

The Mixed Court in the Shanghai International Settlement (1911~1918)

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Introduction

The Shanghai Mixed Court (会審公廨) was founded in 1869, to deal with the situation of large numbers of Chinese taking refuge in the Shanghai International Settlement after the Taiping Rebellion in the 1850s. This court dealt with the litigation that occurred between Chinese and foreigners inside the settlement, which was to be tried by both Chinese magistrates and foreign assessors. In the “International Settlement,” the positions of all the treaty-power nations were considered to be equal. The Mixed Court, however, was under the exclusive control of British and American assessors. Therefore, disputes had often arisen between foreign consulates.

Previous works about the Mixed Court have tended to emphasize the friction between China and the West.¹ This paper concentrates on the period after 1911, when the Consular Body in Shanghai took over the jurisdiction of the Mixed Court, attempts to reconstruct the viewpoint that Western modern law had been gradually transplanted into China, and analyzes how the court functioned, from the aspect of the relationship the court established with both Chinese magistrates and Chinese society, in the international context mentioned above.

¹ A. Kotenev, an officer of the Mixed Court, emphasized its modernity and Western contribution to the court (Anatol. M. Kotenev, *Shanghai: Its Mixed Court and Council*, North-China Daily News & Herald, Limited, 1925). Thomas B. Stephens concentrated on Western “legal theory” and Chinese “disciplinary theory” and criticized A. Kotenev, pointing out the contest between magistrates and assessors in his book, *Order and Discipline in China; The Shanghai Mixed Court 1911-27*, University of Washington Press, 1992. The system of the court was analyzed by Yang Xiangjun (楊湘鈞), in *Diguo zhi bian yu guatou zhi lian: Shanghai Huishen gongxie quanli guanxi bianqian yanjiu* (帝国之鞭与寡頭之鏈—上海会審公廨權力關係變遷研究)(*The Imperial Whip and the Oligarchic Chain: Study of the Power Transition in the Shanghai Mixed Court*), (Peking University Press [北京大学出版社], 2006), and he denied the modern characteristic of the court. Pär Kristoffer Cassel indicated the Chinese “legal pluralism” tradition and its relevance to the Mixed Court in *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-century China and Japan*, Oxford University Press, 2012.

Institution of the Mixed Court

Until the late Qing Dynasty, any modern form of judicial system had not been established in the Mixed Court, where Taotai (道台) and foreign consuls sat in mixed cases together. When the Xin-hai Revolution occurred in 1911, the structure of the court collapsed, thus the Consular Body in Shanghai decided to take over the jurisdiction of the Mixed Court until the central government was formed in China. However, even after the central government had been established in Peking, the Consular Body insisted on their jurisdiction over the court, claiming that they couldn't return the court to the Chinese Government unless the government solved the problems which had occurred in the Mixed Court before 1911. Considering the fact that there hadn't been any civil law or commercial law in China, and that all the economic activities were based on the system of the day in the International Settlement, it was difficult to return the jurisdiction back to the Chinese Government unless a reliable legal system able to replace that of the settlement was accordingly set up in China.² Therefore, from this time on, reform of the Mixed Court proceeded under the administration of the Consular Body. As to the structural reform in the court, its judgment section basically followed the existing structure, being composed of Chinese magistrates and foreign assessors – who were assigned by the Consular Body. While Chinese magistrates ought to have appeared in all the cases, foreign assessors, who were to support the judgment of Chinese magistrates, could be simply divided into permanent (regular) assessors and temporary assessors. As for the permanent assessors, there were two positions: one was the Police Assessor and the other was the Consular Body's Assessor, both of which were customarily occupied by British and American assessors for years. The latter was a newly added post, to sit in the civil cases that occurred between Chinese. Until the late Qing era, foreign assessors did not have the right to interfere in a pure Chinese case, however, since the Consular Body considered there might be injustice if a Chinese magistrate solely tried the case, they appointed the Consular Body's Assessor in 1912 to meet the requirement.³ However, temporary assessors – such as “British assessor”, “Portugal assessor”, “Japanese assessor” and so on, appeared in the case of a foreign plaintiff of their nationality against a Chinese defendant, and only the consulates of treaty powers had a right to supply their officers as assessors. Generally, the Vice-Consul of each foreign consulate took charge of this role,

² Yang, *op. cit.*, pp.147-151.

³ *Nihon Gaimushō Kiroku* (Japanese Ministry of Foreign Affairs [日本外務省記録], hereafter NGK) 4.1.1.17 Acting Consul General in Shanghai, Murakami to the Secretary, Matsubara, May 2, 1914.

while some consulates appointed a clerk or a secretary-translator as assessor.

As a whole, the Consular Body's control over the appointment of judicial officers was extended from that of before 1911, moreover, the British and American assessors, occupying a permanent position and the most important role in the court, were more and more influential, while the other assessors could appear in the court only when the case was relevant to their national interest.

Through the reform of the Mixed Court in 1912, the importance of foreign assessors came to be emphasized more than before. As mentioned above, foreign assessors were to play a supportive role, however, their ruling or opinion, in fact, highly affected the Chinese magistrates' judgment. Moreover, foreigners in the settlement were worried about corruption among Chinese officers, such as runners, which happened quite often, and was a serious problem in the late Qing era.⁴ Therefore, some of them insisted on the necessity of the foreign assessors' supervision over Chinese magistrates. However, there was a dispute about the foreign assessors' capability of being a judge, since they were consular officers in the first place. In fact, some assumed that a foreign assessor did not have any legal knowledge at all, which caused a situation of confusion in the Mixed Court, with others having a positive view that most of them were qualified as lawyers.⁵ If so, what divided the opinions of scholars or observers as sharply as this? This problem, it would seem, is one of the most important points to discover about the actual situation of the Mixed Court.

Consular Body's Assessor and its Status

As mentioned above, the position of the Consular Body's Assessor was set up in 1912, and this assessor had the most authority to apply civil procedure, or to make a ruling on it.

In the Mixed Court, although there had never been any rigid procedural law, some simple

⁴ Motono Eiichi (本野英一), “‘Daitō Kaishinkōkai an (1905)’ ni kansuru ichi kōsatsu (A study on the Mixed Court Riot [1905])”, *Morison panfuretto no Sekai* (Current Affairs Modern East Asia: From the Shelves of George Morrison Pamphlet Collection), Tōyōbunko, 2012, p.136.

⁵ NGK B2.39, *Shanghai Kyōdōsokai Kaishingamon mondai* (Subject for the Mixed Court of Shanghai International Settlement), 1925, pp. 61-62; Ding Rong (丁榕) “Shanghai gonggong Zujie zhi Zhiwai faquan ji Huishen gongxie (上海公共租界之治外法權及會審公廨) (Extraterritoriality and the Mixed Court in Shanghai International Settlement)”, *Dongfang Zazhi* (東方雜誌), Vol.12 No.4, 1915, p.9.

rules stipulating the principles of procedure were in existence, which had been amended several times. For example, the Consular Body established “Procedure in the Mixed Court in Chinese Civil Cases (1912)” in which the provision of a foreign assessor sitting in and watching the pure Chinese civil cases was added. However, as the foreign assessor’s authority in this provision was too vague, the Consular Body decided that the assessors in Chinese civil cases should sit as assessors for the Consular Body, because “their presence should be insisted upon in the interest of the Chinese Community, especially of the small shopkeepers; the latter proved to be strongly in favor of Foreign Assessors who however must be in a position to take part in the proceedings and not merely “to watch”.”⁶ Considering this process for the establishment of the Consular Body’s Assessor, and the fact of the above “Procedure in the Mixed Court in Chinese Civil Cases (1912)” being a provisional rule, it was decided to draft new Rules of Procedure in 1914.

However, the Consular Body’s Assessor wasn’t able to appear in all the Chinese civil cases. When either a plaintiff or a defendant was employed by a foreign firm, or when foreign interest was involved in the case, according to the request of the foreigner in question, if considered to be necessary, the assessor of the nation concerned could appear in the case. Moreover, the Consular Body decided: when the consulate representative of this foreigner thought there was a special interest directly relevant to their nation, their assessor could appear in the case solely, without an attendance by the Consular Body’s Assessor.⁷ Therefore, this system sometimes caused a dispute over the right of sitting in Chinese civil cases, between the permanent assessors and the temporary assessors.

It is also pointed out that these permanent assessors didn’t always follow the above Consular Body’s decision, applying procedure based on so-called “court practice”, and the consulate of the temporary assessor complained about this tendency. On March 1914, the Belgian Consul-General, who held the post of Senior Consul, the head of the Consular Body, sent a letter to the British Consul-General as below:

“Our Spanish Colleague’s letter amounts simply to a complaint that the Assessor appointed by the Consular Body as to all cases in which one of its members give

⁶ NGK 4.1.1.17. Draft of Proposed Letter to the Dean of the Diplomatic Body, Belgium Consul-General and Senior Consul in Shanghai, D. Siffert to the Diplomatic Body, Attached to the Despatch from Japanese Acting Consul-General in Shanghai, Murakami to the Foreign Minister, Makihara, Mar. 30, 1914.

⁷ Baba Kuwatarō (馬場鞆太郎), “Shina Kaishin Seido (Chinese System of Watching cases)”, *Shina no Kaishin Seido, Peking Daigaku, Kōga Jōryū no Suiun* (Chinese System of Watching cases, Peking University, Upstream Water Transportation of Yellow River), Shanhai Tōa-Dōbunshoin Kenkyū bu, Jun. 1926, p.14.

due notice that his national interest is involved – that is, if, as there seems no reason to doubt, the Registrar⁸ states their practice correctly. This complaint, in my opinion, would best be met by the Consular Body asking the superiors of three assessors to instruct them that the ruling applies to all cases brought in the Mixed Court and that the fact of due notice from one of our members ipso facto removes a case from the category of Chinese Civil Cases.”⁹

This was to say that permanent assessors had not applied the Consular Body’s ruling to all cases, moreover, they were unwilling to dispose of the Chinese civil cases into the category of actual mixed cases, which allowed the assessor of the nation concerned to appear in the case instead of them. This kind of arbitrary decision by the Consular Body’s Assessor formed the existing “practice” in the Mixed Court. In spite of the claim from the Senior Consul, the British Consul-General considered “my instructions would compel me ... to resist and to dissent from any proposal capable of disturbing the present arrangement, which has lasted for greater part of the Mixed Court’s existence without the need for definition now alleged and without any dispute with the Chinese authorities as to the capacity in which three assessors sit.”¹⁰

Enactment of Rules of Procedure (1915)

In 1914, the British Bar Association in Shanghai suggested codifying the court’s practice, and asked P. Grant Jones, the British Consular Body’s Assessor, to lead and approve their drafting of the Rules of Procedure. Jones was a person appointed as a student interpreter in China in 1902, and awarded a certificate of honor at the bar final examination, and called to the bar at the Inner Temple in 1912. In that year, he was appointed the local Vice-Consul at Shanghai and the assessor in the Mixed Court.¹¹ When the Rules of Procedure were about to come into force in 1915, Jones made a speech at the Bar Association as below:

⁸ The Registrar’s Office was in charge of all the clerical works such as the issue of summons, warrant, and monetary orders to litigants.

⁹ *NGK* 4.1.1.17. British Consul-General in Shanghai, H. E. Fraser to the Diplomatic Body, Mar. 19, 1914.

¹⁰ *Ibid*, Reply to the Despatch of Mar. 19, 1914. British Consul-General, H. E. Fraser to Belgium Consul-General and Senior Consul, D. Siffert.

¹¹ *The Foreign Office List and Diplomatic and Consular Year Book*, London: Harrison and Sons, 1943, p.232.

“In the first place the rules do little more than reproduce in a codified form the existing practice of the Court, and secondly ... the rules are not intended as a rigid code binding on the Court and on litigants, but as the foundation for the establishment of the recognized procedure in any case where the rules might in our opinion work hardship to relieve against them. There is the further point ... that the proper authority to make rules of procedure is the Court which has to administer those rules. ... It is, to my mind, and I feel sure that the whole Bar will agree with me, an almost conceivable absurdity that such rules as these should require the approval of anybody other than the Judges of this Court.”¹²

From the beginning, the drafting committee intended to make a rule as simple as possible, in order that lawyers and assessors of different nationalities would be able to apply it.¹³ However, even though it was explained to be a “codified form of the existing practice”, the practice against the Consular Body’s ruling wasn’t clearly referred to in the Rules of Procedure.

In fact, the problem had occurred between British assessor and C. E. Gauss, the American Acting Consul-General, as to the enforcement of the Rules of Procedure. A point in dispute was whether these rules required the approval of the Consular Body or not. Gauss insisted that the consent of the whole Consular Body was necessary, while Jones claimed that the Consular Body’s Assessor for Chinese civil cases could solely arrange the matter inside their court. Even though Bishop, the American Consular Body’s Assessor, had once agreed with Jones as to accepting the rules, Gauss instructed him to withhold the approval;¹⁴ besides, he referred the whole matter to the Consular Body. Raaschou, Acting Senior Consul of the Consular Body, intimated that all communications should be addressed to the consuls of the treaty powers.¹⁵ The British Consulate and British Bar Committee emphasized that the object of the rules was to introduce method and uniformity of practice in the conduct of a case from its commencement to its conclusion.¹⁶

¹² “History and Scope of the Rules”, *North China Daily News*, Sep. 20, 1915.

¹³ FO228/2741 Volume 527 (Shanghai Settlement Extension; Shanghai Mixed Court), Mixed Court “Rules of Procedure” takes exception to action of British Assessor, Secretary of British Bar Committee in Shanghai, R. N. Macleod to British Minister in Peking, John Jordan, Oct. 14, 1915.

¹⁴ FO228/2741 British Assessor in Shanghai, P. Grant Jones to Secretary of British Bar Committee in Shanghai, R. N. Macleod, Oct. 15, 1915.

¹⁵ FO228/2741 Mixed Court Rules. Memorandum I (statement of the British Bar Committee), Mixed Court Procedure rules: R. N. Macleod’s Explanatory memorandums, Oct. 16, 1915.

¹⁶ FO228/2741 Chairman of the British Bar Committee, White-Cooper to Danish Consul-General and Acting Senior Consul in Shanghai, P. T. Raaschou, Sep. 15, 1915.

And by pointing out that the expression “promulgation of the rules” which Gauss had used was not correct,¹⁷ and by reiterating that these rules were intended for “guidance” rather than as a binding code, they tried to prevent interference by the Consular Body in the court matter. Though some international disputes arose as to the interpretation of rules and the status of these special assessors, eventually the American Bar Committee and assessors induced Gauss to reconsider his former decision, and the rules came into force accordingly.¹⁸

Personnel Change of Permanent Assessors after World War I

In the situation of the British and American assessors occupying the main permanent posts in the Mixed Court, there has been a dispute over the position of the Police Assessor for years. The Police Assessor, if once appointed, his status would become permanent, and he would never be replaced by someone else. However, from the view of Shanghai being the International Settlement, some of the members of the Consular Body protested the situation of British, American, and German assessors actually taking up the permanent posts, and complained that they must choose the Police Assessor through an election, as the status of every consulate should be equal. However, there was an opposing opinion that in the first place, the British settlement and the American settlement had merged into the International Settlement, so the position of Police Assessor must be as such, from the historical view. In particular, Knipping, the German Consul-General, supported the above claim, asserting that the Consular Body shouldn't interfere.¹⁹

However, due to WWI, the breaking off of diplomatic relations between China and Germany affected personnel changes in the Mixed Court. As the German Police Assessor lost his post in 1917, the problem began to attract the members' notice again, as it was necessary to fill the vacant position. Finally, it was determined to hold an election within the Consular Body, but only two consulates - the Italian and Japanese - put up their candidates, so it was decided to appoint both of them as Police Assessors, without an election. So, from this time on, the British, American, Italian, Japanese have been in

¹⁷ FO228/2741 On Mixed Court Rules, Memorandum III, Secretary of British Bar Committee in Shanghai, R. N. Macleod to American Acting Consul-General, C. E. Gauss, Attached to the Despatch, R. N. Macleod to British Minister in Peking, John Jordan, Oct. 16, 1915.

¹⁸ Kotenev, *op. cit.*, p.197

¹⁹ NGK 4.1.1.17. Japanese Consul-General in Shanghai, Ariyoshi to Japanese Minister in Peking, Hayashi Gonsuke, Mar. 26, 1917.

charge of the permanent assessors, and the power of the latter two consulates has expanded within the Mixed Court.

However, just one year after the personnel change in the court, problems occurred between these permanent assessors. An application for permission to discontinue a Chinese civil case was customarily placed before Grant Jones and Magistrate Tsang. Jones said that it was unnecessary for the court to endorse a discontinuance, and that the Registrar's Office should perform this function instead of the court. But at the same time, G. Ros, an Italian assessor in another Chinese civil case, made a ruling that only the court had power to grant or refuse permission to discontinue a case, which was completely contradictory to Jones' decision. Therefore, the situation became quite awkward, especially for the Registrar who had to carry out the procedure. M. O. Springfield, the Acting Registrar, claimed that without an official endorsement by the assessor and magistrate, a party would not be in a position to prove in this or any other court hereafter, supposing a case arose in which the question whether or not a case had been discontinued arose, so he opposed Jones' ruling, in favor of Ros.²⁰ In fact, confrontation in the court between permanent assessors has occurred frequently, following changes in personnel. To sum up, it was a challenge by a new permanent (Italian in this case) assessor in the Mixed Court to the power of the British assessor.

Status of Chinese Magistrates

While friction among foreign assessors had been provoked in the court, what kind of role did the Chinese magistrates play, and what were their intentions?

With regard to the problem of the British assessor's verbal ruling, as mentioned in the previous section, the Registrar's Office described Jones' action as below:

“The British Assessor ... published and put into force the Mixed Court Rules of Procedure without the knowledge and consent of the other Assessors, other member of the Mixed Court Bar and the Consular Body. The Consular Body and individual Consulates refused and still refuse to recognize these rules. The same Assessor has during the past few days ruled that the Registrar is competent to take into custody and detain without an appearance before Court on a Civil Summons and without a

²⁰ Shanghai Municipal Archives (上海市档案馆)(hereafter SMA) U1-2-709. Mixed Court Registrar, Spring-field to Captain Superintendent of Police, Oct. 14, 1918.

formal Order of the Court in writing [and] a ruling at variance with all previous procedure and custom.”²¹

This seemed to mean that Jones’ irregular action was potentially dangerous, as it would provoke conflicts not only in the court, but legally, with the Registrar, and internationally, with the Consular Body.

This report by the Registrar’s Office cited another case in which the problem was caused by Jones as well, referring to the endorsement to find security, which was to be signed by both assessor and magistrate. The report itself was to point out the inconsistent ruling made by Jones, but at the same time showed how the procedure was decided in the court,²² namely, Jones consulted with the Chinese magistrate and made rulings which were considered “irregular” outside the court. As the Rules of Procedure were introduced in 1915, Gauss had complained that considering the expression “[These rules will be in force] so far as this Court is concerned, [without the approval of the Consular Body],” which Jones used in the explanation of rules, the words “this Court” actually indicated the particular magistrate and Jones himself.²³

Kuan Chiung (關綱), senior Chinese magistrate, had worked in the Mixed Court under appointment by the Shanghai Taotai during the late Qing era, and, after 1911, Kuan and two magistrates were appointed to the same position by the Consular Body. Therefore, it could be said that their status had changed from being the representatives of the Qing Government to being pure judicial officials in the Mixed Court.²⁴ However, even after 1911, the Chinese Government often tried to interfere in trials of Chinese civil cases through the channel of Kuan,²⁵ so magistrates couldn’t help acting under the guidance of the Consular Body’s Assessor as a safeguard. Besides, public opinion about magistrates,

²¹ Ibid.

²² SMA U1-2-709. RE: British Civil Case 2173 Shanghai Water Works Co. Zung Kyung Faung (程錦芳) Claim for Tls.54, Sub-Inspector, John Shaw to Acting Registrar, M. O. Springfield, Mixed Court, Oct. 9, 1918.

²³ FO228/2741 Secretary of British Bar Committee in Shanghai, R. N. Macleod to British Minister in Peking, John Jordan, Oct. 16, 1915.

²⁴ Sun Huei-Min (孫慧敏), *Zhidu Yizhi: Minchu Shanghai de Zhongguo lüshi* (制度移植—民初上海的中国律師 [1912~1937]) (Institutional Transplantation: The Chinese lawyers in Republican Shanghai), p.125. Sun Huei-Min pointed out that it wasn’t due to the order of new or old Chinese Government, but the mere fact that they had been working in the court that those magistrates were appointed.

²⁵ FO228/2741 Enclosure in Consul General Sir E. Fraser’s No.17 of 26th January, 1915, Dutch Consul-General and Senior Consul in Shanghai, von Zeppelin Obermuller to British Minister in Peking, John Jordan, Jan. 15, 1915.

including that of Chinese merchants, was so severe.

Therefore, an alternative proposal was put forward by both Chinese merchants and the government, demanding that the representatives be elected by some public organization. Though there was, of course, a great difference between those merchants and the government as to their aim in requiring election, their position was the same in recommending a person who was acquainted with Western law and foreign languages²⁶.

However, despite this desire for the appointment of a legally educated Chinese as senior magistrate instead of Kuan, the Consular Body has never changed its way of appointment or accepted any personnel change of Chinese judicial officials. Moreover, of interest is that Kuan devoted himself to this work during the existence of the Mixed Court until 1927. It can be explained that the Consular Body desired to close down any interference by Chinese authorities in the matter of foreign settlement. At the same time, it is pointed out that what the Consular Body required for the position of magistrate was not exactly within the ability of the law.

International Challenge of British Sovereignty

Some foreign consulates like Italy tried to challenge the British-centered court system, by providing their assessor for the post of foreign permanent assessor. However, the British assessor was against the Consular Body's ruling and resisted the other assessors' appearance in Chinese civil cases, in which each consulate claimed that their national interest was involved. As in the example of the varied rulings of Jones and Ros about the permission to discontinue cases, the British assessor obviously tried to reduce the power of other assessors, especially in the matter of court proceedings.

It can be emphasized that during the late Qing era, a Chinese defendant had often absconded outside a settlement just after or even before getting a summons, due to the corruption of court runners, resulting in plaintiffs being unable to get debts paid. After

²⁶ FO228/2741 Memorandum communicated by Mr. Ts'ao Ju-lin (undated), Attached to the Despatch from Belgium Consul-General and Senior Consul in Shanghai, D. Siffert to Special Envoy for Foreign Affairs, Dec. 19, 1913; Shanghai Settlement Extension, Jul. 1916, Attached to the Despatch "Shanghai Settlement Extension: progress of negotiation up to date", from British Minister and Dean of the Diplomatic Body in Peking, John Jordan to British Consul-General in Shanghai, H. E. Fraser, Jun. 30, 1916; Son Huei-Min, *op. cit.*, p.127.

the reform of the Mixed Court, the Consular Body's Assessors sat in the case and made rulings day by day and verbally, to deal with the problems as above. Besides, Chinese magistrates had been engaged in making these rulings with Jones, otherwise the court wouldn't have functioned well, especially when the other assessors had acted outside of supervision by the permanent assessor.

In fact, after the rendition of the Mixed Court to the Chinese Government in 1927, a report was handed to the Cabinet Office in England as follows: "Such are the delicacies of international intercourse that the bare statement by any consul that he claimed 'interest' in any particular case was sufficient to put an assessor of that consul's nationality on the bench for the trial of that case. It resulted from this system that illicit traffic in opium and arms and many other nefarious practices flourished under the protection of the Portuguese, Spanish, Italian and other consuls."²⁷ It can also be pointed out that some of the Chinese in this settlement managed to find a way to get the protection of foreign consulates, for example, not only by working in a foreign firm, but by acquiring foreign nationality or becoming foreign protégé to avoid the order of the court.²⁸ Such an "international diversity" advocated by certain foreign consuls was actually one of the useful cards for Chinese, therefore, what the British assessor and magistrates desired to achieve was control over such Chinese, by eliminating the intervention by foreign consulates.

Mixed Court "Practice" from the View of Chinese Society

It is clear that some assessors had tended to cause trouble frequently in the court, however, as mentioned above, the action of the permanent assessors at the same time brought disputes with the Consular Body or the Registrar. So, what was the positive reason that made this practice possible until 1925, through which the permanent assessors exclusively supervised the court procedure?

Considered from the viewpoint of Chinese society, the court's legal procedure relevant to detention and security was, in the first place, taken too harshly by Chinese merchants. Early in 1915, the municipal council received a petition from the inmates of the House of

²⁷ CAB24/203 The Shanghai Situation, circulated by direction of the Secretary of State for Foreign Affairs. May 1929.

²⁸ FO228/3266, Dossier 168 Mixed Court - Shanghai Vol. I, British Assessor in Shanghai, A. D. Blackburn to British Consul-General in Shanghai, C. F. Garstin, May 8, 1922.

Detention for Defendants of Civil Cases (debtor's prison), which described that the reform of the Mixed Court in 1911 had established the new foreign administration and wiped out the abuse of runners, however, the rigid measures were applied by the court to all cases, which caused another difficulty.²⁹ The petitioners complained that: "In cases where monetary security was required the foreign policeman himself had to ascertain the stability of the guarantors, who must be capable of meeting twice the amount of the guarantee", and if this condition was not satisfied, the guarantee would be detained. "In addition to this, the new procedure required the presence of the proprietor of the shop giving security. The petitioners pointed out that there were not many reliable shops in the settlement whose proprietors could always be found at the premises".³⁰ Therefore, they claimed that these requirements were too hard to meet, and were losing touch with the reality of society in the settlement.

In response to this situation, the Chinese Chamber of Commerce in Shanghai, the most influential merchants' guild, made a suggestion to the Mixed Court in 1917. The Chamber of Commerce explained that, despite the fact that some of the plaintiffs brought an action only for revenge, even merchants of reputation would easily be detained, who had enough property and were capable of finding a guarantor. Moreover, if the defendant was outside the settlement without knowing the fact that he was charged, a bill of "Find Security" was put on his residence for the whole time during his absence, and, if he was arrested, he would be in handcuffs, together with other hooligans, for surrender to the Mixed Court. This sort of harsh procedure would cause merchants to lose face, and it was fatal damage for those who had established themselves with trust and reputation as Shanghai merchants.³¹

They proposed that if the defendant was a member of their guild, the Chamber of Commerce would provide protection for him, and owe the responsibility of his absconding and compensation to the Mixed Court. As all the permanent assessors at the time, such as British, American, and German, had approved their proposal through the senior magistrate, the Chamber of Commerce accordingly made the membership

²⁹ Kotenev, *op. cit.*, p.190.

³⁰ *Ibid.*

³¹ "Shanghai Zongshanghui yu Huishen gongxie laiwang hanjian ji suofu geguo Fulingshi fuhan (上海總商會與會審公廨往來函件及所附各國副領事復函)(Correspondence between Shanghai Chamber of Commerce and the Mixed Court and Despatches to Vice-Consuls concerned)", *Shanghai Zongshanghui Zuzhishi Ziliao Huipian* (上海總商會組織史資料彙編)(Compilation of History of Organization of Shanghai Chamber of Commerce), Vol. I, Shanghai guji chubanshe (上海古籍出版社), 2004, pp.268-269.

regulation stricter, tightened the organization to enhance the reliability of the guild, and provided a member list to the Mixed Court. Finally, they acquired the “superiority of reputable merchants (体面商人優待權)” in the court, which protected them from sudden arrest.³² That is to say, the Chamber of Commerce considered that the merchants of reputation should be protected from the severe procedure, while they expected the Mixed Court to exercise strict control over the other merchants.

Conclusion

In the Mixed Court, disputes often occurred among foreign consulates under the principle of international fairness. In this circumstance, even though Jones conflicted with the Consular Body and the assessors from certain consulates, he had built up a co-operative relationship with Chinese magistrates, and had paid great attention to the opinion of the Shanghai Chamber of Commerce, which represented the Chinese merchants in Shanghai. This is the reason why the Mixed Court succeeded in surviving in the international settlement for years.

As a result, the Mixed Court didn't confront Chinese tradition; moreover, such a give-and-take relationship between them has maintained the court system, based on practice.

³² “Zongshanghai jinri kaihui zhi yian (總商会今日開會之議案)(Subject of today's meeting in Chamber of Commerce)”, *Shenbao* (申報), Mar. 23, 1918.