

THE BARK SUMATRA AND MALAY PIRATES
CASES.

The Court House was crowded on Monday in an unusual degree, in order to hear the sentences upon the Gunner of the *Sumatra* and his five accomplices, and upon the Malay Pirates. At about twenty minutes past eleven Mr. Justice Grant entered the Court. The people of the *Sumatra* having been first placed in the dock,—as soon as the form of calling over their names and asking them if they had any thing to say against the verdict, had been gone through, Mr. Leith, on behalf of his client Agapito de los Reyes, began to address the Court in arrest of judgment, and was proceeding to argue the question of jurisdiction, when the Judge informed him that if he wished to press further argument on that point, he should have the opportunity of doing so before a full Bench; but he observed, Mr. Leith might perhaps not think it necessary to take that course after he should have heard what he (Mr. Justice Grant) was about to state, namely, that in consultation with his brother Judges it had been determined, in consequence of the novelty and importance of this case, to refer it home; and though he should proceed to pass sentence, the sentence would not be carried into effect until the pleasure of His Majesty should be known. Mr. Leith said, this was all he could have desired. Sir John Grant then put on the black cap and sentenced all the six prisoners to be hanged on Wednesday morning, informing them at the same time, that the execution of the sentence would be suspended until the result of a reference to England on the point of law; but warning them, that if the result should be a confirmation of the jurisdiction of this Court, they must not hope for mercy. The prisoners were then taken out, to be returned to the jail where they will remain in confinement. They seemed very callous, especially the Gunner, about their situation.

The Malays were next brought up, and on their behalf Mr. Clarke took the same course of objecting to the jurisdiction; and was told by the Judge that he might be heard before a full Bench, and that this case like the other would be referred to the King in Council, the prisoners remaining in confinement in Calcutta until an answer should be received. Mr. Clarke said he would avail himself of the permission offered him to argue the question of jurisdiction before the three Judges on a day to be fixed; and, if he succeeded in convincing the Court that it had no jurisdiction in the case, he trusted that the Government would send the prisoners back to their own country instead of keeping them in confinement here for so long a period. Sentence of death was then passed upon them pro-forma.

We very much apprehend that considerable embarrassment may arise from the position in which the Court has placed itself with respect to these piracy cases; for, if we correctly understand the course of proceeding, the cases will not go home by appeal, but in the very different shape of a reference by the Judges themselves. Should the result of that reference be a confirmation of their power to try the criminals, then indeed the situation of the prisoners would be the same, as if they had been allowed to appeal,—for they (we apply this remark to the men of the *Sumatra*, not having heard what fell from the Judge when he sentenced the Malay Pirates) were distinctly told not to expect mercy. But suppose the jurisdiction of this Court to be disallowed—what will be the position of the prisoners then? A sentence not reversed by appeal is still a sentence. Could the prisoners, after a sentence unrepealed, though pronounced by a Court declared incompetent, be delivered over to be tried by another tribunal in another country? And how will the sentence itself be got rid of? The usual way of dealing with convicts, when doubts arising in the minds of the Judges on points of law, are referred to the King in Council, is, should they not be over-ruled, to issue a free pardon. Will this course be necessary to get rid of the sentence for piracy? And suppose it be adopted, can the criminals after pardon be kept in confinement, and delivered over as criminals to the Java Government? We are quite perplexed to imagine how the difficulties of these questions will be got over, without compromising the Royal Prerogative of mercy, and deviating from usage.

Admitting, according to the verdict, that the crime of piracy was committed by the Gunner of the *Sumatra* and his accomplices, the murder was also proved against them beyond all doubt. For the latter crime they were at any rate amenable to the Dutch Courts, the vessel being a Dutch vessel. Both were crimes of equal degree in the eye of the law, in all civilized nations. What signified it then to the ends of justice, whether these men were tried in Calcutta for piracy, or at Batavia for murder? The ends of justice merely required that they should not escape the penalty of their guilt, and therefore that they should be brought to trial in such manner and in such place as should most certainly lead to that end. What the depositions contained we know not, but we must suppose they made out a clear prima facie case of piracy—otherwise the men would not have been put upon their trial. But the question that naturally suggests itself is this—were not the importance and novelty of the case equally apparent before and after trial? and if they really were, as declared yesterday from the Bench, a sufficient motive for arrest of judgment pending a reference to England, were they not a reason sufficient to avoid the embarrassment altogether by sending the prisoners to be tried in their own country, as was done in the case of the *Dedericka*? It surely did not require the reality of a trial here—it was not necessary to create a precedent, in order to determine either an abstract point of law or a question of political expediency. They might be equally settled by a reference at leisure through the proper channels.