

THE CALCUTTA MONTHLY JOURNAL.

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attending his master at dinner; and then prisoner, Roshun, went on shore alone, at about sunset. The prisoner, as he went away, took a *chatays* with him from the cook boat. He had a *chupkun* and a pair of drawers. *His clothes were clean.* On Sunday morning at 12 o'clock he went on shore to fetch some meat for his master, such as mutton. I did not see what became of it. It was taken inside of my boat. I then saw a small spot of blood on one sleeve. I know not whence it arose. One of the boatmen of the pinnace, at about eleven or twelve at night, that Sunday night, called me up, and said, a man wants to come on board. It was Roshun, the prisoner. He entered the cabin, and I saw him no more. On the Monday, a chowkeedar came on board at 10 a. m., and asked me for the kidmutgar's clothes, which I gave him. They were stained with blood. The prisoner got up the next day, after dawn. I was already up. I knew him for a month and a half, and I never saw him quarrel with any body. He had no *pugree* on the night he returned on board. Very little moonlight remained when he returned; and some rain had fallen in the night.

Pulwan.—I know the prisoner; I recollect his return on board. I was sitting on the roof of the boat, and my master had fallen asleep, when the prisoner came in. I saw the prisoner come on board by the moonlight, which was faint. I did not see what clothes he had on, I did not see any turban. I knew the tailor Lascari for seven months. The prisoner made the bazar every day and the prisoner did the joint business of cook, kidmutgar and mussalchie.

Captain Sage.—My name is William Sage, captain in the 48th regiment of native infantry. Prisoner was in my service ever since April 1829. I remember the day of the murder. Prisoner regularly went on shore every day to make the bazar. He went on shore on Sunday the 24th day of July last. I left the boat, at half past six in the evening; and prisoner was not yet gone on shore. I did not see him come on board. I read that night until half past 11, and went to bed. My bearah undressed me. His name is Paul Chaund. He put out the light after I was in bed. I am sure prisoner came at 11½ p. m. The next morning the sircar Womachurn Bose, told me the tale of the tailor's death. When between 8 and 9 a. m. I had dressed myself, prisoner came into the room, and on my questioning him, answered that he had heard but came away, being afraid. I spoke to him of his friendship towards the tailor; that I had once known them to be drinking together. I then read him a lecture. He said he had never since touched liquor. This occurred about two months ago. I then told him to collect his friends and those of the tailor, and to bury the latter's body respectfully. He replied affirmatively; but that it would prevent his giving me my dinner at 4 p. m. He said he would wait upon me at the Bengal Club. Capt. Birch came on board. The tailor's boxes were brought to me. I ordered them to be broken open, no key being found. The dandy gave a key to Womachurn, the sircar, and it opened the boxes. That key was found by the dandy close to the tailor's bed. I saw the prisoner behave with perfect coolness throughout, which gave me misgiving about his being guilty or not. I found new pieces of cloth in the cook boat, and got them sent to the coroner. No instrument of any kind was found, upon search, to give any clue to the discovery of the author of the murder.

A favorable testimony is given by Captain Sage of the character of his servant—the prisoner. The durzee was a man of 30 or 35, whilst prisoner can hardly be more than 17 or 18 years of age. I saw this handkerchief (exhibited in Court) wrapped round the durzee's throat, after his murder under the tree. There was a blue turban lying close to the body, and when to-day the handkerchief was opened on the table, I found in it a thimble and white thread which I had not seen, nor,

I firmly believe, could have seen in it when it was taken off, by the chowkeedar, from the throat of the tailor.

The prisoner never denied to me that he had been on shore on the Sunday preceding the murder. I never observed the prisoner have any weapon of his own. The prisoner's body was examined at the Police and no mark whatever or scratch was to be found on it. The deceased was a remarkably quiet man, and was loved by all his fellow servants. The prisoner is also an exemplary character.

Mr. Macan.—The event occurred on the 25th of July. Roshun stated to me that on the 24th he went at half past 6 p. m. to his uncle Wahid Khan, where he remained until about half past 8 p. m.; that he got on board at about half past 9, and called the baboo, who replied that he was *asleep*, and wished to know why he was disturbed.

Captain Birch.—I am Superintendent of the police. I know the prisoner; he was apprehended on the 25th of July. I saw him before he was apprehended. I put various questions to him; nor did I give him any cause to fear that he should be apprehended. He said subsequently to me that he had gone on shore with a vest, a *pajama*, and a *tipoe*. The prisoner told me that the durzee was addicted to drinking, and that Captains Trower's and Champney's servants could give me accounts about the durzee, which was ascertained by me to the contrary.

Captain Sage.—My kidmutgar was absent for two days having been beaten at the molorum, and would have, perhaps, perished, had he not been rescued by the tailor.

Palchaund.—I am mate bearah to Captain Sage. I remember the murder of the tailor. I do not know when he went on shore, he or the prisoner, nor when they returned. It was a Sunday. Captain Sage returned from Church, after it struck eight. At 11 the Captain went to bed. I put out the lights and went to sleep. Pulwan, the dandy, watched the boat that night.

Wihid Khan.—I am a kidmutgar out of employ. I have known the prisoner for above seven months. I heard the event from prisoner on Monday at about ten in the morning, on board the cook boat. The prisoner, who was in the pinnace, had called for me. Then the prisoner informed me of the event which had happened.

Bustyrn.—I am a washerman. I knew Lascari. I had received my wages and had given him 21 rupees to keep, because I had no place to keep it safe. I got only from those 21 rupees 7 rupees; the rest is lost.

The Jury think it unnecessary to hear the prisoner.

Verdict: not guilty.

Neither was Mr. Clarke, counsel for the defence, heard, nor did his Lordship think it necessary to sum up the evidence.

His Lordship advised the prisoner to think how the tailor came by his death. The manner was unknown; but from his habits of drinking he met a mysterious end. Take you care, (concluded his Lordship,) to profit by such an example, and correct those similar vices, to which you were formerly addicted, from a salutary fear of similar unfortunate consequences.—*Hurkara*.

MONDAY, AUGUST 15.

Mr. Justice Grant entered the court at 12 o'clock precisely, and after briefly intimating to the Bar that the Sittings were further adjourned to the 29th instant, delivered his charge to the Grand Jury, nearly as follows:—

Gentlemen of the Grand Jury,—I have put you to the trouble of assembling again on account of two cases

within the Admiralty jurisdiction of the Court: and which I had not previously an opportunity to bring to your notice.

I have been induced to ask you to attend this day, because the Admiralty jurisdiction of the court is of a totally different nature from that which you have been exercising. It is founded on different principles; it extends over different persons, and a different region, and therefore administers a different law. Amongst those persons who inhabit the same country, members of the same community, and submitting to the same Government, there is an agreement, express or implied, that all should submit to the laws, enacted by the authority to whom it is entrusted to make laws for the community, and to the jurisdiction of the courts appointed by the authority to whom it is entrusted to appoint judges. As to foreigners who come within that territory, there is an implied agreement to submit to those laws and courts so long as they remain within the territory. The right to enforce compliance with this implied agreement, as well on the part of all citizens as on the part of foreigners, is derived from the first law of nature—self preservation. It is to maintain good order and good government. It is necessary to the peace and welfare of all societies. But the laws of a community, and the jurisdiction of judges appointed by a community, can extend no further than the territory belonging to such community. A citizen leaving his own country and going into the territory of another community, ceases to be subject to his native laws and becomes for a time subject to the laws of such other community. In places not within the territory of any nation, the laws of no particular nation can prevail; and the citizens or subjects of a state, are as free from subjection to its laws and the jurisdiction of its courts, in such places, as the citizens or subjects of any other state, because its laws do not extend there, nor the jurisdiction of its courts. A law may be made imposing obligations, or laying commands upon a citizen or subject of a state to be binding on him, when out of the territory of the state, and this may be enforced on his return, because the obligation upon him personally to yield obedience to the supreme authority of his country is not limited by place, but the law must expressly bear that obedience is to be paid to it without the territory, for generally the laws of a nation subsist only within its territory, and such law were an exception. When some of the citizens or subjects of a nation, establish themselves in an uninhabited country, or a country inhabited by savages, or barbarians, having no established laws, they take possession of the territory for their nation or sovereign, and it becomes the territory of their nation, and is subject to its laws. But the ocean,—in law language the High Seas,—is said in the Law of Nations to be public, *i. e.* not belonging to any people or nation, but to the whole human race,—to be within the dominion of none, except of God alone. The laws of no country, therefore, can prevail upon the High Seas: those, however, who traverse them, are not therefore subject to no laws; for they are subject to the Laws of God stamped by the Creator on the minds and hearts of all men. These are called the law of nature and nations, and are common to all nations of civilized men. By this law we are entitled to repel force and injury by force; for our own safety and that of others, to punish those who violate this law; and by this law murder and robbery are especially forbid. Whosoever, therefore, upon the High Seas, where there are no laws but the law of nature, and nations, and no courts nor lawful authority of any government of any nation, to exercise jurisdiction not equally possessed by all other governments and nations, and by all mankind, commits a crime forbidden by the law of nature and nations, may be lawfully there restrained and punished, by those who have been injured, and those who have witnessed the injury, acting on the principle of natural justice, and for the common safety; as men are by the law of nations entitled to do, in all places not under the dominion of any established government,

nor under subjection to any fixed laws, and having no courts of lawful jurisdiction. But the ocean being the common highway of all nations, it is the common interest of all nations, and the common duty of all governments, to protect those who traverse it, for the security of the traffic and intercourse in which all civilized nations are equally concerned, as in that of all things the most essential to their comfort and prosperity. All civilized nations, therefore, have agreed, that the vindication of crimes committed on the High-Seas, *contra jus gentium*, *i. e.* against the law of nature and nations, ought not to be left to the sufferers, or to such of the companions of their voyage as might be inclined and able to assist them, for thus many grievous offenders might escape, and the commission of great and frequent injustice, and many scenes of unnecessary bloodshed might ensue, contributing to augment the dangers of voyages by sea. It has, therefore, been agreed, by the common consent of all civilized nations, that certain courts shall be established within each nation, having within its territories coasts and harbours of the sea, appointed by the sovereign authority within each nation, whose duty it shall be to administer in a due course of judicial proceedings, that justice upon offenders upon the unsubdued and unappropriated ocean, which the law of nature permits it to the person injured and the bystanders to administer in all places unsubdued and unappropriated by any nation in a manner more summary and with greater danger of injustice and excess. The jurisdiction of these courts is conferred by the sovereign power of each state. The right in each state to erect courts with such jurisdiction is no other than the right and duty derived from the law of nature to all men to execute justice upon one violating the law of nature in a place where he is subject to no other tribunal. These courts are termed Courts of Admiralty. It follows, first, that their jurisdiction is not founded on any allegiance, permanent or temporary, to the sovereign of the country by whom they are appointed and it therefore extends, by the law of nature and nations, over the subjects of all other countries. Secondly, it is not established for the protection of the subjects or citizens of the state by which these courts are appointed, but for the general protection of all persons passing upon the ocean, and therefore it is immaterial to what country the person injured belongs. Thirdly, it has nothing to do with place or territory, and therefore it is immaterial in what part of the expanse of the ocean the offence has been committed. The King of England claims a peculiar and exclusive right of jurisdiction bestowed on the Admiral of England, over the British seas, as over a province, to maintain the peace in those seas, and to protect those who traverse them. This, which gave rise to much contest and to a very learned disputation between two of the most learned men in a former age, we have no concern with here; but with that more extensive jurisdiction, common to the courts of Admiralty of England, and of all other civilized countries, which the learned Selden describes "as extending over the persons and things of the African, Mediterranean, Indian, or any other sea yet more remote, for the space" says he, "over which this sort of maritime jurisdiction extends is interminable." Fourthly, the offences which may be tried by this jurisdiction are those against the *jus gentium*, or the law of nature and nations. Amongst the most prominent of these are murder and robbery, which latter when committed at sea, assumes the name of piracy. Fifthly, the law which is to be administered, is not the law of England by an English Court of Admiralty; nor the law of France by a French Court of Admiralty; nor the law of Spain or of Holland, by a Spanish or Dutch Court of Admiralty; but the *jus gentium* or *lex maritima*, the law of nations or the maritime law which upon questions and crimes arising upon the sea are the same. And by the *jus gentium* or law of nations is not meant that law with reference to the intercourse of nations or states in their political relations, peaceful or hostile, but with reference to the intercourse of individuals

and the duties of man towards man. That law which natural reason hath constituted, and which amongst all civilized nations is preserved and kept—and which is called the law of nations, as being that law whose use is common to all nations. Therefore, whether one who is guilty of a crime at sea, is tried in a Court of Admiralty of one nation or another, he is tried by the same law; nor is there any other difference, but the greater or less learning, the more or less perfect administration of justice, to be found in one court than in another, a difference which from the imperfection of human nature, may be found in an equal degree between different courts of the same country. The law by which the culprit is tried is the same,—a law binding upon the whole human race,—a law deriving its source not from the institution of any one nation, but written by the finger of God upon the hearts of all men. Neither is this law left to the arbitrary interpretation of the judge any more than the municipal laws of the country, administered by the ordinary tribunals, but its doctrines are equally fixed as those of the common and municipal laws, by the common consent, and long and uniform usage of the civilized world, the decisions of the courts administering the law of nations, in the different countries of the civilized world, and the writings of learned men from the time of the Romans downwards received as acknowledged authority, by the concurrence of all modern nations. It is obviously of the utmost importance to the safety of those voyaging by sea, distant frequently from any port or shore, more distant usually from ports and shores belonging to their own country, that crimes committed on the seas, inconsistent with the safety of those who traverse them, should receive adjudication and punishment at the first port and upon the first shore at which the ship arrives. Nor could any thing be more dangerous to the safety of navigators and consequently to the interests of commerce, than that men, who commit these great crimes of murder and robbery at sea, should go without question if they could avoid returning within the limits of their native country. It is therefore necessary to the peaceful intercourse and beneficial commerce of mankind, that these offenders should be brought to trial wherever they are first laid hold of, and their offences judged of by the law which is common to all mankind.

Gentlemen, two sets of offenders will be brought before you. First—certain persons, inhabitants of a country bordering upon the straits of Malacca, accused of piracy committed upon other persons inhabitants of those shores. The legal definition of piracy which is only a sea term for robbery, is an act of robbery and depredation committed on the High Seas, which, if committed on land, would have amounted to felony there. Now if the persons accused belong to a different nation from the persons who were despoiled, it is equally piracy as if they belonged to the same nation, unless it shall appear that the nations were at war.

The second is a case of a different description; that of a person said to be a settled and resident inhabitant of Calcutta, of what country a native, is not, that I am aware of, distinctly in evidence upon the depositions, but alleging himself to be a Spaniard; and of several persons, apparently inhabitants of Calcutta, having joined the ship here, and in all probability many, if not all of them, born within the British dominions of India and natural born subjects of the King of England, and one a Chinese, as is said, who also joined the ship at Calcutta.

If the country of the accused, therefore, made any difference, no proceedings could be had until the different places of their birth could be ascertained; and this being done they would probably have to be sent to different and very distant places to take their trials. But this I have said is not so, for if they have been guilty of piracy, or of a crime, *contra jus gentium*, against the law of nations committed upon the High Seas, it is

immaterial of what country they are natives,—of what sovereign subjects—they are amenable to the jurisdiction of this court of admiralty. These persons, upon the evidence taken before the magistrate, appear to be charged; the first, the gunner of the vessel, as a chief actor; the rest as aiding and abetting him, some of them by substantive criminal acts, in the murder of the captain and the chief mate, and in the taking unlawful possession of the ship and of the property in her, the same being the property of Dutch Merchants.

Now this is not murder simply, but murder with a piratical intent, for the taking possession of the ship was a direct act of piracy. It is, therefore, little else than a very usual case of piracy accompanied by murder, for piracy in many, if not most cases, is accompanied with murder also. But murder itself is the highest crime by the law of nature and nations, and as such punishable by court of Admiralty.

Murder is defined in the law of nations, as in the English common law homicide proceeding from malice. But there are some distinctions in regard to principal and accessory. By the maritime law, *jus gentium*, those who command a murder, and those who afford the means, and those who inflict the wound or injury, or wounds and injuries which cause the death, are principals in the murder; but those who stand by, though in the sense of the law of England, aiding and abetting, and so by that law principals in the second degree, are not principals but accessories by the law of nature. Thus if pirates at sea assault a ship, but by force are prevented entering her, and in the attempt a pirate happens to slay a person in the other ship, they are all principals in such a murder, if the common law hath jurisdiction of the cause, but by the law maritime, those who gave the wound only shall be principals, and the rest accessories, and so was determined by the Court of Admiralty of England in 28 Eliz. in the case of Ralph Williams, reported in the *Molloy de jure Maritimo*, B. 1. ch. 4. s. 14.

Upon the question of piracy I cannot do better than direct your attention to Sir Charles Hodge's charge in 1696, to the Grand Jury at a Sessions of Oyer and Terminer and Goal Delivery for the jurisdiction of the Admiralty of England, in which he lays down the doctrine of the law of nations:—

* Now piracy is only a sea-term for robbery, piracy being a robbery committed within the jurisdiction of the Admiralty. If any man be assaulted within that jurisdiction, and his ship or goods violently taken away without legal authority, this is robbery and piracy. If the marines of any ship shall violently dispossess the master, and afterwards carry away the ship itself, or any of the goods or tackle, apparel or furniture, with a felonious intention, in any place where the Lord Admiral hath, or pretends to have—that is, justly pretends to have jurisdiction, that is also robbery and piracy. The intention will, in these cases, appear by considering the end for which the fact was committed; and the end will be known, if the evidence shall shew you what hath been done.*

Gentlemen, I have thought it right to occupy so much of your time in explaining to you the nature of the jurisdiction which you are now to be employed in giving effect to, and the law which it administers, because these cases within the admiralty jurisdiction of this court are of rare occurrence; and the law which governs them is different from that administered in the exercise of the ordinary criminal jurisdiction of the court. I believe there have not been many cases for some time back tried under its admiralty jurisdiction.—*Englishman*.

TUESDAY, AUGUST 16.

Mr. Advocate-General called the attention of the Court to a paragraph, purporting to be part of a letter

in this-day's *Hurkaru*, which, he said, was likely to pervert the ends of justice. The paragraph not only charged the prisoners with the commission of offences for which they were now about to be tried but also of other offences of which he, the Advocate-General, employed for the prosecution, had never heard. (The learned Advocate then read an extract from the letter, which we think it proper to suppress.) Now, my lord, whoever this man may be, or whatever crime he may have committed, he is surely entitled to have a fair trial, and I think your lordship will agree with me, that even in my office of prosecutor, I should far exceed my duty were I to use such language regarding one who is here called "a miscreant."

Mr. Justice Grant.—Nothing can be more proper than your conduct in bringing this paragraph to the notice of the court, and I am sure you and every English barrister will invariably pursue this course on similar occasions when engaged in the prosecution of unfortunate men. At present it is unnecessary for me to say more than that the paragraph is a high contempt of court, and that it meets my grave and decided disapprobation. Have you any thing to move?

Mr. Advocate-General—Not at present, my lord, but I will take care that you are provided with evidence on a future occasion.

The jury were then impannelled to try a common assault case, but the defendant was permitted to speak with the prosecutrix, and no evidence was offered in support of the charge.—*Englishman*.

WEDNESDAY, AUGUST 17.

At five minutes after ten o'clock, Mr. Justice Grant took his seat on the Bench and opened the Court. No business was done; but the learned judge intimated that to-morrow would be a busy day, and that the Court would sit at eleven o'clock, for the trial of the Gunner of the *Sumatra*, &c.—*Hurkaru*.

THURSDAY, AUGUST 18.

The Advocate-General applied to the Court on the subject of a paragraph in a letter signed BLACKWALL POINT, which appeared in the *Hurkaru* newspaper of the 16th instant, and which, in his opinion, and he thought in the opinion of the Court, must be deemed calculated to interrupt the course of justice. The Advocate-General put in an affidavit of a party who had received a number of the journal containing the paragraph in question, as *prima facie* evidence of publication, and also an alleged copy of a number of the *Hurkaru*; upon inspecting which documents, which were not read in Court, Mr. Justice Grant granted the application for a rule calling on the Editor of the *Hurkaru* to shew cause against the Advocate-General's motion, on Saturday next.

Some few minutes after the Advocate-General had sat down, he rose and stated an objection that had occurred to him, that he knew not how the order should be entitled, as no indictment had been found against the party, to the proceedings against whom, the letter he complained of, had been stated to have referred. He would, therefore, withdraw his application.

The Advocate-General subsequently applied to the same effect as above, at a late hour in the evening, and obtained a similar order for Monday next.

PIRACY CASE.

Nine Malay prisoners were brought into Court, charged with having committed piracies on the High Seas, within the jurisdiction of the Court.

The indictment stated that a case of piracy was committed on the High Seas off the Malay Coast, in which the prisoners were concerned.

Mr. Advocate-General charged the Jury. The boat was carrying a rather important cargo to Singapore. Between Pulo Tinghee and Singapore, the boat was boarded by the prisoners, and taken. Mr. Advocate-General alluded to the case of the *Wolf*. The attack on the boat is the main point to be considered.

Dihohly, A Cochin-Chinese, was introduced. I am native of Aynan in the kingdom of Cochin-China, and a dyer by profession. I know Port Candio, near Cape St. James. I left that Port about seven months ago, and proceeded towards Singapore in a large country boat. It had been hired in the province of Billikam, and the Port of Fantiit. The owner's name was Liptoe.

There was rice, sugar, and silk, &c. in the boat. The cargo was worth about 1,100 or 1,500 dollars, all under the joint management of fourteen Malayan individuals. The rice consisted of 2,000 bundles, about 500 dollars worth; the remainder consisted of more than 2,000 ligatures' worth of sugar and sundries. There were 14 Cochin-Chinamen on board our vessel. We were unarmed, and had no other weapon but some pointed bamboos, and there was no other weapon on board. (The Bishop of Cochin-China, who interpreted the language to the Court, observed that in their country they are not allowed to carry fire arms in public.) On the 28th of the *second moon* we saw some Malay prahus, near Pulo Tinghee, coming towards us. On perceiving the Malays, one of the Cochin-Chinese went up the mast and reported that he had seen 12 boats, one of which approached us and made us a sign to surrender, and by their appearance we concluded that they were pirates. The first boat that came, fired a gun at us, and the discharge killed our pilot and my own brother, who received a ball through his body. The first boat had a *fixed* and large gun, and other boats had smaller ones mounted on pivots. They fired at us with canon and musketry. After fighting from morning till noon we surrendered. We were then in sight of Pulo Tinghee, at a distance of about three hours' sail. The bodies of our pilot and my brother were thrown over board. I was wounded myself, as well as my companion here present. I received three wounds. The affair took place on the open sea. We were not then at war with any nation. The Malays took possession of us, and took us to Pulo Tinghee. The rice and sugar were left in the boat, but the crape was taken away. My boat remained five or six days at Pulo Tinghee, and was then taken possession of by an English armed boat, in which I remained with my friend Moc seven days. The boat which attacked us can carry about 20 persons each, are called *coolups* by the Cochin-Chinese, and are open. There were 14 oars in each of the boats, and they had fire-arms, lances, javelins, and a swivel-gun. The boats were differently armed. I was wounded on the arm with a lance, and on the breast and on the arm-pit a ball grazed me. We, when on board the Malay boat, were obliged to cook rice for our masters, take out their *lice*, and shampoo them, for about 7 days. The Malays took us on shore, on Pulo Tinghee, to avoid the English, whose frigate was in sight. The Malays, four in number, kept us, and had daggers or keesses in their hands.

As the English boats were nearing the shore, the Malays took us up the mountains, and my companions knew that the English would rescue us from the pirates, and attack the latter. My companion Moc contrived to escape, and ran away. I had two fellow-prisoners who succeeded in running from the Malays, and I endeavoured

to abscond like them, and made a noise, and then the Malays put their daggers to my throat. I struggled with the Malays, and was slightly wounded under my ear, and soon after freed myself, fled and entered the English boat. I can recognize five sailors of that boat. (Two sailors were produced). I saw these men on the occasion; they had arms; I saw them on the mountain when I made my escape to the English boat. We hailed when at liberty to call such of our fellows as might happen to be on shore, and then left the Island at about midnight.

I went on board an English ship-of-war. [The witness recognized Captain Stanley as the head or Commanding officer of the ship.] We (the Cochin-Chinese,) lived in a state of community of goods, in our own boat. When the English had taken the pirates, I recognized my trousers on one of the Malay men, and also some other articles in the Malay boat, which belonged to us, and particularly some tobacco which was our property.

I did not until now understand the questions put to me about this affair, neither at Singapore nor at Madras, having been examined by Chinese interpreters at the latter place. I said to the Mandarin at Singapore, pointing to these prisoners, that they were sea-robbers, or pirates.

Mr. Clarke said to witnesses: look at the gentleman, (pointing to Mr. Macfarlan, which witness did.) Did you not hear from Mr. Macfarlan that at Singapore you had only pointed out four prisoners as guilty, instead of nine? Yes, the Mandarin at Singapore told me so, but I did not understand the Mandarin.

Mr. Clarke. Did you not ask the Captain of the *Wolf* permission to cut the throats of the prisoners? Answer. *Yes! I did!* On the English taking the pirates I informed them that the prisoners were the very men who had taken my boat. I asked the Captain's permission to *kill these men*, because they had robbed me of my property and killed my brother. I also asked the Captain's leave to *open their bellies*. (Observe, said the Bishop of Cochin-China that deponent is a pagan, and unacquainted with the first principles of justice!)

Mr. Clarke. Did you not say at Madras that you could only identify four of the prisoners, and not the nine? Witness. No! I pointed out nine individuals, nor could I understand the Chinese Interpreter at Singapore. I did not point out the prisoner, Tijer, as one of those who held me on the mountain.

Did you point out Omar, another prisoner, at Madras? I swear that I did.

On Sir John Peter Grant's question. When the English had taken the pirates I told them that these nine prisoners had seized our boat. These are the same men whom I pointed out. I swear it on my oath.

Moc, examined by Mr. Advocate-General. I am from Coanam, which is in Cochin China. I know the last witness; I was in the same boat with him, going to Singapore. It was about seven moons ago. I saw four of these prisoner who had taken hold of me on the mountain, and had also seized my boat. There were twelve pirate ships which attacked mine. These were the people, and others, who are called *kiava* or Malays, who surrounded my boat. We were fired at with cannon, and javelins and spears were thrown at us, and being unarmed, we were obliged to surrender. We remained in the pirates' boat about ten days. I do not exactly recollect how many; and I am now trembling with fear. It was at three hour's sail distance from Pulo Tinghee.

Before they arrived at Pulo Tinghee we did not see the English ship. On board the Malay boat where we were taken, there were fifteen pirates. At Pulo Tinghee we were forced to cook rice for them, clean the boat, and so forth. I was wounded in the fray, on

the hand, on the side, and two javelin wounds on the foot. The last witness was also wounded, his brother killed, and the pilot, too. At Pulo Tinghee I went on shore to fetch wood, water, and other necessaries for the pirates. The Malays had captured seven boats; seeing the English man-of-war at a distance, they dispersed, and I was conducted on shore by four men, who accompanied me to the mountain. (He points out four prisoners as those that were guarding him on the mountain. All the nine were in the same boat with me. There were fifteen of them when they saw the English ship first. Immediately we were taken we were put on the board the Malay boat. When I saw the English ship, I succeeded in running away from the pirates, and made signs to the English to come to me. Mr. Pearson:—look at these two sailors, pointing to two seamen of the ship-of-war.) I saw them on that occasion. I saw *mandarins* and chiefs on board the English ship, and two days afterwards, the English took one boat and these prisoners, but failed in taking three other boats, which were pirate boats, too, but escaped. Did you point out these prisoners to Captain Stanley, sitting in this Court-house now? Yes, I did. There was a Chinaman on the same island were I was. When I left my country, I had on board rice, sugar, silk, hog's lard, salted meat, &c. and when we were seized, these articles were in our vessel. The pirates shared all those things among themselves, nor did I see our boat any more, which was taken away by them. I was once at Singapore. The value of the articles on board was about 2,600 ligatures. There are four ligatures to a dollar. I am an ignorant man. I do not know the value of our boat. I had heard on a former voyage that there were pirates in the Straits; but we had the good luck to avoid them. The year we went to Singapore I heard that the Malays used to seize Cochin-China boats, and was told that they used also to kidnap the people of Lower Cochin-China. I saw a man of my own country who had been once taken by the Malays and treated like a slave. There is no war between us and the Malays. I heard that the Mandarins had ordered the coast of our country to be guarded. The pirates were hidden behind a part of the island of Pulo Tinghee, and suddenly attacked us. We showed some defence, but it was without avail. The Malays are in the habit of attacking the Siamese, Chinese and others.

(The Court rose at seven p. m. and was adjourned till the 19th instant.)—*Hurkaru*.

FRIDAY, AUGUST 19.

A Cochin-Chinese named PUNCHAYET. I was examined at the Police. I come from the island of Aynan. I left Cochin-China to go to Singapore, on the eighth of the ninth moon, about six full months ago. During my voyage to Singapore I did not see the first witness Decho, I saw him in the boat, and at the time when the Malays, with whom I happened to be a prisoner, struck me, and made me row, against my will. When the Malays, with their spy-glass, first descried the boat of Decho, they rowed towards it; and I was with those nine prisoners, now in Court, when they with fifteen others, attacked Decho's boat, and I remained two days more in the same vessel with Decho, and was afterwards put in another boat. I understand the questions put to me, and spoke the same words at the Police as I do now. I know Pulo Tinghee, where the Malays took me. While at Pulo Tinghee, the Malays made us row, take water out of their boat, and beat us if we disobeyed their orders. When they had taken our boats, they put us afterwards in their prahus. These prisoners are some of those same Malays whom I then saw.

The men of the second boat were of the same kind as those of the first. When they saw the English they led me to the mountain at Pulo Tinghee. I was then given in charge to four men by a person belonging to the second boat. My boat was seized six days before that of Decho, and when that of Decho was subsequently taken, I was put with him into another boat, 8 days after being with them. I was at Pulo Tinghee, under the keeping of Ryam, Tungol, and two others, (pointing to four prisoners). I know the five other prisoners, as I have been in the same bark with them. The boat of Decho was taken near Pulo Tinghee, within a spy-glass sight distance. We were lying in a bay of that island, about 12 boats, and some of the Malay boats went after Decho's boat. At Pulo Tinghee, my companion Moc made his escape from the pirates, and I escaped also at the first opportunity. We were received on board the English ship, and (pointing to the gentlemen of the ship), shewed all these Malay pirates here present, making it understood by signs that the Malays were buccaneers.

The Bishop of Cochin-China, then stated that the Malay tribes are subject to several petty sovereigns, and carry on systematic plunder.

Deposition of Jean Luiz, Bishop of Cochin-China. I left France in 1820, to go to Cochin-China, where my Apostolic Vicariate is situate, and have remained there since that time till 1836, only occasionally visiting the neighbouring states. Cochin China is only troubled by internal war, and not by foreign hostilities. I know the Malay people but indifferently, having observed their manners only when travelling at Singapore, Siam and Penang. That nation is under the sway of Musulman Rajahs, holding petty principalities, on the Malay Coast, and several islands. They use circumcision. I never heard that they were of another religion, except that of Mahomed, but have heard that some of their Rajahs are pirates, or rather send out pirates on plundering excursions, and divide with them the booty.

The Bishop, as an ecclesiastical man, here declared that he was unwilling to contribute to the condemnation of the prisoners.

I do not know the Rajah of Bentharo; I believe he is tributary to the Birman. The Rajah was, some years ago, at war with the Siamese. I do not know to what Rajah the prisoners are subjects, nor was I ever acquainted with them. I believe the Malay Rajahs carry on a predatory warfare with the people of the coast of Siam, and have heard that the Malays had made a descent on Pulo Condor and taken away 60 or 70 inhabitants. The great Mandarin sent troops against these pirates, caused them to be beheaded, and their heads exposed on the sea-shore, to frighten away other robbers.

Sir John Peter Grant. Does the Bishop recollect that peace was made between the Siamese and the Rajah of Paham?

Bishop. I believe that he has made himself tributary to the Siamese. I have no knowledge of any treaties between the Malay Rajahs and their neighbours.

Captain Stanley. I am Captain of H. M.'s ship *Wolf*. I recollect that about the 20th of April last I was off Pulo Tinghee. I brought these prisoners on board after taking them in a prahu. I know these prisoners. I know Decho who, on seeing this prisoner Draman, took off his outer garments, and his trousers, and put them on. Decho pointed four prisoners out as having known them before. The Chinese and Malays could not speak each other's language. Moc recognized four of the prisoners, but did not seem so inveterate as the first witness. The Chinese came on board our ship's boat at Pulo Tinghee. My second Lieutenant, Mr. James, took the Malays' boat. Two jolly boats were sent after them. They had kreeses and javelins on board. I found rice, tobacco and salt in their boat, and also some papers, which they considered as charms calculated to

render their undertakings prosperous. I left them at Singapore, with a turban sash, and looking-glass. The Malays always pretend to be nothing but traders when they happen to fall in with us.

Mr. James. I am second Lieutenant of the *Wolf*, and saw the first witness Decho brought on board. I was the person who captured the prisoners at the bar, on the 26th of April last, near Pulo Tinghee. I saw these weapons (produced in court) when they were found on board the Malay boat. I boarded three boats on that day. I did not detain more than one, where I found the prisoners. The boats carried about 10 men each. We found kreeses on board the boat we detained. Most Malays wear these weapons, and also use javelins at sea. I boarded the boat about one mile astern of the ship *Zephyr*. They were making in for the land and approaching our ship. The three boats were in company; but the two other boats had regular papers, and I allowed them to pass. The boat which I detained was the weathermost of the rest. I saw no ammunition on board, nor any swivel.

Mr. Macdonald, first Lieutenant of the *Wolf*. I saw a man at Pulo Tinghee run toward my boat, from on shore. I told him to shout out; he did so, and another man came from the jungle, and then a third man; and I took them all three on board the ship. I did not observe any of the prisoners on the Island. I saw wounds on the neck and on the wrist of one of the Chinamen.

George Curtis. I am a seaman on board the *Wolf*. I know Pulo Tinghee, where first I saw Moc the witness; and also the second witness Shaget. I did not see the third at that time. Decho, the first witness, came to me then and was bleeding under the ear.

Andrew Hurn. I know these witnesses (pointing to the Cochin-Chinese.) Moc first came to me, as I went into the jungle. These witnesses came out of the jungle to me, and I took them on board.

Mr. Clarke said, there is no case to go to a jury. The Cochin-Chinese and Malays are at war, therefore this is no act of piracy; it is warfare. Besides, the prisoners are here destitute and friendless, and can produce no witnesses; and there is proof by the Bishop's declaration and the whole evidence, that the tribe were at war, and the Cochin-Chinese mandarin obliged to guard the coast.

This Court has no jurisdiction in the matter; but the Malay Rajah has, and to him the affair ought to be referred.

Sir John Peter Grant. There is no doubt, that when two nations are in a state of hostility any such collision between them on the high seas can be no piracy.

Mr. Clarke quoted an instance of a case of a Chinaman called *Appa*, who had been accused of murder and was acquitted, the event having taken place on the high seas.

Mr. Advocate-General. The man was not acquitted but transported to Penang, where he destroyed himself.

Mr. Clarke. There can be no doubt that the property of Decho belonged to a joint partnership; and yet there is no proof as to whom, according to the indictment, the property belongs. How then can piracy be charged on the prisoners, jointly or severally?

Mr. Osborne supported the defence. He entered on the details of the case, alluded to the law of marine jurisdiction, as applicable to the point at issue.

Sir John Peter Grant. In this Court, the Common Law of England is not always applicable to such cases as the present one.

Mr. Osborne stated that the evidence did not seem to support this indictment.

Mr. Advocate-General. The boat is the property of Dhooe; and the cargo belongs to persons unknown.

Sir John Peter Grant referred in substance to the instance of mutual war, when the seizure of a ship would be no case of robbery or piracy. It is to be considered whether there is any proof of the fact of any legitimate war, or whether it was an instance of spoliation.

Verdict. Prisoners guilty of piracy, excluding 1st count, and admitting the subsequent ones.

Sir John Peter Grant,—Let the prisoners be brought up on the last day of the sessions.

The interest felt by the public in this case was very obviously manifested, by a numerous attendance on both days of the trial.

The Court rose after five P. M. and adjourned till Monday, at 10 o'clock—*Hurkaru*.

MONDAY, AUGUST 22.

THE HURKARU CASE.

Shortly after the sitting of the Court, Mr. Justice Grant addressed the Advocate-General and said, in regard to the motion for a contempt of this Court which ought to come on to-day, I have given it much consideration, and I am desirous that a case of so grave a nature should not be brought before me sitting alone on this Bench. I would therefore suggest to you, Mr. Advocate-General, that it would be a preferable course to apply for a criminal information before the full Bench, from which the censure will have the due weight which so grave an offence requires. In pointing this out to you I am not prejudging the case or giving any opinion on it; but I must also say, that I do not entertain the smallest doubt, that in sitting here in Session I have the fullest power to entertain your motion, and that this Court can punish as a high contempt any act tending to bias or prejudice either the Petty or the Grand Jury—on that point I have no doubt.

The Advocate-General.—After this intimation from your Lordship I shall not press my motion, and I shall most seriously consider whether I ought not to apply to the Court in another form as your Lordship suggests. I have no doubt that had I proceeded I could have fully established that the Court has jurisdiction to make the order I apply for.

Mr. Clarke.—I came here prepared to oppose my friend's application. Had I addressed the Court I should have commenced by stating that I had affidavits to offer and explanations to make regarding what I may term the merits of the case and quite distinct from the legal points. But it would have been my duty as an Advocate of the Court, before I went into these merits, to have shewn that my friend asked your Lordship to exercise a jurisdiction which, as a Court of Admiralty and as a Court of Oyer and Terminer, you did not possess.

The Advocate-General.—If my friend denies the jurisdiction, and goes into a discussion of the question, I shall press my motion.

Mr. Clarke.—I am not going to discuss the question, I am merely mentioning the course I should have taken had my friend pressed for his order, and as I would then have previously stated that I had affidavits on the merits independent of the legal points, so now that these legal points cannot be discussed, I think it due to my client to state that these affidavits distinctly deny the slightest intention on his part to attempt to bias the Jury or prejudice the prisoners. They also state that should the Court be of opinion that such was the tendency of the publication that my client regrets deeply that it should have appeared, and that it is solely attributable to inadvertency occasioned by a serious press of business.

The Advocate-General.—I have no doubt that my motion was right and the Court have the power.

Mr. Clarke.—I cannot discuss that now, but as you do not press it, the regular course is to discharge the order.

Mr. Justice Grant.—It is; let the order be discharged.

The Advocate-General.—A mistake, my Lord, has been made in drawing up the order, which it is as well I should correct. The Attorney's name is to it as the Attorney of the Hon'ble Company. Now, the Government have nothing to do with the motion I made on my own responsibility, not as Advocate-General but as a Counsel engaged in the cause, considering that a contempt of Court had been committed in the cause; just as my friend Mr. Clarke the other day complained to the Court of a similar publication. The Government have nothing to do with the matter. I have thought it advisable to set this right.

Mr. Clarke.—It was hardly necessary for the Advocate-General to take the trouble of assuring either me or any one who knows the Government, that they could have had nothing to do with such a motion.

THE AFFIDAVITS.

Samuel Smith, of Hare Street, in the city of Calcutta, maketh oath and saith, that he, this deponent, is the printer and publisher of the *Bengal Hurkaru and Chronicle* daily newspaper. And this deponent further saith, that he, this deponent, received, on Monday the 15th day of August instant, a certain letter signed BLACKWALL POINT, which said letter was personally delivered to this deponent by Mr. ———, with whom he, this deponent, has for the last five years been well acquainted. And this deponent further saith that he, this deponent, held a conversation with the said Mr. ———, the principal subject of which was concerning a certain tale or story entitled "A tale of the Java Clipper" which had appeared in a publication called the *Bengal Annual* and in the weekly newspaper called the *Bengal Herald*.

And this deponent further saith, that he, this deponent, is from an early hour in the morning until very late hours at night, incessantly employed with a variety of business in Editing the said newspaper and conducting a very extensive business as a publisher, and that as the Editor of a public Journal he, this deponent, receives every day numerous letters from anonymous and also from known correspondents for insertion in the said newspaper. And this deponent further saith, that at the time of his receiving the said letter signed BLACKWALL POINT, he, this deponent, was indisposed and suffering from severe fatigue, and partly from such circumstance and partly from the letter having been given to him by a gentleman with whom he was well acquainted, he, this deponent, did not read the said letter through, but only looked at parts of it paying but very slight attention to the same. And this deponent saith that under the circumstances aforesaid of this deponent's fatigue, indisposition, and acquaintance with the gentleman giving him the letter, and more especially the said conversation regarding the said tale published in the *Bengal Annual*, and *Bengal Herald*, and this deponent knowing that he, Mr. ———, had often commanded in a ship in the Eastern seas, the impression on this deponent's mind was, that the said letter was principally a criticism on the said "Tale of the Java Clipper," and that under such impression he, this deponent, sent the said letter to this deponent's deputy printer for insertion in the said journal. And this deponent positively swears, that this deponent did not believe or suspect that there was any thing whatsoever in the said letter calculated to prejudice the prisoners or bias the jury or in any way impede the course of justice. And this deponent saith that had any such suspicion occurred to this deponent, he would not have permitted the said letter to be published, he,