

Inhuman torture!! Fairburn's edition of the trial of Thomas Picton, late Governor of Trinidad and Colonel of the 54th Regiment of Foot, for torturing Louisa Calderon in the island of Trinidad in the month of December, 1801 ... Which was tried at the Court of King's-Bench, Westminster on Monday, Feb. 24, 1806 before Lord Ellenborough & a special jury / Taken in short-hand.

Contributors

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Louisa Caldron on the TORTURE, called Picketting, alias PICTON-ING.

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Inhuman Torture !!

FAIRBURN'S EDITION

OF THE

TRIAL

OF

THOMAS PICTON,

Late Governor of Trinidad,

AND

Colonel of the 54th Regiment of Foot,

FOR TORTURING

LOUISA CALDERON,

IN THE ISLAND OF TRINIDAD,

In the Month of December, 1801,

BY SUSPENDING HER BY A ROPE TIED TO HER WRIST, AND
A SHARP SPIKE THE ONLY RESTING-PLACE FOR HER FOOT.

WHICH WAS TRIED AT

The Court of King's-Bench, Westminster,

On MONDAY, Feb. 24, 1806,

BEFORE

LORD ELLENBOROUGH & A SPECIAL JURY.

TAKEN IN SHORT-HAND.

"I ask not of your passions, but of your justice, a verdict of GUILTY
against this Defendant." *Garrow.*

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T R I A L
OF THE LATE
GOVERNOR PICTON.

Court of King's Bench, Westminster, Feb. 24, 1806.

THE KING (for Louisa Calderon) *versus* THOMAS PICTON, Esq.

The Indictment charged the Defendant, being in His Majesty's service, as his Governor of the Island of Trinidad, in the West-Indies, with having in the Month of December, 1801, unlawfully, maliciously, and without any probable cause, INFLICTED THE TORTURE on LOUISA CALDERON, a free Mulatto Girl of that Island, and one of his Majesty's Subjects, then under the age of Fourteen Years, by having her Foot placed on a sharp Wooden Spike, fixed in the Ground, and her Body suspended by a Rope tied round her Wrist, and fastened by Pullies to the Ceiling.

There were other Counts in the Indictment, charging the offence in various forms, to which the Defendant pleaded NOT GUILTY.

COUNSEL FOR THE PROSECUTION,
Mr. GARROW, Mr. ADAM, and Mr. HARRISON.

FOR THE DEFENDANT,
Mr. DALLAS and Mr. LAWS.

The Pleadings on the part of the Prosecution, were opened in the usual form, by Mr. Harrison, junior Counsel, and the Case by Mr. Garrow, as follows:—

MAY it please your Lordship,—Gentlemen of the Jury, I am sorry this most painful task has devolved on me by the removal of a learned person (Lord Erskine) from this Court to an exalted station, in whose more able hands it would be so much better conducted; but deprived of the advantage of

that Noble Personage's greater abilities, it becomes my duty to lay before you a statement of the singular and horrid transaction which is the subject of this prosecution; and, although I shall acquit myself zealously of the obligation imposed upon me, to bring to light and condign punishment, an offence so flagrant as that charged upon the Defendant, yet much more happy should I be, to find that there is no ground upon which the charge can be supported, nor do I wish to impress your minds with any consideration which would draw a reluctant verdict of *Guilty* from you; and I should be still more happy, that the British character was not stained by the adoption of such cruel measures as are alleged in this indictment.

The Defendant, Thomas Picton, was the representative of our Sovereign, and the Governor of Trinidad, one of the Spanish dependencies, which had surrendered to the British arms. The benignant code of laws which had prevailed in the island, were, unhappily, cruelly innovated under his administration. He abused his station, and disgraced his country;—and if the facts which I have to state, are true, of which I have no doubt, he is the subject of horror and detestation; he has inflicted the torture on one of His Majesty's subjects, in order to gratify his own tyrannical disposition, and oppress the individual.

In the year 1797, when the island of Trinidad surrendered to the British arms, under the gallant veteran, Sir Ralph Abercromby, the Defendant was appointed Governor, by that brave Officer, and the island was to be governed by its own laws, which were to be adopted by the Defendant, until His Majesty's pleasure should be known upon that subject. These were a code of laws, ameliorating the old laws of Spain, and were well calculated for the protection of the subject.

Louisa Calderon, the Prosecutrix, in the year 1800, then about 12 years of age, was seduced from her mother, by a person of the name of Pierre Reuz, with whom she afterwards continued to live as his mistress. However strange this may appear to Englishmen, yet in some of the West-India Islands, and many other parts of the world, from the climate and constitution, young women frequently become mothers, at the age of twelve years. In the casual absence of Reuz, in the year 1801, an intimacy took place with one Carlos Gonzales, who took an opportunity of robbing the house of Reuz, of a large quantity of dollars. In consequence of this, Carlos Gonzales, Louisa Calderon, and her mother, were taken into custody on suspicion, and underwent an examination before Monsieur Beggurat, the magistrate. Louisa, whether from

affection for Gonzales, or from the consciousness of her own innocence, persisted in a denial of any knowledge whatever on the subject.

Upon this, application was made to Governor Picton, who ordered this bloody sentence:

"Inflict the Torture on Louisa Calderon."

(Signed)

THOMAS PICTON.

No delay was given to the execution of this decree; the unfortunate object against whom it was pronounced, was handed over to the gaoler. She was here told that if she would confess, there might be some alleviation of her misery; but, on the contrary, her death was on her own head: and to impress it stronger on her mind, he adverted to the cases of two or three Negro women, who suffered the same punishment, on a charge of witchcraft, a short period before. This, is the first instance of which I have ever heard of a British Governor resorting to the torture, as a punishment for witchcraft: this sort of punishment, is miscalled *picketting*. The old method of picketting was used in the army, and consisted of a spike of wood, on which the culprit soldier was obliged to stand, but then he had something to rest on; but the instrument in question is quite different, and, I hope, in future, it will be called *Pictoning*, and not *picketting*, for the Defendant certainly has the honour of being the sole inventor. Upon this instrument of torture, consisting of a sharp wooden spike, fixed in the ground, this unhappy girl was placed, her right foot resting on the spike, while she was suspended by a rope, tied round the wrist of her left arm, and passed through a pulley fixed in the ceiling of a room, the other hand and foot were tied together. In this position, suffering the most excruciating tortures, she continued for fifty-three or fifty-four minutes, as calculated by the Magistrate's watch, who was present the whole time, in order to prevent its continuance for more than an hour; alleging, that the English laws did not permit a subject to be tortured longer.

This operation not proving effectual in extorting a confession, in less than twenty-four hours after, she was again tied up in the same manner, and so continued for a space of 22 minutes, till she swooned away with excessive pain. All these diabolical experiments were irresistible, and she at last confessed that Gonzales had committed the robbery.

From the torture, she was then put immediately into irons, and confined in a miserable apartment, where she could not

stand upright, and there remained for the space of eight months, until a short time previous to the arrival of Colonel Fullarton, by whom she was liberated, and brought to England.

[The learned Counsel here produced a drawing in water-colours, in which the situation of the sufferer, &c. was described. He then proceeded:]

It appears to me, that the case, on the part of the prosecution, will be complete when these facts are established in evidence; but I understand I am to be told, that though the highest authority in this country could not practise this on the humblest individual, yet, that by the laws of Spain it can be perpetrated in the island of Trinidad. I shall venture to assert, that if it were written in characters impossible to be misunderstood, that if it were the acknowledged law of Trinidad, it could be no justification of a British Governor. Nothing could vindicate such a person but the law of *imperious necessity*, to which we must all submit.

It was his duty to impress upon the minds of the people of that colony, the great advantages they would derive from the benign influence of British jurisprudence; and that in consequence of being received within the pale of this Government, torture would be for ever banished from the island. It is, therefore, not sufficient for him to establish this sort of apology; it is, required of him to shew, that he complied with the institutions under the circumstances of irresistible necessity. This Governor ought to have been aware, that the torture is not known in England; and that it never will be, never can be, tolerated in this country,

The rack is utterly unknown to the law of England, though once, when the Dukes of Essex and Suffolk, and other Ministers of Henry VI. had laid a design to introduce the civil law into this kingdom, as the rule of Government, for a beginning thereof they erected a rack for torture, which was called in derision *the Duke of Essex's daughter*, and still remains in the Tower of London, where it was occasionally used as an engine of State, not of law, more than once in the reign of Queen Elizabeth. But when upon the assassination of Villiers Duke of Buckingham by Felton, it was proposed in the Privy Council to put the assassin to the rack, in order to discover his accomplices, the Judges, being consulted, declared unanimously, to their own honour, and the honour of the English law, *that no such proceeding was allowable by the laws of England.*

It cannot be imputed to Governor Picton that he was such a fool as to suppose the torture could ever be useful in the discovery of truth, as has been most ably stated by Mr. Justice BLACKSTONE to be in its very nature that which would make the unhappy sufferer accuse any body, or even accuse itself falsely from the excess of pain and horror: it has been matter of calculation how much torture a person of a given firmness of nerve could bear before he should begin to say any thing that is asked of him in order to be relieved; it is therefore a waste of time to discuss the point as to torture being an instrument to procure truth, indeed, the absurdity of it is so great, that even Spain itself, and other countries where it has been prevalent, have become ashamed of it, and have disused it for many years. But, what will you say if I prove to you, by many witnesses, that so far is torture from being the daily practice in Trinidad, that it was never used there by any body but Governor Picton himself; that he has the merit of its introduction; that the instrument which resembles that, which by way of infamy is called the "*Duke of Essex's Daughter*," had no existence until General Picton cursed Trinidad with its presence; that it was an instrument never known in that country until a British Governor introduced it—the Representative of the Sovereign of this mighty empire—who thus sullied the British character, always so famed for its humanity.

Gentlemen, if I present this case to you in this light by proof, as I am assured I shall—if I prove to you that there is no such law as that by which any torture can be inflicted—that there was no instrument by which torture could have been inflicted until General Picton brought it into Trinidad—if I prove that this punishment of torture has been inflicted on this poor helpless young Girl—if I prove, in the hand-writing of General Picton himself, the bloody order for its infliction, I shall leave the General absolutely without the shadow of a cause to defend him. Gentlemen, the date I gave you of this transaction is some time removed from the present time, and may be said to be far removed from it, being 1801.—It became expedient in the minds of His Majesty's Ministers, to intrust certain powers of investigation and direction, to Commissioners appointed for that purpose; one of those was Colonel FULLERTON, who took much trouble to discover many evils which required a remedy, and this among them. This scene being disclosed to him, he felt it his duty, a duty he owed to the British character and to common humanity, to bring it for enquiry, as it is now, before you; for which, I think, his country is indebted to him.

Gentlemen, I have seen the unhappy victim of this cruelty; I saw her this morning, in a room which I entered by mistake, thinking it was one in which a consultation was to be held.— She shall be presented to you, and you shall hear her tale. Gentlemen, I shall hear, with as much patience and attention, and with as much real pleasure as any man in Court, the address which will be delivered to you on the behalf of the Defendant, by my excellent and most eloquent friend, Mr. DALLAS. But I shall state to you with confidence, notwithstanding any address that can be made to you, that I shall obtain your verdict. *I ask not of your passions, but of your justice, a verdict of guilty against this Defendant*; although you must feel that while you give it, you put one of your fellow subjects, of high rank, in an horrible situation, yet you feel it to be your duty, and therefore, whatever the consequence may be to the individual, you will discharge that duty to your country.

Witnesses for the Prosecution.

LOUISA CALDERON was then called. She appeared about eighteen years of age; is a Mulatto or Creole, of a very genteel appearance and interesting countenance, was dressed in white, with a turban tied on in the *costume* of the country. Her person was slender and graceful. She spoke English but very indifferently, and was examined through the medium of a Spanish interpreter.

Louisa Calderon sworn, (examined by Mr. Adam.)

Were you at Trinidad in 1798?—*A.* Yes.

Q. Were you acquainted with Pierre Reuz?—*A.* Yes.

Q. Did you live in his house?—*A.* Yes.

Q. Were you there when the Defendant was Governor of the island?—*A.* Yes.

Q. Do you remember a robbery committed in the house of Pierre Reuz?—*A.* I do.

Q. Were you suspected of committing that robbery?—*A.* I was, and also Carlos (Gonzales.)

Q. Do you remember his being apprehended?—*A.* Yes.

Q. Were you, and your mother, also taken up?—*A.* Yes, the same night.

Q. Before whom were you carried?—*A.* Before Governor Picton.

Q. Did he order you to be committed to prison?—*A.* Yes.

Q. Under what guard were you conveyed thither?—*A.* By three soldiers.

Q. To what apartment of the prison were you consigned?—*A.* To the women's side.

Q. Before you were sent there, what did the Defendant tell you?—A. That if I did not confess, the hangman was to put his hand upon me.

Q. Do you know a person of the name of Beggorat?—A. Yes.

Q. Is he an Alcalde (magistrate)?—A. Yes; he came to me in prison, and examined me frequently as to the robbery.

Q. Was there an Escrivano (notary,) of the name of Francisco de Castro, who also attended?—A. Yes.

Q. After some examinations were you carried into a room where there was a picket erected in the gaol?—A. Yes.

Q. What is the nature of that instrument of torture? Can you describe it? (*Here the learned Counsel, handed to her a drawing of her posture on the rack,*) Louisa, is that any thing like it?—A. Yes, Sir, exactly,—This hand (holding up her left) was tied up so, and this hand (the right) and this foot (passing her left foot behind the right leg) were tied together. They put me first on one side, and then on the other.

LORD ELLENBOROUGH objected to the exhibition of this drawing to the Jury, until Mr. Dallas, on the part of his client, permitted it to be shewn to them. The examination then proceeded.

Q. The first time they tied you up, they tied you by the left hand?—A. Yes.

Q. And the left foot tied to the right hand?—A. Yes, the right.

Q. Then the left hand was tied by a rope?—A. Yes.

Q. Was the rope fixed to the ceiling, or made fast to a pulley?—A. A pulley.

Q. What was your right foot put on?—A. On a spike, in this manner (describing it by her attitude,) the toe resting on the sharp point of the spike.

Q. How long did you remain tied up in this situation?—A. Three quarters of an hour.

Q. Were you upon the spike all that time?—A. Yes.

Q. Were you at any time drawn up by the rope connected with the pulley?—A. Yes.

Q. Had you seen any persons in the same unhappy condition before?—A. Yes, two others.

Q. What was the effect of this torture?—A. I was in great agony, and, after it, my wrist and foot were very much swelled.

Q. Were you asked to make confession of the robbery,

before you were tied up?—*A.* Yes; Beggorat enquired if I would declare who took the money.

Q. Were you sworn, before the torture was applied?—*A.* No; but the holy cross was held up before me.

Q. Did you confess?—*A.* Yes; after I was suspended, I said Carlos took the money.

[Several questions were then proposed as to the time the punishment was inflicted, which appeared to be about Christmas, and by subsequent interrogatories, it appeared she was taken into the gaolers room, where she saw Carlos, to learn if she had herself taken the money.]

Q. Where did you go after you left the gaolers room?—*A.* To the same apartment where I had been suspended. I was kept there all night.

Q. Were you put in irons?—*A.* Yes, in *grillos* (fettters for the legs.)

Q. Describe what these *grillos* are?—*A.* They are formed of an iron bar fastened to a piece of wood, to which are attached two rings to receive the legs.

[A drawing of this instrument was then produced, which the witness said was an exact representation of the *grillos*.]

Q. Were you put upon the picket next day?—*A.* Yes, upon the same instrument, and in the same manner; it was in the morning.

Q. How long were you kept upon it?—*A.* Twenty-two minutes.

Q. Was there a watch to shew the time?—*A.* Yes.

Q. Who was present?—*A.* Alvarez Beggorat, Francisco de Castro, and Rafael an Alguazil, (constable) were present.

Q. With which arm was you tied up on the second day?—*A.* By the right, and the operation reversed. I was so suspended that I could just touch the spike by extending my toe.

Q. By Lord Ellenborough. Were your feet without shoes or stockings?—*A.* Yes, they were naked.

Q. What effect did the rack prodouce on you?—*A.* I fainted twice whilst on the rack.

Q. Was you taken down before or after your fainting?—*A.* I do not recollect, for I was totally insensible.

Q. Were you again put in irons?—*A.* Yes, in the *grillos* the same evening.

Q. How long were you in this state?—*A.* All the time I was in prison, during eight months.

Q. Are there any marks of the injury you received, now ap-

parent on your person?—A. On my wrists there are, but none on my feet.

[The witness now exposed the seam or callus, formed on her wrists in consequence of the torture.]

To some questions, on the cross-examination by Mr. Dallas, she said, that she did not know how long she had been released before she was brought over; that she came with Colonel Fullarton, and that she had been maintained by Mr. White, of the Treasury.

Don Rafael Chandos, sworn, (assisted by the interpreter) said, that he was an Alguazil, in the island of Trinidad, in the year 1801; that he returned from the interior of the country on the 22d of December, and saw Louisa Calderon in gaol; that they were then giving her a glass of water, after bringing her down from the torture. She was supporting herself on a table; it was about seven o'clock in the evening. Beggorat desired witness to bring Carlos up, and told her, that she must repeat to Carlos what she had said to him. After this interview, at which nothing transpired, she was instantly put in the *grillos*, and in the same room in which she had suffered the torture. The apartment was like a garret, with sloping sides, and the *grillos* were so placed, that, by the lowness of the room, she could by no means raise herself up during the eight months of her confinement. On the 23d of December she was again put to the torture, between eleven and twelve in the morning, and she remained in this situation twenty-two minutes by the watch.

[The witness here examined the drawing, and described the position much in the way it had been before represented, and then added:]

She fainted twice in his arms. Beggorat sent vinegar to the executioner, to administer to her in this situation. There was no advocate appointed to attend on her behalf, and no Surgeon to assist her. No one but a negro belonging to Bullo the gaoler, to pull the rope. As soon as she was taken down she was put into the *grillos*. The witness had seen her sister bring her victuals, but never noticed the admission of her sister or her friend into the gaol. The witness had been four or five years in the post of Alguazil. He never knew the torture inflicted in the Island until the arrival of the De-

fendant. There had been before no instrument for the purpose. The first he saw was in the barracks among the soldiers. Before Louisa Calderon, the instrument had been introduced into the gaol perhaps about six months. The first person he saw tortured in Trinidad was by direction of the Defendant, who said to the gaolor, "*Go and fetch the black man to the picquet guard, and put him to the torture.*" After the eight months confinement, both Carlos and Louisa were discharged.

On his cross-examination, by Mr. *Laws*, he said, that Carlos was discharged at the time the Judge ordered him to bring the money; that he went from the Island, he did not know by whose orders, and that he took his passage for Margarita.

Don Juan Montes, sworn.—He said that he was acquainted with the hand-writing of the Defendant, and proved the document containing the order of the torture, expressed in these terms:

"*Appliqua la question a Louise Calderon ;*" i. e. "*Apply the Torture to Louisa Calderon.*"

(Signed)

"THOMAS PICTON."

It appeared that this order was written at the bottom of a requisition by Beggorat stating, that Louisa Calderon had prevaricated in her account of the robbery; that Beggorat was persuaded she would discover the truth by means of a slight torment, but that he was not invested with power to inflict it, and therefore, praying his excellency to order the same.

After some observations from Mr. Dallas, which were answered by Mr. Garrow, the Lord Chief Justice ruled, that the application of the Alcade Beggorat, which led to the issue of this order, should be read.

Mr. *Lowten* then read the representation of this officer, advising, that slight torture should be applied, and giving the result of the proceedings, in the examinations Louisa Calderon had undergone. The instrument was countersigned by Francisco de Castro.

Mr. Garrow—"Then follow, my Lord, the service of the order, and the acts of torment."

Lord Ellenborough—"Does it appear, that the Defendant was acquainted with the subsequent proceeding?"

Mr. *Garrow*—"I do not want it."

Mr. *Harrison* now proceeded with the examination of Don Juan Montes, who said, he had known the island of Trinidad since 1793. That the torture was never introduced, until after the conquest of the island, and was then practised by order of the defendant. It was first used with the military in 1799, and two years afterwards in the gaol.

Mr. *Garrow* said, that he had more witnesses to produce, if necessary, of the first respectability; but from regard to the time of the Court, he should here close the case on the part of the Crown, unless it should be required by the Counsel for the defendant, that it should be proved that General Picton was Governor of the Island.

Mr. *Dallas* agreed to admit that fact.

Lord *Ellenborough* said he thought the evidence was sufficient on these points.

Here ended the Evidence for the Prosecution.



THE DEFENCE.

Mr. *Dallas*, in stating the defence of his client, observed, that this case had certainly not been spared in point of statement, or in point of proof, and it now became his duty to address the Court and Jury on behalf of Governor Picton. It had not been a matter of choice with him to defend this indictment; there were so many in the daily practice of the Court, who could much better defend it, he having ceased to attend regular for some time. If the determination had in any degree rested with himself, it might have been otherwise; but, unfortunately, he could not persuade Governor Picton, that there were several others much more fit to conduct his cause, in every particular, except a most anxious wish to be of service to him.

He hoped, therefore, he would not be misunderstood, when he observed, that he was greatly deterred, from the many difficulties in which the case was involved, and its unpopularity; but he should look it boldly in the face; and when it was considered how much General Picton had at stake, it must necessarily engender in the mind of every man an extraordinary degree of anxiety.

This case was of a very novel and extraordinary nature whether considered in a public or individual light; in the former respect nothing was more important, than that great powers, vested in any one person, should not be abused; and in the other, that malice should not be attributable to an individual, while merely discharging his duty.

From the manner of stating and proving this case, from the exhibition of pictures, he was aware it must have created unpleasant sensations, and sensations unfavourable to the Defendant. From the laws of this country, whose chief characteristic is their mildness and humanity, the result of its habits made it most difficult to wean the mind of an English Jury to the difference in other countries; but whatever were the feelings they had imbibed, he trusted, that, confining their attention to the case, they ultimately would pronounce a discreet, calm, and dispassionate verdict.

General Picton was invested, not only with the chief civil, but military command. A robbery had been committed of great magnitude, which, in this country, would have amounted to a capital offence; and, by the mild and merciful laws of England, the offenders would have lost their lives. Where a robbery has been committed in a dwelling-house here, however painful to the Judge, he cannot interfere to save the life of the criminal, but the crime is expiated by an ignominious death. Under such circumstances, inform a was laid before Governor PICTON, at the Government-house, and the parties were brought before him; and the Prosecutrix appearing involved in a suspicion, was committed for the purpose of being examined, in the regular course, by Beggorat the chief Magistrate, in order to ascertain whether she was an accomplice or not.

In the course of the proceedings, reference was had to the Criminal Judge, and every fair means used to induce her to confess; and it was not till after repeated equivocations, that he made this representation of her concealing the truth, and intimating the experiment of a slight torture; the suggestion of Beggorat was acquiesced in; and this was said to be either premeditated or implied malice in the Governor, to which not one tittle of evidence had been adduced; and, therefore, with respect to malice, it was out of the question; as from the antecedent committal, to the subsequent discharge, it did not appear that he had ever known her or seen her but once. In every count of the indictment, it was alledged that the act done was unlawfully and maliciously done, without any real or probable cause. He, however, contended that a Judge may mistake the limits of his jurisdiction, but he cannot act maliciously; and, in fact, having acted according to the laws of Spain, which he was sworn to observe, he could not be said to have acted unlawfully.

He then adverted to the laws of the island of St. Vincent, where, if a man were guilty of maiming another, or guilty of various other offences, he is liable to have his nose slit, or one of his members, perhaps his right hand, cut off; and, though we may shudder at it, for the sake of humanity, yet such is the law, and it is our bounden duty to go by the law of the particular place where the offence is committed.

In the island of Trinidad, a different line of policy was necessarily adopted, at different times, and this Colony was totally different from all the other Spanish Settlements in America; sometimes it was highly cultivated, and sometimes

abandoned; and at last the Spanish Government thought proper to admit all sorts of foreigners, as settlers. The population greatly increased, and it was the receptacle of all sorts of runaways, vagabonds, and persons in debt from the other Islands. Such was the state of the Colony when General ABERCROMBY appointed General PICTON the Governor. Through the different gradations in the army, he was raised by his merit to his present high and honourable situation; he was esteemed by the veteran General, not only as a man of courage, but of humanity, and had been his Aid-de-Camp for several years, and acted under the immediate instructions of that great officer. He was no civilian, but only a military man, and it became necessary to lay down rules for his conduct. These instructions were afterwards confirmed by His Majesty. Upon the Island becoming British property, all former regulations ceased. The Alcaldes formerly were the Criminal Judges, who, upon enquiry, were bound to acquit or condemn. From this judgment the party could appeal to the Royal Audience of Curattas, and from thence to the Royal Audience of Madrid, before the sentence could be put into execution; but General PICTON was the supreme Judge of Appeal, as well in civil as criminal cases. Upon three grounds, therefore, he rested the defence; first, he contended that the Defendant was entitled to an acquittal, because every part of the indictment charged him with acting unlawfully; whereas, by the law of Spain, the torture was applicable and lawful. Secondly, that the counts charge him not only with acting unlawfully, but maliciously, and without any probable cause, for which there was no evidence. And lastly, supposing the Jury were of opinion that by the law of Spain torture ought not to have been applied, but that he was misled, then the cause resolved itself into a question of error, upon an erroneous exercise of power, in a subject of criminal proceeding, on which there were many decisions. The Learned Counsel was then proceeding to draw a distinction between express and implied malice, when he was interrupted by

Lord Ellenborough, who said it was impossible to go into that sort of argument. It might in that way be contended that a man might murder by mistake. Such could not go to an acquittal, though it might to mitigation. The question really was—was the punishment unlawful, in which case the law inferred malice, or was it one authorised by the law of Spain? It would be very fit, if the authorities from the Spanish law warranted it, that the case should be turned into a special verdict.

Mr. Dallas then put in the Instructions from **Sir RALPH ABERCROMBY** to the Defendant, and instructions to him from His Majesty; both of them specifying the existing law of the Island, as being that by which he was to regulate his conduct. He also produced several Spanish law books, and commentaries on the laws of Spain, and other documents, in which the doctrine of torture as congenial to the spirit of the law of that country was recognised.

Those books, particularly *Bobadellia* and *Curia Phillipicæ*, were declared by *Mr. GLOSTER*, the Attorney General of Trinidad, to be founded on standard authorities in the law of Spain, and to have been sustained as such before the council at Trinidad, though he professed he did not know much either of the law or language of Spain.

The **LONDON GAZETTE**, of the 27th of March, 1797, setting forth the capture of the island of Trinadad, and the Articles of Capitulation, by which it was stipulated to be governed by the Spanish Colonial Code: also the appointment of Governor **PICTON**, with General **ABERCROMBY**'s instructions, afterwards ratified by His Majesty, wherein it was stated, "that in criminal cases, the appeal lay with the Governor."

Michael Gourville sworn; he said he had been in Trinidad from the year 1774, and had been an *Alcalde* (an officer of justice.) There were two *Alcaldes*, who had nearly equal powers with the superior officer, called an *Ascavana*, and were all elective out of a corporate body, composed of the principal inhabitants of the Island, and something similar to the Lord Mayor and Corporation of London. It was not necessary they should be lawyers, and they had not the power of life and death, or of inflicting punishments, except in cases of petty theft, and then only upon slaves, whose thumbs were tied together with a cord.

On his cross-examination, he admitted, that the torture never was known in the island, till introduced by General **Picton**.

Mr. Chacon, another *Alcalde* was examined, who deposed to the same effect.

Mr. Nugent, who resided in the island, from 1787 to 1796, further elucidated the laws and customs of that Colony; but never had seen or heard of the torture.

Various extracts were then translated from the Spanish law authority of *Bobadilia*, shewing that torture was considered as constituting, in certain cases, part of the process of the law of Old Castile; and stating that, "although during torment, judicially inflicted, the culprit should die, or come out maimed therefrom, the Judge cannot, nor ought not, to be blamed;"

and stating, that in cases of "high treason, manslaughter, robbery, parricide, and other most atrocious crimes, should the presumption be strong, and the guilty persons hardened, new tortures may be inflicted; but for these the Judges are to be responsible."

Much other documentary testimony, deduced from old writers on Spanish jurisprudence, was also read, to shew that the infliction of torture was compatible with the existing law of that country.

Mr. Garrow was then allowed to call a witness, to shew, that however such a law might at any time have existed, or might still exist, in Spain, it did not prevail in the West Indian colonies of that power. To this end

Don Pedro de Vargass was sworn. He deposed that, during the earlier part of his life, he had been regularly initiated and admitted to the office of an Advocate at the Spanish law courts in the Colonies; that he had practised, after his admission, in the regular course, for two years, and had resided, for a shorter or a more extensive period, at five or six of the West India islands, in the pursuit of his profession; and that, according to his knowledge of the Book of Recapitulation, by which the laws are administered, there was nothing contained in it to justify the infliction of torture, nor was torture, to his knowledge, ever resorted to. He had not ever seen, or heard of instruments for torture being kept in the goals, or elsewhere.

In reply to a question, "Do you know of any existing Spanish law whatever which warrants the application of torment?" he said, that there was a law of Old Castile, of the year 1260, which justified it in certain cases; but he never understood that it extended to the West India Colonies; and it had been long so abhorrent in Spain, that, if not repealed, it was fallen into disuse.

On cross-examination by Mr. Dallas, he said, that he did not know of any law which forbade the practice of torturing persons in the colonies; and admitted, that he had been employed by Colonel Fullarton as an interpreter and translator of part of the evidence to be employed in this prosecution.

In answer to a question from Lord ELLENBOROUGH, *Mr. DALLAS* said, that he certainly was not prepared with any parole evidence to prove that the infliction of torture prevailed generally in the Spanish West Indies.

Lord Ellenborough appeared to be about to close the case here, with the observation, that the special verdict which had been consented to, was granted on the supposition that a greater contrariety of evidence on the subject of the law of the colony would have been elicited than now really appeared; but it was thought it would, perhaps, be better, before the

Jury were called on for a general verdict, that the Council should, if they thought proper, address to them what observations they might have to make.

Mr. Dallas then rose, and said, that in the stage of the investigation to which the Jury had arrived, he should content himself with submitting to their determination the single fact, unincumbered with any question of his, whether the Criminal Judge, by the law of Spain, could in any instance, order the application of torture; to prove that the discretion did rest with that officer, he did not call to them persons who spoke from the observation they had made during any short periods they might have resided in the colonies, but he produced to them the unequivocal testimony of books of the first law authority, which were constantly resorted to, as had been proved by the Judges, on all occasions of doubt or difficulty. As charitable men, and as men of sense, must they not conclude that this code of reference was correctly elucidatory of the law, as it was meant to be dispensed? The works of distinguished civilians, writing upon the jurisprudence of their country, were a ground upon which he felt he stood firmly in defence of his client. The law of 1206 was proved by them to have existed, and to be still existing, to the date of the works of the last writer he had cited. No attempt had even been made by the ingenious counsel to shew that the universality of the Spanish law, as applied to the colonies, had been broken in upon by any special privilege enjoyed at Trinidad; and he would ask, therefore, could the Jury, upon their oaths, decide, that what had transpired there, and was the subject of this prosecution, was it not agreeable to a law that had authorised it, and which there was no proof had fallen into disuse?

Mr. Garrow said, that he looked at this case as it regarded the honour of our country, and the *redress of a stranger*, who had visited our land to procure it. If the defendant had had an *English heart in his bosom*, he would have wanted no restrictive provisions to have guarded him from the *commission of sanguinary acts*. He feared that it remained to the disgrace of the British name, that General PICTON was the *first* man to stretch authority and order TORTURE to be established in the island of Trinidad. After a few other animated observations, *Mr. Garrow* said he left the case to the decision of the Jury, confidently anticipating their verdict.

Lord Ellenborough.—"The single question for your consideration is, whether, by the Spanish laws observed in Trinidad, the defendant was justified in inflicting torture upon the prosecutrix? I would advise you, by all means, to divest yourselves of every thing which may inflame your minds, so that you may give impartial attention to the present case. The inquiry for

you to make is, what was the subsisting law by which Trinidad, at the time it was taken by Sir Ralph Abercrombie, was governed? The various authorities upon the subject of the distribution of justice in Spanish Courts do not mention the infliction of torture, and therefore the right of applying it, if it can be applied at all, must depend upon authorities before us, or upon the jurisdiction of the Judge. We are not made acquainted at what time Trinidad was annexed to the Spanish Colonial possessions, or what code of laws were then instituted. Depositions of witnesses have been read who have known the island for 32 years, and one of them was born there, and swears torture was never administered. Mr. Nugent also says, he knew Trinidad for twenty years, and never saw the torture inflicted, or had even seen the instruments, and therefore it is absolutely without any proof to support it. Mr. Gloucester speaks to books of authority, which he stated to be in use when he was in the island; but the existence and reference to them can certainly not extend beyond the period when he himself was acquainted with them.”—(His Lordship having made some farther observations respecting the different authorities produced, concluded as follows :) “The question then resolves itself to this, viz. whether in the absence of usage for thirty-two years, you will infer that the law of Old Spain so necessarily involved that of Trinidad, as to induce you to believe, that as the practice of torture is allowed by the one, it is also by the other. If you are of opinion that it does, you will be so good as to say so, that it may be inserted in the special verdict; if not, you will find the defendant generally guilty.”

The Jury immediately returned, that they were of opinion, that no such law did exist which would authorise the defendant in inflicting the torture, in consequence of which General Picton was found **GUILTY OF EVERY CHARGE.**

Lord ELLENBOROUGH.—“Mr. DALLAS, you will have the advantage of all objections on a motion for a new trial.”

Mr. DALLAS.—“Yes, my Lord; there are many points in the evidence of which I may **AVAIL MYSELF.**”

The Trial lasted from nine in the Morning ’till seven at Night.

Governor Picton walked the Hall of the Four Courts, during the trial. He is a tall man, of a very sallow complexion, apparently about fifty years of age, and was dressed in black. He was accompanied by several of the civil officers of the Island.

The Court was much crowded, and the verdict seemed to give general satisfaction.