

Proceedings in the case of John  
Discombe on an Indictment for  
Perjury at the General Quarter Sessions  
in the Colony of Suriname and  
the dependencies thereof

December 1829

On Wednesday the 8th December a little before the  
rising of the Court the Grand Jury returned a true  
bill against John Discombe for Perjury.

Mr. J. Walsh, Attorney for the prosecution moved  
that a Bench warrant do issue for taking the  
said John Discombe into custody. The warrant was  
granted and Discombe was thereupon taken into  
custody, and was brought to the Court house  
immediately after the adjournment. The Chief  
Justice met him at the entrance and recognizing  
his person expressed to those about him and  
to Mr. Hamilton the Kings Advocate in  
particular a disposition to relieve him from  
the inconvenience of personal restraint; and with  
this intention he turned round and followed towards  
the Court house: but upon reflection he thought  
it most prudent to allow matters to take their  
regular course and to await the application which  
he expected to be made to him on the part of Discombe.

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John Discombe

Necessity against John  
Discombe for Perjury

R. 21 March 1829

John Discombe



rather than to anticipate it.

Accordingly in a few minutes after the Judge returned to his house the deputy Sheriff (Mr J Woods) acting for Mr J Piffell gone to the Gaol with Governor MacCarthy came with an application from Discombe desiring that he should be released on his personal engagement to appear when called upon, or at least to be permitted to remain at his own residence under the superintendance of an officer; the Judge immediately gave his consent suggesting at the same time the expediency of communicating with the Attorney for the prosecution. This was immediately done, and with full concurrence Discombe was released on his personal promise to appear in Court at the hour of its opening ten o'clock next morning. Discombe remained in the Court house while the Deputy Sheriff went and came in the arrangement for his release.

Immediately after the deputy Sheriff left the Chief Justice in order to release Discombe Mr Van Sertima judge of the mixed Court of Justice under the Treaty with His Majesty the King of the Netherlands came to the Chief Justice's house and mentioned as the cause of his visit that "he had heard of a Subject of the King his Master, advertising to Discombe by name; being taken by Constables by the Chief Justice's order." The

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The Judge informed Mr Van Sertima of the indictment and the warrant issued for its consequence, and the arrest all being in the ordinary course of <sup>the</sup> practice of the Colonial Jurisdiction in such cases; Mr Van Sertima asked if he could render any service to Discombe under these circumstances the Judge mentioned to him the measures already taken for leaving Discombe at large until his trial Mr Van Sertima said nothing remained for him to do, and retired with some appearance of being satisfied - in a few minutes after Discombe was seen at large ~~and~~ going into Mr Van Sertima's House.

On the morning of Thursday the 9th soon after the opening of the Court Discombe appeared and Mr W R Savage his Attorney appeared to address the Court on his behalf, it was suggested from the Bench that the arraignment should take place in the first instance he was arraigned accordingly and pleaded not guilty.

Mr Savage then addressed the Court stating that this accusation had been preferred altogether unexpectedly and consequently the accused could not be prepared on the instant to make that defence which he would have been enabled to do if he had had timely notice. he therefore prayed for further time till the ensuing day.

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The Judge asked if that extension of time would be sufficient? and as the other business before the Court was likely to be brought to a conclusion in the course of that day he enquired of Mr Hamilton whether it was consistent with the practice of the Court to adjourn over for any interval? Mr Hamilton answered he was not aware that this had been ever done. The Judge said he did not see any thing to prevent it.

Mr Savage said if only a delay till tomorrow could be granted he would endeavour to be prepared as well as the time would admit: if two days could be given it would be ample for every purpose.

The Judge intimated his disposition to grant this enlargement. Mr O'Neil Walsh Attorney for the prosecution objected to this extension on the ground that no affidavit was offered to substantiate the necessity of it. The witnesses were all in attendance and the preparations for the prosecution would be altogether deranged by the delay.

The Chief Justice observed that every accommodation for his defence consistent with the due course of Justice ought be accorded to a person of Discombe's class in life under accusation of such a crime he thought

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the cause assigned for requiring further time was sufficient and he thought the delay of two days very reasonable. He was therefore disposed to grant the delay of two days unless some strong cause should be shown against it such as the probable departure of a material witness so as to endanger the loss of their testimony with respect to what had been said concerning affidavits to establish grounds for motions he trusted that every thing suggested from the Bench of that Court as reasonable would be admitted without the formality of affidavits; and every thing reasonable suggested by parties would equally be attended to by the Bench without that form.

Mr Walsh said the particular cause of his objecting to the delay was the intended immediate departure of a very material witness Mr Robertson!

This statement excited some consideration and it was in consequence suggested to the accused and his Attorney to take time till the ensuing day, as they had in the first instance required and to look for further extension till the day following according to circumstances.

The accused and his Attorney were tenacious of the inclination of the Bench to grant a delay of two days. The Attorney for the Prosecution pressed for a speedy trial, and it appeared a matter of difficulty to bring them to any accord, till Mr Robertson the witness alluded to on the part

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of the prosecution offered himself to the Court and declared his willingness to adjust the differences on this head by deferring his departure for another day. The Chief Justice took occasion in the course of the day to ask Mr Savage the Attorney for the defence if he had any further application to make on behalf of the accused - Mr Savage answered that he was not aware of any. -

The Chief Justice asked if any thing particular was wished for respecting the Jury. Mr Savage said he was desirous the Jury should be composed of Europeans. Mr Woods the deputy Sheriff interposed and said he has already communicated with Mr Savage and had given him assurance of every attention on his part to make the Jury the most respectable that the Colony could afford, and to contain the largest portion of Europeans that could be obtained without including those on the Grand Jury. The Chief Justice adverted to the case of John Mercer which had occurred a little more than a year before as constituting a precedent proper to be followed in the present instance. Mercer wished to be tried by a Jury of Europeans. The Kings Advocate (Mr Hamilton) objected to the application as tending to cast a reflection on the Colonial Jurors, Mercer disclaimed every idea of being disposed to cast any such reflection. He was merely influenced by a natural preference for his Country men and for his Colour. The Court thought the desire reasonable and allowed as many Europeans to be called in the first instance as could be found without including those serving on the Grand Jury. The deficiency was supplied by Colonial Jurors

this course he conceived would be most proper now also. This arrangement was perfectly satisfactory to Mr Savage.

After the Court had risen this day the Clerk of the Crown discovered that Discombe had retired without any renewal of the arrangement and understanding on which he was left at large on the preceding day; and a report having reached him of an intention on the part of Discombe to leave the Colony on board of a vessel purchased by the Crew of a condemned Spanish Schooner and then ready to sail, on board of which he has since actually sailed; a constable was sent for Discombe who came forthwith to the court house. The Clerk of the Crown proposed to take his recognizance but before he could proceed further the Deputy Sheriff arrived and rebanded Discombe again giving him according to his own desire a constable to attend him. These transactions took place after the rising of the Court that day. - No farther mention was made of the case in Court till the day appointed for his trial Saturday the 11th December.

On the 10th late in the evening probably about eight o'clock Mr Van Sertima Judge for His Majesty the King of the Netherlands under the treaty relating to the Slave trade came to the house of the Chief Justice, and entering the apartment where he sat presented a sealed paper which he said he wished to put in the Chief Justices own hand, he was invited to sit down but declined the invitation and retired on the instant.

The paper No 2 is a copy of that delivered by Mr Van Sertima.

The Chief Justice on reading over this paper found no reason to abandon the line

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of his duty as he had already understood and proceeded in it. But being anxious to do every thing consistent with propriety for the satisfaction of the Judge and Arbitrator of the Netherlands he sent to each of them very early in the morning of the 11<sup>th</sup> a copy of the note No 3 together with a copy of the Act of Parliament for carrying into effect the treaty with the Netherlands relating to the Slave trade. He had every reason to be persuaded that these Gentlemen were already in possession of this Act, and well aware of the particular provisions contained in the 10<sup>th</sup> Section of it to which he invited their immediate attention; but he wished to place these points beyond all doubt and he conceived that the step which he was taking would not be misplaced although it might be superfluous. Immediately after receiving this note about 7 o'clock A. M. M Van Sertima came to the House of the Chief Justice and without accepting a chair which was offered him entered at once without preface on the subject of the note sent to him. He said he did not consider that note an answer to the paper delivered by him to the Judge. The Judge told him it was not intended as an answer to that paper, but as the means of conveying to him the Act of Parliament and of calling his attention to the 10<sup>th</sup> Section of that in particular. M Van Sertima observed that the paper delivered by him was written jointly by his colleague M Bonnovie and himself and therefore an answer addressed to them jointly was required. The Chief Justice

Justice informed him that a similar <sup>and in closure</sup> note had been sent to M Bonnovie. M Van Sertima said they were already aware of that Act of Parliament and of the provisions contained in it which had been pointed out to their particular notice; but they considered those provisions as applying only to British Subjects, and upon this he was preparing to enter into argument rather in a strain of considerable warmth and with visible irritation in his countenance.

The Judge begged earnestly to decline entering into any discussion and entreated that nothing of that nature should be pressed upon him at a time when he was preparing for the discharge of a very serious duty a duty the considerations belonging to which he had suspended for the purpose of writing and reading the Notes addressed that morning to M Van Sertima and to M Bonnovie; but from which he could not allow himself to be turned away for any other object. His judicial duty was in itself always one of the most serious nature but in the present instance it was particularly so on account of the nature and novelty of the case coming on for trial: that seriousness was enhanced by the circumstances in the situation of Mr Hamilton the Kings advocate who from being Registrar of the Commission declined conducting the prosecution which otherwise would fall under his charge. The Court was thus deprived of the benefit of his experience and information and would have much more difficulty with the junior practitioners. If any thing further was wanted it must have been added by the Paper which

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The indictment charged the alleged piracy to have been committed in an answer of Discombe to a certain

Interrogatory exhibited by Thomas Gregory and Dou Van Sertima Esquires judges of the mixed Court of Justice under the treaty with His Majesty the King of the Netherlands relating to the Slave Trade. which Interrogatory ran thus "How many Slaves were taken on board from the time you commenced trading to the Completion of your present Cargo" To which he the said John Discombe answered "there were not any Slaves taken on board" whereas in fact ten male ~~and~~ Slaves were taken on board among whom was one Ba and several female Slaves.

D M Hamilton Esquire Registrar of the mixed Court of Justice under the treaty with the King of the Netherlands attended under a writ of Subpoena with the original depositions of the accused before the Court of which had been read over to him, and were authenticated by his signature This paper contained the answer charged in the indictment. Having been verified by Mr Hamilton it was read by the Clerk of the Crown.

Mr Hamilton was examined as to the tendency of the matter so sworn by the accused and charged in the indictment to injure St. Nazaire by inducing the judges of the mixed Court to liberate the Vessel and in that event to cause St. Nazaire the Captor to be condemned in costs and damages Mr Hamilton said it was quite matter of opinion upon what points in the evidence before <sup>the</sup> Judges might prove their opinions;

He supposed if the Judges had believed the accused they might be induced to liberate the Eliza and in that event the Captor would most probably be condemned in costs and damages.

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Mr Savage in cross examination asked if the Judges would not in all probability have given the same judgment if Discombe had not been examined at all. Mr Hamilton said that again was matter of opinion it depended upon what the Judges might see in the other evidence he supposed the result might have been the same In answer to a question from the Bench whether the Vessel was not in fact condemned contrary to Discombe's evidence: he said she was

The Sentence of Condemnation was also produced and verified by Mr Hamilton and put in and read by the Clerk of the Crown. The Vessel was condemned by Thomas Gregory Esquire and G. G. Bannour Esquire Arbitrator for the Netherlands forming the Majority of the Members of the Court which included also Dou Van Sertima Esquire Judge of His Majesty the King of the Netherlands

The treaty with His Majesty the King of the Netherlands was also put in for the purpose of authenticating more strongly by reference to the Schedule of Compensation annexed thereto the amount of Damages to which the Captors might have been liable in the event of the liberation of the Vessel. Reference was also made to these documents in order to show

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and Lt. Hagen told him not to cry, that he was a slave with the Spaniards but he would therefore be free he was taken on board the man of war and brought to Senegone. Cross examined by Mr Savage he was asked if he had not been told that unless he said he was a slave on board that ship he would be sent back to them to be a slave again? Witness answered that Lt Hagen told him he was not to be a slave again. Being asked if he was not luxuriously treated while on board the man of war, he answered he was kindly treated. Being asked who gave him the cloathing which he now wore, he pointed out Mr Walsh the Attorney for the prosecution. Mr Walsh said the articles were given from the Captured Negro department they consisted of a shirt and trousers. The witness was asked whether he did not live at Mr Walshs house, he said he did. He was asked if any promises were held out to him or any expectation of future provision, he said not any promise nor any expectation. He was asked when he expected to live in future he said he did not know.

The depositions of a Midshipman of His Majestys Ship Thistle also taken before the Judges of the mixed Court were then offered in evidence to be verified by Mr Humblon for the purpose of corroborating the testimony of Ba. But these papers were objected to on the part of the defence and the Bench declared them inadmissible.

Mr David Edmonds of Pentonville was then called: the tendency of the

questions put to him was to obtain from his knowledge of ships for the slave trade an opinion that the Eliza must have been fitted out for that trade and no other.

This evidence was declared from the Bench to be irrelevant and was not further proceeded in.

Mr Robertson who was subpoenaed for the same object was not called. 127

The Case for the Prosecution <sup>closed</sup> here.

Mr Savage begged to be allowed to read a written paper prepared on behalf of the accused. This paper adverted to the circumstances of the prosecution not being conducted by the law officer of the Crown now ordered by the Judges of the Court before whom the Crime was alleged to have been committed, but by the Captors of the Eliza which Vessel had been condemned by that Court, the paper went on to attribute the prosecution to motives of private malice and personal hostility. It adverted to the evidence of the Negro Ba who was described as incompetent through deficiency of Religious principle want of knowledge of a God and a belief in a future state and therefore unworthy of credit also on account of the influence of interest having the promise of freedom held out to him if he should prove that the Eliza was engaged in the slave trade and being taught that the alteration of his being free or being a slave turned on his testimony on that head. This witness was manoeuvred single and according to the doctrine laid down in certain cases to which he adverted, one witness was

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was not sufficient to a conviction for perjury

The Chief Justice said the turn this case had taken removed the serious duty and heavy responsibility which it appeared at the outset to impose on himself and upon the Jury. One Witness as they were told in the address now read was not sufficient to a conviction for perjury and in this case there was but one Witness to the matter in issue when therefore the case for the prosecution was closed under this deficiency the jury would have been directed at once to acquit. if it had not been thought more beneficial to the accused to allow the Statement offered on his behalf to be read. for Complaints had often been made in cases of this and similar nature that when acquittals took place on points of law after the case for the prosecution was fully gone through and without hearing anything on the defence, the accused had not his fair opportunity of vindication and had to go back into Society with the same injurious influence attached to his character there was much asperity of peremutation in that paper but if parties could not be restrained in that respect at least the abuse was confined to them; the Court had nothing to do with it. There were two or three things connected with the defence and with the cause which it might be proper to explain. This prosecution was instituted under the Act 59th of the King Cap 16 made to carry into effect the treaty with the Netherlands relating to the Slave Trade among the means for carrying into effect the objects of this treaty a Mixed Court of Justice was established and with respect to the Witnesses giving testimony before that mixed Court the following provisions were

were contained in the 10th Section of that act. "Every person who shall wilfully and corruptly give false evidence in any examination or deposition or affidavit had or taken before the said Judges or before the said Judges and Arbitrator under the said treaty instructions and regulations or this Act shall be deemed guilty of perjury and being thereof convicted shall be subject and liable to all the punishments and pains and penalties to which persons convicted of wilful and corrupt perjury are liable, and every such person may be tried for any such perjury either in the place where the offence was committed or in any Colony or Settlement of His Majesty's throne in which there is a competent jurisdiction to try any such offence or in His Majesty's Court of Kings Bench in England and that in case of any prosecution for such offence in His Majesty's Court of Kings Bench the same may be laid in Middlesex" 128

Under this provision as the alleged offence was committed here and as this Court was a Court of competent jurisdiction, it was the duty of those who sat on that Bench to try the charge on the indictment being properly brought before them. It was competent to the party injured or endangered by the act to prefer the indictment and when the indictment was regularly returned into Court the duty of trying it immediately attached, Acting under the impression of that duty the Court came this day to take Cognizance of this case; and since the allusion had been made which called forth an expression of his feelings on that head, he would say that from his conscientious feeling of his duty no external consideration should induce him to swerve. He should hold himself unworthy of the seat which he had the honor to hold on that Bench if he could be so swayed.

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He trusted no British Judge could in any place be so swayed, and feelings of particular interest for the dignity of this Bench from having the honor to preside on it he trusted that the judge who would ever sit on it hereafter could be influenced to sacrifice the sense of his duty in such a way. Having come to the trial with these impressions it was the more incumbent on him to take care that justice should be fairly done between the prosecutor and the accused. He trusted that justice had been fairly done between both, and he trusted at the same time that all liberality and all indulgence <sup>had been manifest</sup> towards the accused that the due course of justice would permit, and he trusted that this indulgence and liberality would be found exhibited as well in the course of the trial this day as in the previous proceedings which he had recapitulated. He had already told the jury that there was but one witness to the matter in issue; and as it was not consistent with the laws of England as understood and established here nor yet consistent with the general principles of justice on this head that the oath of one person should be so far over balanced by the oath of one other as to fix this crime, the Jury therefore would not have any occasion to take the trouble of entering into any estimation of the comparative credibility of the accused; and of the witness Ba. - for without any other consideration than that there was but one witness, they were bound to acquit.

It was said in the paper read for the defence that the Negro Ba was an incompetent witness; The proper time to object to the competency of a witness, was before his testimony was given.

but the Bench would be wanting to its duty, if it admitted an obviously incompetent witness to give his testimony. Although no objection might be made. The witness Ba was however not incompetent. He was a witness of that class and description, for the admission of whose testimony, particular provision was made in that part of the Colonial Charter which related to the establishment of this Court. Natives of Africa, not of the Christian Religion, must of necessity be the most frequent witnesses, and therefore in conjunction with the direction for oaths on the holy evangelists and solemn affirmations to be administered to witnesses professing the Christian Religion. It was directed that those other witnesses should be sworn in the way most binding upon their consciences to oblige them to tell the truth. The witness Ba had been so sworn, with forms not without solemnity and he appeared to have a strong sense to tell the truth. He was therefore not incompetent but he was single; and the Jury must acquit.

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Verdict Not Guilty

Dixcombe bowed respectfully to the Bench and to the Jury several times, when the Verdict was announced.

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