M.R.O. 1—77,006—8-6-37.

(1) Number of pages 36

(2) Date of repair 10-2-40

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 105 Press / Mis.

127-128.

Dated 21-1- 1873.

18/19

127-128

Not to be folded or roughly handled

Read the following papers :—

No. 127. From the Secretary and Treasurer of the Bank of Madras, to the Chief Secretary to Government, Fort St. George, dated Madras, 8th November 1872, No. 1428-P.

I have the honour, by desire of the Directors, to request that you will be good enough to lay before the Government the following facts connected with certain suits instituted by the Bank at Cochin.

2. In the beginning of this year the Bank brought a criminal charge against Ganasa Naicken Nagon and Pedda Naidoo (the late Cochin Branch Cash-keeper) the result of a civil suit, O. S., No. 385 of 1046 M. E., heard in Native Cochin, in which judgment was given against one defendant Ganasa Naicken Nagon on the ground of fraud and perjury, he having cashed a hoondee which he knew was not drawn by the purporting drawer.

3. The Criminal Court found the defendants guilty, they then appealed, and the Appeal Court reversed the decision of the other Court, so far as Pedda Naidoo was concerned, upon what appears to the Directors to be insufficient grounds.

4. The charge against the defendants arose out of certain transactions on four bills negotiated at the Cochin Branch.

5. The principal case was that of a Bill of Exchange on Alleppy Branch for Rupees 1,000 purporting to be drawn by Shangara Mullen Royan on Dossa Poy.

6. The charge was that the bill was forged inasmuch as that Shangara Mullen Royan was dead at its date, and Ganasa Naicken Nagon had taken the money from the Bank.

7. There was direct oral testimony here, and so Ganasa Naicken Nagon was convicted, and his conviction confirmed. But Pedda Naidoo (late Cash-keeper at the branch), notwithstanding his deposition in the civil suit (put in evidence in the criminal trial) that the bill was drawn in the Bank, and that he himself paid the money to Ganasa Naicken Nagon, was acquitted of abetting.

8. But in the further charge of perjury on account of the deposition by him that he saw Shangara Mullen Royan sign the hoondee, and that Shangara Mullen Royen at that time told him to give the money to Nagon, he was convicted. This conviction, however, was reversed in appeal.

9. Mr. A. G. Gover, Barrister-at-Law, who was engaged by the Bank to conduct these suits, comments on the appeal judgment of the 1st Judge as follows:—

"The 1st Judge says that the hoondee may have been signed by Shangara Mullen Royan prior to his death (which was nearly two months earlier) and brought thus to the Bank. But if so the perjury remains, for Pedda Naidoo's deposition is that he saw Shangara Mullen Royan sign it at the Bank on the same day that the money was paid, and that the date was not an immaterial point, but of the very gist of the case, and the conviction of Ganasa Naicken Nagon confirmed by this Appeal Court depends upon the actual forgery and not mere ante making of the hoondee."

Mr. Gover complains as follows of the "vexatious delays which have expensively engthened these cases. These delays have been entirely consequent upon the inherent imperfections of their Criminal Procedure, or rather the almost entire absence of any procedure; for the Sirkar Regulations upon the point are practi-

cally ignored, and the Courts cannot ostensibly follow the British Indian Code, whereby the various Courts are left without any guide whatever, and so come into conflict or remain inactive."

Mr. Gover states further:—"I think the decision of the Appeal Court reversing the conviction of Pedda Naidoo for perjury might very properly be laid before the British Resident or the Madras Government."

10. The Directors in submitting the foregoing case for the information of the Government venture to express a hope that the flagrant miscarriage of justice in this instance may be considered sufficient ground for the issue of instructions to the British Resident in Travancore which will result in the improvement of judicial administration in Native Cochin, and will insure to British subjects in that Territory that protection of civil rights which it is the duty of every well-ordered State to provide.

Referred to the Resident in Travancore and Cochin for his remarks.

FORT ST. GEORGE,
9th November 1872.

(Signed) W. HUDLESTON,
Officiating Chief Secretary.

No. 127-A. From the Assistant Resident in charge, Travancore and Cochin, to the Chief Secretary to Government, Fort St. George, dated Trevandrum, 30th December 1872, No. 129.

Adverting to the Order of Government, dated 9th ultimo, endorsed on the letter from the Secretary to the Bank of Madras, I have the honour to state that Pedda Naidoo was tried in the Criminal Court of Anjikamail in the Cochin State upon two charges of abetting forgery and perjury. In the former case he was acquitted by the Criminal Court on the ground that there was nothing to show that he had complicity in the fraud committed by Naicken Nagon, and in the latter he was acquitted by the Appeal Court for want of sufficient proof of wilful perjury.

2. The acquittal in both cases arose from the fact of the insufficiency of evidence.

3. The delay, if there was any, in the disposal of the Bank cases which were pending in the Criminal Court including those against Naicken Nagon arose it appears to their having been put off either at the instance of the Bank Agent or of Mr. Gover who was practising at Tellicherry so as to meet his convenience, and Mr. Gover had no reason for complaining of delay in the hearing of any case in which he had to appear before the Appeal Court.

4. I beg to enclose copies of a memorandum and explanatory statement from the Judges of the Appeal Court on the questions raised in the Bank's Secretary's letter, which I consider ample and need no further remarks from me.

No. 22.

MEMORANDUM.

The Judges beg to acknowledge receipt of the Diwan's Memorandum (No. 687) of the 18th ultimo, forwarding copy of a letter from the Assistant Resident in charge, dated 15th idem, calling for report with reference to a letter from the Secretary and Treasurer of the Bank of Madras

in which the Directors complain of the decision in the criminal case against Pedda Naidoo which ended in his acquittal.

2. Pedda Naidoo was tried in the Criminal Court of Anjikamail upon the two charges of abetting forgery and perjury referred to in the letter, respectively in Calendar Cases Nos. 43 and 44 of 1047.

3. In No. 43 he was charged with abetting and aiding Ganasa Naicken Nagon in the utterance of a forged hoondee purporting to be drawn by one Mullen Royan. And in No. 44 the charge was that he made a false statement in a civil suit to the effect that Mullen Royan was present in the Bank, and had signed the hoondee in Kunni 1046. In the former case he was found not guilty by the Criminal Court on the ground that there was nothing to indicate that he had complicity in the fraud committed by Naicken Nagon, and in the latter he was acquitted by this Court, which considered that there was not sufficient proof of wilful perjury. The acquittal it will be observed in both cases arose from the fact of the insufficiency of evidence.

4. In the case of perjury, as Mr. Gover observes (though he is not correct in quoting the 1st Judge's judgment), the date on which the hoondee was signed and cashed was not immaterial, but the defendant was not acquitted on the ground that it was immaterial.

5. The facts necessary to be proved were (1) that the hoondee was not signed by Mullen Royan, (2) that it was not signed by him in Kunni 1046. Upon either point positive evidence was required which alone would justify a conviction for perjury. Upon the first point there was no evidence. Upon the second the evidence was considered to be weak or insufficient as there was no conclusive proof of the death of Mullen Royan before that date. All the evidence given as to his death consisted of the depositions of his brother and son, who were interested in maintaining what they said, and of the testimony of the purohit, who was himself not present at the death. The 2nd Judge considered the whole evidence to be untrustworthy, while the 1st Judge was of opinion that it was unsafe to convict a man of perjury upon the deposition of one witness who himself bore no direct testimony, unsupported by independent or disinterested evidence, the testimony of the other two witnesses being of little value on account of their interest in the prosecution. The opinions of both were concurred in by the 3rd Judge.

6. It cannot be said that any other evidence than that produced was not available, when the fact of the death of Mullen Royan must have been known to several men in the village, and it is in the highest degree improbable that the two men alone, the brother and son, without other relatives or friends, were present at his death.

7. The Court was further of opinion that, if the evidence could be deemed conclusive as to the falsity of the statement, the case was one which gave room to doubt whether it was not made by defendant in the belief that he was present at the transaction; for his previous relation to the Bank, his presence at several transactions with Mullen Royan himself, and his admitted hostility to Naicken Nagon, which indicated that he could not be biased in his favour, did not tend to show that it was induced by perverse or sordid motive, so as to make it a wilful false statement.

8. It is unnecessary to refer to the decisions in the cases against Naicken Nagon which furnish no matter for complaint on the part of the Bank, and which could not be legally used against Pedda Naidoo who was no party to them.

9. The distinction, however, between the two cases may be here pointed out. In the case of Naicken Nagon, the offence charged was different. He was convicted of uttering forged document, and the conviction was confirmed by the 1st and 3rd Judges of this Court (2nd Judge dissenting) with reference to the evidence and pleadings in that case, though there was no evidence of actual forgery, because it was found that the money advanced upon the hoondee was received by Naicken Nagon; because there was evidence of the probable death of Mullen Royan prior to the date of the hoondee afforded by the testimony of the purohit; and because there was dissimilarity between the signature on the hoondee and the admitted genuine signatures of Mullen Royan, while there was no proof on the other side that the suspected signature was affixed by Mullen Royan, which alone could displace the presumptions against him. The points necessary for the conviction in that case were (1) whether the document was forged; (2) whether it was uttered by the defendant.

The elements necessary for the conviction for perjury were (1) whether the statement upon which perjury was assigned was false; (2) if so whether that statement was wilfully made; so that the two cases were not only distinguishable, but there was a clear distinction in the nature of the evidence required.

10. Perjury is an offence, not against person or property, but against public justice in the punishment of which the local Courts were interested more than any one else; and the Judges are unable to understand the relevancy of the remarks of the Directors about "the protection of the civil rights" of British subjects. It is difficult to answer general remarks, when they could not point to a case in which any supposed failure of justice may have occasioned pecuniary losses to the Bank, or in which the interests of the Bank were not sufficiently guarded so far as it was consistent with justice.

11. It must be confessed that there are "imperfections" in the Criminal Procedure as remarked by Mr. Gover, but it is one of these very imperfections that he took advantage of in one of the cases above-mentioned, the case of perjury. If he had followed the procedure in British India—a procedure which was in practice observed in the Courts of this State—he must have obtained the previous sanction of the Civil Court for the prosecution.

12. The "imperfections," however, do not appear to have contributed so much to the delay which is said to have "expensively lengthened" the cases. The Bank cases which were pending in the Criminal Court including those against Naicken Nagon seem to have been put off either at the instance of the Bank Agent, or of Mr. Gover who was practising at Tellicherry so as to meet his convenience, though it is said to have been done with the consent of the defendants or their Vakeels.

13. It appears from the report of the Criminal Court that the cases against Naicken Nagon were committed to the Court on the 12th Makarom 1047 (24th January 1872), that his trial was commenced on the 19th Choambam (29th February), and closed by the 1st Meenom 1047 (12th March 1872). The cases against Pedda Naidoo were committed on the 23rd Idavom 1047 (3rd June 1872), and his trial occupied between the 15th and 24th Mithunom 1047 (27th June, 6th July 1872). In the case of Naicken Nagon the Criminal Court appears to have given its judgment the day after the close of the trial, and in the case of Pedda Naidoo within twelve days after the trial.

14. Mr. Gover had no reason to complain of delay in the hearing of any case in which he had to appear before this Court. The appeals from the conviction of Naicken Nagon were heard on the same day on which they were posted. The appeal in the case of perjury in which Mr. Gover did not appear was disposed of about two weeks after it was filed.

15. It may be added that Mr. Gover had not to wait for the judgment in any of the above cases either in the Criminal Court or in this Court where judgments were delayed or reserved.

16. Copies of the judgment of the Criminal Court in Case No. 43, and the appeal judgment in Case No. 44, together with a separate memorandum bearing upon the case, are, herewith, forwarded.

ERNACOLLUM,
18*th December* 1872.

(Signed) V. SUBRAMANIA PILALY,
1*st Judge.*
(,,) C. D'ALBEDYHLL,
2*nd Judge.*
(,,) SOOBRAMANIAN SHASTRY.

To the Diwan of Cochin.

Criminal Appeal No. 23 of 1047.

In this case the Directors of the Madras Bank complain of the decision relying apparently upon the opinion of Mr. Gover, Barrister-at-Law. As a report is now called for, we think it but proper to state our reasons fully for acquitting the defendant.

The parts of the defendant's statement alleged to be false were (1) that Mullen Royan signed the hoondee, giving authority to Naicken Nagon to receive payment; (2) that he signed the

Proceedings of the Madras Government, Financial Department,
21*st January* 1873.

hoondee in Kunni 1046. It was not necessary to disprove both statements, as the disproof of either would have been enough, but upon either point direct evidence was required. To say that a statement is false there must be the deposition of one opposing witness, at least, in direct contradiction to it, or the contradictory statement of the defendant himself, with confirmatory proof of its falsity (Madras High Court Report, vol. VI., page 342). Upon the first point there was no evidence. As regards the second, legal evidence there was. The statement of Mullen Royan's brother and son who deposed to his anterior death was certainly opposed to the defendant's statement, but that evidence, in our opinion, could not be relied upon in the absence of better or independent evidence which could have been produced, and for the non-production of which there appeared no reason. It is in the highest degree improbable that the two men alone had seen him at his death. There was the deposition of the purohit it is true, but that at best could afford only presumptive evidence, as it could not be said to be direct testimony upon the death of Mullen Royan, when it appeared that he did not see him on his death-bed, or his corpse after his death.

It cannot be contended that there would be legal evidence for a conviction if the depositions of Mullen Royan's brother and son were eliminated from the records, but the presence of this evidence, impaired as it was, to which no one could give credit, when better evidence was withheld, is no better than its absence. The weakness of the case would have been more apparent, if Mr. Gover had not refrained from taking proceedings against the four witnesses who contradicted the witnesses for the prosecution in the civil suit. Very often we declare upon the probabilities of a case, relying upon the testimony of a single witness, or upon a particular circumstance, the depositions of a host of witnesses to be untrustworthy; but merely because we declared them so, that is no reason for convicting them all of perjury. If such a rule should be adopted we think the result must be dangerous. It may have the effect of checking perjury on one side, but on the other it will have the more serious effect of deterring many a witness from coming forward, and thus imperil justice, besides unduly influencing Judges in their appreciation of the evidence. When the statements of a number of witnesses are alleged to be false, there must be not only legal evidence, but evidence possessing such decided preponderance, not hanging merely upon the personal character of one witness, as absolutely to exclude the hypothesis that they were true. A nominal weight caused by substitution of the practically worthless evidence of two men, and the omission to prosecute a number of those by whom they were directly contradicted, cannot tend to give such preponderance.

Whether the document was forged or not, no one can find consistently with the acknowledged rules of evidence that the statement of the defendant that it was signed by Mullen Royan was false when it was not contradicted by direct evidence, and when in fact no evidence was given upon the point in this case.

Our judgment, however, rests not only upon the weakness of evidence as to the falsity of the defendant's statement, but upon the want of proof in regard to the dishonest motive of the defendant in making the statement upon which the perjury is assigned. Granting the whole statement was false, no Court or jury could be expected to convict a man unless they could infer also that the false statement was intentionally and wilfully made. "Evidence is essential not only to show that the witness swore falsely in fact, but also as far as circumstances tend to such proof, that he did so corruptly, wilfully, and against his better knowledge."—(Roscœ 763). The motive might be ordinarily implied from the very falsity of the statement and other circumstances accompanying it, but the falsity itself is no conclusive proof of dishonest motive. Upon this very ground rests the decision of the High Court of Madras in the recent case of Queen *vs.* Ross, where they found the prisoner's statement to be false, but acquitted him, on the ground that the circumstances of the case did not warrant the presumption that he made it against his belief (Madras High Court Report, vol. VI., page 345).

In saying in this case there was no proof of wilful perjury, the existence of hostility between the defendant and Naicken Nagon was relied upon, which was admitted on all hands, and which was sought to be explained by alleging an after-conclusion—a thing which did not appear on record. The fact of the remittance slip connected with this hoondee not bearing the defendant's initial,

the circumstance that the other slips generally bore his initials in cases in which the transactions passed through him, and the fact that Mullen Royan had several transactions in the Bank during his lifetime, did not tend also to exclude his belief that it was one of those transactions that passed through him. Also defendant was not one of those witnesses cited by Naicken Nagon to prove the death of Mullen Royan in contradiction to the testimony of the witnesses for the prosecution. The case in our opinion is not half as strong as that of Queen *vs.* Ross. Upon the facts which gave room to such doubt there was no reason why the benefit of the doubt should not have been given to defendant, to which any other person would be entitled under similar circumstances.

In our opinion there was no conclusive proof of wilful false statement, and we accordingly acquitted the defendant.

(Signed) V. SUBRAMANIA PILLAY,
1st Judge.
(,,) C. D'ALBEDYHLL,
2nd Judge.
(,,) SOOBRAMANIAN SHASTRY.

No. 128. ORDER THEREON, 21st January 1873, No. 105.

Ordered that copy of the Assistant Resident's letter and its enclosures be furnished to the Directors of the Madras Bank, with reference their Secretary's letter of 8th November 1872.

(True Extract)

Chief Secretary.

To the Secretary and Treasurer of the Bank of Madras.
,, Resident in Travancore and Cochin.

Exd. J. Wright.

Criminal Appeal No 23 of 1047.

In this case, the Directors of the Madras Bank Complain of the decision, relying apparently upon the opinion of Mr Gover Barrister at law. As a report is now called for, we think it but proper to State our reasons fully for acquitting the Defendant.

The parts of the Defendants Statement alleged to be false were (1) that Raja Muller signed the hoondee, giving authority to Naga Nairken to receive payment, (2) that he signed the hoondee in Kunni 1046. It was not necessary to disprove both Statements, as the disproof of either would have been enough, but upon either point direct evidence was required - To say that a Statement is false, there must be the deposition of one opposing witness, at least, in direct contradiction to it, or the contradictory Statement of the Defendant himself, with confirmatory proof of its falsity (Madras High Court Report Vol 17. page 342) Upon the first point there was no evidence - As regards the second, legal evidence there was - The Statement of Raja Muller's brother and son who deposed to his anterior death was certainly opposed to the Defendants Statement, but that evidence in our opinion could not be relied upon, in the absence of better or independent evidence which could have been produced, and for the non-production of which there appeared no reason - It is in the highest degree improbable that the two

Govt. of 1873 Madras.

FINANCIAL.

To THE SECRETARY AND TREASURER,
Bank of Madras,
&c.,
&c.,

Dated January, 21st.
Recd. Encl.

G. O., 21st January 1873, No. 105.

JANUARY.
Nos. 127-128.

Furnishing copy of a letter from the Assistant Resident in charge of Travancore and Cochin reporting the result of the trial before the Criminal Court of Anjikamail in Cochin of Pedda Naidoo upon the charges of abetting forgery and perjury.

two men alone had seen him at his death - There was the deposition of the purohit, it is true, but that at best could afford only presumptive evidence, as it could not be said to be direct testimony upon the death of Raya Mullen, when it appeared that he did not see him on his death-bed, or his corpse after his death.

It can not be contended that there would be legal evidence for a conviction, if the depositions of Raya Mullen's brother and son were eliminated from the records, but the presence of this evidence, impaired as it was, to which no one could give credit, when better evidence was withheld, is no better than its absence - The weakness of the case would have been more apparent, if Mr. Gover had not restrained from taking proceedings against the 4 witnesses who contradicted the witnesses for the prosecution in the Civil suit. Very often we declare upon the probabilities of a case, relying upon the testimony of a single witness, or upon a particular circumstance, the depositions of a host of witnesses to be untrustworthy, but merely because we declared them so, that is no reason for convicting them all of perjury. - If such a rule should be adopted, we think the result must be dangerous - It may have the effect of checking perjury On one side but on the other, it will have the more serious effect of deterring many a witness from coming forward, and thus imperil justice, besides unduly influencing judges in their appreciation of the evidence - When the Statements

of

of a number of witnesses are alleged to be false, there must be not only legal evidence, but evidence possessing such decided preponderance, not hanging merely upon the personal character of one witness, as absolutely to exclude the hypothesis that they were true - A nominal weight caused by substitution of the practically worthless evidence of two men and the omission to prosecute a number of those by whome they were directly contradicted, cannot tend to give such preponderance --

Whether the document was forged or not, no one can find consistently with the acknowledged rules of evidence that the Statement of the Defendant that it was signed by Raya Mullen was false when it was not contradicted by direct evidence, and when in fact no evidence was given upon the point in this case.

Our judgment however rests not only upon the weakness of evidence as to the falsity of the Defendants Statement, but upon the want of proof in regard to the dishonest motive of the Defendant in making the statement upon which the perjury is assigned - Granting the whole Statement was false, no Court or jury could be expected to convict a man unless they could infer also that the false statement was intentionally and wilfully made "Evidence is essential not only to show that the witness swore falsely in fact, but also as far as circumstances tend to such proof, that he did so corruptly "wilfully and against his better knowledge" (Roscoe 763) The motive might be ordinarily implied from the very falsity of the Statement and other circumstances

accompanying

accompanying it, but the falsity itself is no conclusive proof of dishonest motive. Upon this very ground rests the decision of the High Court of Madras in the recent case of Queen V.S. Ross, where they found the Prisoner's Statement to be false, but acquitted him, on the ground that the circumstances of the case did not warrant the presumption that he made it against his belief (Madras High Court Report Vol: VI. page 345.)

In saying in this case there was no proof of wilful perjury, the existence of hostility between the Defendant and Naga Naiken, was relied upon, which was admitted on all hands, and which was sought to be explained by alleging an after conclusion. A thing which did not appear on record - The fact of the Remittance slip connected with this hoondee not bearing the Defendants initial - the circumstance that the other slips generally bore his initials in cases in which the transactions passed through him - and the fact that Raya Mullen had several transactions in the Bank during his life time, did not tend also to exclude his belief that it was one of those transactions that passed through him. Also Defendant was not one of those witnesses cited by Naga Naiken to prove the death of Raya Mullen in contradiction to the testimony of the witnesses for the prosecution. The case in our opinion is not half as strong as that of Queen vs Ross - Upon the facts

facts which gave room to such doubt there was no reason why the benefit of the doubt should not have been given to Defendant, to which any other person would be entitled under similar circumstances.

In our opinion there was no conclusive proof of wilful false statement, and we accordingly acquitted the Defendant.

/Sigd/ V. Subramania Pillay
1st Judge
" C. D'Albedyhll
2d Judge
" Soobramanian Shastry

No P/L 28. 15

Bank of Madras.
Madras 8th November 1872.

The Chief Secretary
to Government
Fort Saint George.

Sir

I have the honor by desire of the Directors to request that you will be good enough to lay before the Government the following facts connected with certain suits instituted by the Bank at Cochin.

In the beginning of this year the Bank brought a Criminal charge against Ganasa Naicken Nagon and Pedda Naidoo (the late Cochin Branch Cashkeeper) the result of a Civil Suit O.S. No 385 of 1048 M.E. heard in Native Cochin in which judgment was given against one defendant Ganesa Naicken Nagon on the ground of fraud & perjury he having cashed a hundi which he knew was not drawn by the purporting drawer.

The Criminal Court found the Defendants guilty, they then appealed, and the Appeal Court reversed the decision of the other Court so far as Pedda Naidoo was concerned upon what appears to the Directors to be insufficient grounds.

The charge against the Defendants arose out of certain transactions on 4 Bills negotiated at the Cochin Branch.

The principal case was that of a Bill

of.

of Exchange on Alleppey Branch for R1000/ purport
ing to be drawn by Shangara Mullen Royan on
Dossa Roy.
The charge was that the Bill was forged inasmuch
as that Shangara Mullen Royan was dead at its
date and Ganasa Naicken Nagon had taken the
money from the Bank.
There was direct oral testimony here, and so
Ganasa Naicken Nagon was convicted, this con
viction confirmed. But Pedda Naidoo (late Cash
keeper at the Branch) notwithstanding his deposition
in the Civil suit (put in evidence in the Criminal
trial) that the Bill was drawn in the Bank, and
that he himself paid the money to Ganasa Naicken
Nagon, was acquitted of abetting.
But in the further charge of perjury in account
of the deposition by him that he saw Shangara
Mullen Royan sign the hundi & that Shangara
Mullen Royan at that time told him to give the
money to Nagon, he was convicted. This con
viction however was reversed in appeal
Mr A.G. Grover Barrister at law who was en
gaged by the Bank to conduct these suits
comments on the appeal judgment of the 1st
Judge as follows
" The 1st Judge says that the hundi may "
" have been signed by Shangara Mullen "
" Royan prior to his death (which was nearly "
" two months earlier) brought thus to the Bank "
" But if so the perjury remains. for Pedda "
" Naidoo's deposition is that he saw Shangara "
" Mullen Royan sign it at the Bank on the "
" same day that the money was paid & that "
" the "

" date was not an immaterial point, but of the "
" very gist of the case & the conviction of Ganasa "
" Naicken Nagon confirmed by this Appeal "
" Court depends upon the actual forgery "
" and not mere ante making of the Hundi "
Mr Grover complains as follows of the
" vexatious delays which have expensively "
" lengthened these cases. These delays have "
" been entirely consequent upon the inherent "
" imperfections of their Criminal Procedure "
" or rather the almost entire absence of any "
" procedure; for the Strear Regulations upon "
" the point are practically ignored, and the "
" Courts cannot ostensibly follow the British "
" Indian Code, whereby the various Courts "
" are left without any guide whatever, and "
" so come into conflict or remain inactive "
Mr Grover states further. I think the decision
" of the Appeal Court reversing the conviction "
" of Pedda Naidoo for perjury might very "
" properly be laid before the British Resident "
" or the Madras Government "

The Directors in submitting the foregoing case for the information of the Government venture to express a hope that the flagrant miscarriage of justice in this instance may be considered sufficient ground for the issue of instructions to the British Resident at in Travancore which will result in the improvement of judicial administration in Native Courts, and will insure to British subjects in that territory that protection of civil rights which it is the duty of

of every well ordered State to provide

I have the honor to be
Sir
Your most obedient servant

S. Tyler Sim.

Secretary & Treasurer

Respectfully submitted to the President. Transmitting for his Remarks.

D. Huntington
Off'g Chief Clerk

Navy Dept
9 Nov 1872

Nov 8 1872 Referred
Hon
Secy of Treasury
Bureau of Statistics.
by order of Secy Boutwell
Nov 8 1872.

No 2265

Representing that in a Cause
wherein Benj. H. Ely & Others
were Complainants & Nicholas Nash
& Others Defendants & Cause
before the Circuit Court of the
United States for the Southern
District of New York, Decree
was rendered finally, & that
the Clerk of the said Court is the
Keeper of the Records where-
in & thereof & ought to make
certificates of Decrees - and
transmitting the Same made &
entered in the Cause aforesaid &
by the Court, the Counsel aforesaid
& the Bail, on the Proceedings
of the Circuit Court

Clerk

No. 22.

Appeal Court House
Cinnamon Gardens, 18th December 1872.

Memo:

The Judges beg to acknowledge receipt of the Dewan's Memo: (No. 6687) of the 18th Ultimo forwarding copy of a letter from the Assistant Resident in charge dated 15th Idem calling for report with reference to a letter from the Secretary and Treasurer of the Bank of Ceylon in which the Director complains of the decision in the Criminal case against Peddoo Rayalu which ended in his acquittal.

Peddoo Rayalu was tried in the Criminal Court of Chilaw upon the two charges of abetting forgery and perjury referred to in the letter, respectively in Calendar cases Nos. 43 & 44 of 1871.

In No. 43 he was charged with abetting and aiding Ganasa Naiken Naga Naiken in the utterance of a forged bond purporting to be drawn by one Raya Mullen. And in No. 44 the charge was that he made a false statement in a Civil suit to the effect that Raya Mullen was present in the Bank,

and

and had signed the hoondee, in Kunni 1046 -
In the former case he was found not guilty by the Criminal Court on the ground that there was nothing to indicate that he had Com-plicity in the fraud committed by Chaya Naiken, and in the latter he was acquitted by this Court, which considered that there was not sufficient proof of wilful perjury. The acquittal, it will be observed in both cases arose from the fact of the insufficiency of evidence

In the case of perjury, as Mr Clover observes (though he is not correct in quoting the 1st Judges judgment) the date on which the hoondee was signed and casted was not immaterial, but the Deft was not acquitted on the ground that it was immaterial -

The facts necessary to be proved were (1) that the hoondee was not signed by Raya Mullen (2) that it was not signed by him in Kunni 1046 - Upon either point positive evidence was required which alone would justify a Conviction for perjury. Upon the first point, there was no evidence - Upon the 2d the evidence was considered to be weak or insufficient as there was no conclusive

proof

proof of the death of Raya Mullen before that date - All the evidence given as to his death consisted of the depositions of his brother and son, who were interested in maintaining what they said, and of the testimony of the purohit, who was himself not present at the death - The 2d Judge considered the whole evidence to be untrustworthy while the first Judge was of opinion that it was unsafe to convict a man of perjury, upon the deposition of one witness who himself bore no direct testimony, unsupported by independent or disinterested evidence, the testimony of the other two witnesses being of little value on account of their interest in the prosecution. The opinions of both were concurred in by the 3d Judge -

It cannot be said that any other evidence than that produced was not available, when the fact of the death of Raya Mullen must have been known to several men in the village, and it is in the highest degree improbable that the two men alone, the brother & son, without other relatives or friends, were present at his death -

The

The Court was further of opinion that if the evidence could be deemed conclusive as to the falsity of the statement, the case was one which gave room to doubt whether it was not made by Deft in the belief that he was present at the transaction; for his previous relation to the Bank, his presence at several transactions with Raya Mullen himself, and his admitted hostility to Naga Naiken, which indicated that he could not be biased in his favor, did not tend to show that it was induced by perverse or sordid motive so as to make it a wilful false statement.

It is unnecessary to refer to the decisions in the cases against Naga Naiken which furnish no matter for complaint on the part of the Bank, and which could not be legally used against Peddoo Nayden who was no party to them -

The distinction however between the two cases may be here pointed out - In the case of Naga Naiken, the offence charged was different - He was convicted of uttering forged document and the conviction was confirmed by the 1st & 3d Judges of this Court (2d Judge dissenting) with reference to

to the evidence and pleadings in that case, though there was no evidence of actual forgery, because it was found that the money advanced upon the hoondee was received by Naga Naiken, because there was evidence of the probable death of Raya Mullen prior to the date of the hoondee, afforded by the testimony of the purohit; and because there was dissimilarity between the signature on the hoondee and the admitted genuine signatures of Raya Mullen, while there was no proof on the other side that the suspected signature was affixed by Raya Mullen, which alone could displace the presumptions against him - The points necessary for the conviction in that case were (1) whether the document was forged (2) whether it was uttered by the Defendant - The elements necessary for the conviction for perjury were (1) whether the statement upon which perjury was assigned was false (2) if so whether that statement was wilfully made - so that the two cases were not only distinguishable but there was a clear distinction in the nature of the evidence required -

Perjury is an offence not against

person

person or property, but against public justice in the punishment of which the local Courts were interested, more than any one else - and the Judges are unable to understand the relevancy of the remarks of the Director about "the protection of the civil rights" of British subjects - It is difficult to answer general remarks, when they could not point to a case in which any supposed failure of Justice may have occasioned pecuniary losses to the Bank, or in which the interests of the Bank were not sufficiently guarded so far as it was consistent with Justice -

It must be confessed that there are "imperfections" in the Criminal Procedure as remarked by Mr Gover but it is one of these very imperfections, that he took advantage of, in one of the cases above mentioned the case of perjury - If he had followed the procedure in British India - a procedure which was in practice observed in the Courts of this State he must have obtained the previous sanction of the Civil Court for the prosecution -

The "imperfections" however do not appear to have contributed so much to the delay which

which is said to have "Expensively lengthened" the cases - The Bank cases which were pending in the Criminal Court including those against Naga Naiken seem to have been put off either at the intance of the Bank Agent, or of Mr Gover who was practising at Tellicherry, so as to meet his convenience through it is said to have been done with the consent of the Defendants or their Vakeels -

It appears from the Report of the Criminal Court that the cases against Naga Naiken were committed to the Court on the 12 Makarom 1047 / 24 January 1872 that his trial was commenced on the 19 Chambam / 29 February and closed by the 1 Meenom 1047 / 12 March 1872 - The cases against Peddo Naydu were committed on the 23 Idavom 1047 / 3 June 1872, and his trial was occupied between the 15 & 24 Mithoonom 1047 / 27 June & 6 July 1872 - In the case of Naga Naiken the Criminal Court appears to have given its judgment, the day after the close of the trial, and in the case of Peddoo Naydu within 12 days after the trial -

Mr Gover had no reason to complain of delay in the hearing of any case in which he had to appear before this Court - The appeals from the conviction of Naga Naiken were heard on the same day on which they

were

were posted. The appeal in the case of perjury in which Mr Glover did not appear was disposed of about two weeks after it was filed.

It may be added that Mr Glover had not to wait for the judgment in any of the above cases either in the Criminal Court or in this Court where Judgments were delayed or reserved.

Copies of the Judgment of the Criminal Court in case No 43, and the appeal Judgment in case No 44 together with a separate Memo: bearing upon the cases are herewith forwarded.

Signed/ V. Subramanya Pillay
Puisne Judge
" / C D'Albedyhll /
Dy Judge
To
The Dewan of Cochin " / Soobramanian Shastry

(True copy)
Signed/ T. Shungoony Menon
Dewan.

(True copies)
Worrall Clay Capt
Asst. Resident in charge.

F. S.

No. 129

Residency Office,
Trevandrum, 30th December 1872.

From,

Captain W. Hay
Assistant Resident in charge
Travancore & Cochin

To,

The Honorable W. Huddleston
Chief Secretary to Government
Fort Saint George

Sir,

Adverting to the order of Govern-
ment dated 9th Ultimo endorsed on the
letter from the Secretary to the Bank of Madras
herewith returned. I have the honor to state that Peddoo Nayda
was tried in the Criminal Court of Anjikamail
in the Cochin State upon two charges of
abetting Forgery and Perjury. In the former
case he was acquitted by the Criminal Court
on the ground that there was nothing to show
that he had complicity in the Fraud Commit-
-ted by Nagan Naiken, and in the latter he
was acquitted by the Appeal Court for
want of sufficient proof of wilful Perjury.

2. The acquittal in both cases arose from
the fact of the insufficiency of evidence.

Received under cover of
the Hon'ble Resident
Nedungadi Travancore
& Cochin to the
Chief Secretary to
Government of Fort
St. George dated 30th Dec.
1872.
Forwarded & Rs 13-7-38
Stamp duty
Rs 13

Copies of Memo: &
Enclosures to Chief
Secretary Madras
from the Judge of
the Cochin Appeal
Court in the Case
of Bank of Madras
Versus Kesa Kaiken
Peddoo Nayda

3. The delay if there was any in the disposal of the Bank cases which were pend-ing in the Criminal Court including those against Ragan Raiken arose it appears to their having been put off either at the instance of the Bank Agent or of Mr. Gover who was practising at Tellicherry so as to meet his convenience, and Mr. Gover had no reason of complaining of delay in the hearing of any case in which he had to appear before the Appeal Court.-

4. I beg to enclose copies of a then and explanatory statement from the Judges of the Appeal Court on the questions raised in the Bank's Secretary's letter, which I consider ample and need no further remarks from me.

I have the honor to be,
Sir,
Your most Obedient Servt

Capt.n
Asst. Resident in Charge

T. S.

Judl. 1873 Dept.

From,
The Asstt. Resident in charge Travancore & Cochin

To,
The Chief Secretary to Government. Fort St. George

Of 30 December 1872
Recd: 4th Jany. 1873.

No 129
Enclosures – Two (retd)

No. 4

Reporting on the case of Bank of Madras versus Nagoo Naiken & Peddoo Naidoo tried before the Courts of the Cochin State –

With ... [illegible]

21st January 1873 No. 105

Submit that Copy of the Resident's letter & its enclosures be furnished to the Solicitor of the Madras Bank [illegible]

[illegible]

of {1873} Madras.

Financial

Treasurer Bank of
Madras.
Sea

Da 21. }

Encl.

21 Sept., 1873, No. 105.

Nos. 127. 128.

Enclosing copy of a letter
from the Advt. Genl. in
Charge of Travancore and
Cochin reporting the result
of the trial before the
Criminal Court of Arpakanam
in Ceylon of Pedro Baptiste
& others the charges of abetting
Forgery & Perjury.