Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Jugal Kishore and others v. *Girdhar Lal and William Martin from the High Court of Judicature for the North-West Provinces of Allahabad; delivered February 8th,* 1888.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

THE Plaintiffs in this suit, the Appellants before their Lordships, claim to recover from the two Defendants a balance of an account which they say there was between their firm and the Defendants as commission agents in respect of certain transactions of trading in indigo, grain, &c., between January 1878 and March 1879. The Defendants separated in their defence, that of Girdhar Lal being that excepting in respect of a contract for indigo seed he was not a partner at all with the other Defendant, and there was no other claim against him; and that as regards the transaction of the indigo seed the balance was in favour of the two Defendants, and nothing was due to the Plaintiffs as agents in respect of that transaction. The Subordinate Judge found that this defence was true, and that Girdhar Lal was not liable to the Plaintiffs upon the account, the balance as far as regarded that transaction being in his favour. Upon appeal by the Plaintiff to the High Court that finding was affirmed.

A 53273. 125.—2/88. Wt. 328. E. & S.

The consequence was that the learned counsel for the Appellants, Mr. Cowie, admitted that he could not contest the propriety of that decision. As regards Girdhar Lal, therefore, the appeal must be dismissed, and the decision of the High Court affirmed, Girdhar Lal having the costs of this appeal.

There then remains the question with regard to the other Defendant, Martin. His defence was that, as regards the transactions which followed the contract for indigo seed, they were not entered into by the Plaintiffs as commission agents for him, but that Ram Parshad, a member of the Plaintiffs' firm, had entered into a contract for the supply of 100,000 maunds of seeds, and that there was an agreement between him and Martin that Martin should purchase 40,000 maunds for the purpose of carrying out that contract. Upon the case of the Plaintiffs it would be necessary for them to show that a balance was due to them, which they claim in respect of damages which they had sustained as commission agents; but the evidence which Ram Parshad gives, so far from showing that, rather shows that the contention of Martin is correct, and that the damages which are claimed were really damages sustained in consequence of the transactions with regard to the 40,000 maunds. There is nothing to show that the case of the Plaintiffs, which they were bound to prove, has been made out; and in the absence of other evidence, the entries in the account books would not be sufficient to sustain the claim of the Plaintiffs. It is possible that those entries may be consistent with the transaction which Ram Parshad spoke about. The result is that the Plaintiffs have failed to prove their case, that they have a claim on balance of account against Martin in respect of losses which they have incurred as commission

agents on purchases which they made on his account. The case has entirely failed, and there is no ground for considering that the decision of the High Court, by which they reversed the decree of the Subordinate Judge, is not perfectly correct.

The appeal as regards Martin should also be dismissed, and their Lordships will humbly advise Her Majesty to dismiss the appeal as against both the Respondents, and to affirm the decrees of the High Court. The Appellants will pay the costs of Girdhar Lal of this appeal.