Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Firm of Shriram Rupram (Owner: Rupram) v. the Firm of Madangopal Gowardhan (Owners: Rampratap and others), from the Court of the Judicial Commissioner, Hyderabad Assigned Districts; delivered the 15th May 1903.

Present at the Hearing:
LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The parties to this Appeal are merchants and commission agents. The Respondents, who were Plaintiffs in the Court of First Instance, sued the Appellant for breach of contract, claiming damages for non-delivery of 700 bojas or bales of cotton, which the Appellant had, as they alleged, contracted to deliver between certain dates.

The question has been reduced to a very narrow compass by the findings of the lower Courts. Both Courts have held that the Appellant came under a contractual obligation to deliver the cotton to the Respondents. They differed on one point and one point only. The Judicial Commissioner held that the Respondents were entitled to damages, which he assessed at Rs. 15,500. The first Court held that the Respondents were not in a position to claim damages, because they had not called upon the

26244. 125.—5/1903. [33]

Appellant to fulfil his contract, accompanying the demand with a tender of the price. Finding, however, that the Appellant had credited the Respondents in his books with a small sum as representing the rise in value of the cotton between the date of the contract and the due date of delivery, the Judge of First Instance thought it equitable that the Respondents should be paid that amount. He held them entitled to that, but to nothing more, and he ordered them to pay the costs of the suit.

The case is a little complicated, and as presented to their Lordships it was embarrassed in some measure by the criticisms of the Judicial Commissioner on the course of procedure in the Court of First Instance. But the story comes out clearly enough on reference to the entries in the Appellant's own books. The only defence really set up was that those entries did not record a business transaction, as they appeared to do, but that they were made merely as a favour to the Respondents, who were not able, as the Appellant alleged, to find the money required to carry out a contract which they had made with one Kasturchand Bhikamchand.

It seems that the Appellant had come under obligation to deliver to Kasturchand Bhikamchand 1,050 bales of cotton which he had bought on Kasturchand's account. On the 15th or 16th December 1892 the Respondents received instructions from a broker by wire to sell 1,000 bales of cotton at Amraoti for "basant" delivery, that is, for delivery during that part of the Hindu month of Magh which corresponded with the period between the 12th and 22nd days of January 1893. They were afterwards informed that the 1,000 bales belonged to Kasturchand who would be the seller. The Respondents accepted the position and sold

1,000 bales of cotton accordingly to customers of their own at Rs. 59 per bale for "basant" delivery on their own account. Subsequently Kasturchand sent to the Appellant a "nond chithi," that is, a "letter to register" instructing him to register the Respondents as purchasers of 700 bales out of his 1,050 bales at Rs. 59 per bale. The Appellant accepted these instructions and acted upon them, and made entries in his books shewing that he had sold the 700 bales to the Respondents at Rs. 59 per bale for "basant" delivery. At the same time he credited the Respondents with Rs. 10,500 as earnest money for the 700 bales, debiting the same to Kasturchand.

The cotton market afterwards began to rise. Evidence was adduced on this point, and the Judicial Commissioner states that "it was practi- "cally admitted that Rs. 78 per boja was the "market rate on the 23rd of January 1893." The Appellant failed to make delivery, but on the 23rd of January 1893 there is an entry in his books crediting the Respondents with Rs. 87.8, being the difference between Rs. 59 per bale and Rs. 59.2 per bale, which was said to be the rate fixed by a certain committee of traders. This committee does not appear to have had any authority to fix the rate as between the Appellant and the Respondents, or indeed to fix a rate for any business purpose whatever. The Judicial Commissioner therefore took what appears to have been admittedly the market rate per bale on the 23rd of January 1893. The entry, however, proves that the arrangement between the Appellant and the Respondents was a real business transaction, and it is a clear admission by the Appellant of his liability to the Respondents. The Appellant seems at one time to have set up the defence that the transaction was a mere gambling transaction in differences. There was, however, no proof of this allegation.

As regards the ground on which the Judge of First Instance decided the case against the Respondents, it is to be observed that there was evidence that the Respondents called upon the Appellant to carry out the bargain and that he refused to do so. It is true that no tender was actually made, but the Respondents, naturally enough in view of a rising market, were ready and willing to carry out the bargain on their part, and it is proved that they made preparations with the object of having the money ready in hand. More than this they were not required to do by the Indian Contract Act, which provides, by Section 51, that "when a contract consists of reciprocal promises "to be simultaneously performed, no promisor "need perform his promise unless the promisee "is ready and willing to perform his reciprocal "promise."

In the result, therefore, their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellant will pay the costs of the Appeal.