Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Seth Lukhmee Chund and others v. *Seth Indra Mull and others, from the late Sudder Dewanny Adawlut, Agra, North-Western Provinces, Bengal; delivered 28th February*, 1870.

Present:

SIR JAMES W. COLVILE.
THE JUDGE OF THE HIGH COURT OF ADMIRALTY.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

ON the question of partnership their Lordships do not think it necessary to say much. If the proof of the partnership had depended on the evidence given of the agency of Saliq Ram, and of the circumstances which are alleged to have taken place at Muttra, their Lordships would certainly have been unable to find against the Respondents that Saliq Ram, as their accredited agent, had made there a contract of partnership binding on them. The reason why the Appellants in their plaint gave such prominence to the earlier negotiations, and brought so much evidence to prove Saliq Ram's alleged character at that time, may possibly be, that they then felt pressed by the difficulty of making the Respondents amenable to the Court at Muttra, and thought that it was necessary to establish a contract made at Muttra, in order to found the jurisdiction of that Court. When the case came here on appeal from the Courts of India, which had found that there was no such jurisdiction, the view which this Committee then took was that the letter written at Rutlam, if genuine, amounted either to a contract of partnership, or to a ratification of what had been previously done by Saliq Ram; and that the partnership, being one which was to be carried on principally at Muttra, any cause of action arising out of the balance resulting from the partnership transactions must be taken to

have arisen at Muttra; and the cause was accordingly sent back for trial on the merits in that Court.

Their Lordships now think that if there was a partnership at all, it was a partnership created, constituted, and defined by the letter written at Rutlam, the translation of which is found in the margin of Mr. Harrington's Judgment at page 122. They are disposed to think that the evidence preponderates in favour of the genuineness of that letter, and, at all events for the disposal of this case, they will assume that that letter was written contemplating such a partnership as is there described.

The partnership so contemplated seems to have been a joint adventure of the two firms in opium speculations, to be managed principally by Saliq Ram, who was to buy up opium in Malwa and other parts of Western India, and was to act with the consent of both parties. The capital with which those transactions were to be carried on was to be furnished by the Appellants' firm at Muttra. They were to advance the capital, and to be allowed interest at the rate of 6 annas per cent. Therefore, if that agreement were strictly carried out, the firm at Muttra would become accountable to their partners in the joint adventure, the Respondents taking credit for the money which they advanced, and accounting for the returns of the opium when sold; and, on the other hand, Saliq Ram would have to account either to both firms, or to the Muttra firm, as the gerents of the joint adventure, for the disbursement of all the moneys received by him, and for his application thereof.

This being the relation of the parties, the Appellants have brought their suit to recover from the Respondents their share in the alleged loss upon this joint adventure, and have attempted to prove that loss by producing the accounts kept by them at Muttra, showing the gross amount of their advances, and giving credit for what they represent as the gross amount of the sum realized by the sales of the opium purchased. The accounts kept by Saliq Ram are not produced; though some such accounts must surely have been kept and rendered, in order to show what opium was purchased, and for what it was sold. Saliq Ram himself, who may have been alive when the suit was first instituted, though he is said to have been dead when it went back to

India to be fully tried, is not examined. Punna Lall, the other agent, is examined, and is unable to give any account whatever of these transactions. Therefore, the whole evidence seems to consist of the accounts and books of account kept by the Appellants.

The learned Judge who tried the case in the first instance allowed certain items of the sums which the Appellants said they had advanced by way of capital for this adventure, and he disallowed other large items. The result was that, according to his mode of stating the account, there was a considerable amount of loss. It appears, however, that he made what is clearly a mistake in the calculation of the amount advanced. He gave the Appellants credit for the sum of twenty lacs of rupees remitted to Mundesore, whereas they had taken credit in their own accounts for only seventeen lacs sixty-six thousand and four rupees, the difference being the difference in value between the Company's rupee and the rupee current at Mundesore, calculated on the whole remittance. When the case went to the higher Court, that error was pointed out. It seems almost to have been admitted, and the result is, that if that error is rectified, and nothing more is allowed than the Judge below allowed, there is no proved loss, but, as the account stands, an apparent profit on the speculation of upwards of a lac of rupees.

The question, therefore, whether the Appellants have made out a right to recover anything against the Respondents, turns upon the question whether the sum which they have been allowed to charge against the Respondents can be increased by either of the disallowed items? Their Lordships have considerable doubt whether there was sufficient evidence to justify the charge against the Respondents of even those items which have been allowed. It seems to rest entirely upon the books kept at Muttra by the Appellants (which cannot be likened to books of a partnership to which all the partners of the firm have access, and which are kept by the servants of all), and upon the books kept by the kootees of the Appellants at Mundesore and Indore. No doubt those Indore books, and those Mundesore books, carry the case, as to those two items, to this extent, that while the Muttra books show *prima*

facie that remittances to the amounts stated were made to those kootees, the books of those kootees show *primâ facie* that those sums did find their way into the hands of Saliq Ram and Punna Lall. That those sums were really applied by those persons for the purposes of the joint adventure there is no evidence whatever. However, even this degree of proof is wanting as to the disallowed items. As to them, there is nothing more than the evidence of the Appellants' servants, corroborated by the Appellants' books at Muttra, that certain drafts were drawn—one upon the Appellants' kootee at Bombay, and another on the Appellants' kootee at Rutlam—in favour of Saliq Ram and Punna Lall; but that those sums ever passed from those kootees into the hands of those persons there is no evidence whatever.

Their Lordships, therefore, are clearly of opinion that the Judge of the Court of First Instance was right in disallowing the latter items as insufficiently proved. Whether he was right in allowing the other items, their Lordships think is extremely doubtful; and they would not be disposed, without further inquiry, to charge those items, if the case turned upon them against the Respondents. But, as the case stands, the Appellants have failed to prove that there is any sum due to them from the Respondents; and the only question is, whether the suit is therefore to be dismissed as having failed, or whether their Lordships are, after this twenty-one years' litigation, to send it back for further inquiry and investigation, and allow the Appellants to amend their case? Their Lordships are of opinion that they would not be justified in adopting the latter course. The Appellants seem to have had all the means they ever can have of proving their case. They had the benefit of all the machinery which the Courts of India afford for taking the account, and it is unreasonable that, having failed to prove their case, they now should ask their Lordships to send it back for further investigation, there being, moreover, no reason to suppose that they would have any better proof than they had before.

Under these circumstances, their Lordships think it is their duty to advise Her Majesty to dismiss this Appeal with costs.