

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Seth
Jaidayal v. Ram Sahae and others, from the
Court of the Judicial Commissioner of Oudh,
Lucknow ; delivered July 31st, 1889.*

Present :

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[Delivered by Sir Barnes Peacock.]

THEIR Lordships are of opinion that the decree of the Judicial Commissioner is correct, and ought to be affirmed.

The action was brought upon a contract dated the 11th June 1877, and was commenced on the 11th June 1883. The contract was not a void contract as was supposed by the Subordinate Judge. It was a binding contract; but it was one which the Defendant was not able to fulfil. He states:—"I have of my own accord and
" free will, in consideration of my having taken
" an advance of Rs. 21,000, put the said share,
" with the exception of Talukdari Sir lands, in
" possession of Shukl Gur Parshad, Mahajan,
" resident of Cawnpore, by way of settlement in
" a lease and farm for a period of 12 years from
" 1285 F till 1296 F,"—that is from the 23rd of
September 1877, a date within the period of limitation. Then he shows that the whole of that Rs. 21,000, which he admits having received, in fact had not been received: he had not received Rs. 5,000 of that amount; and although the contract states that he had put Shuklji into possession, he had not in fact put him into

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possession. Then the contract goes on "The first condition is that the said Shuklji" (that is the ancestor of the Plaintiffs) "shall retain possession as lessee of all the villages of the Ilaka to the extent of seven annas for the stipulated term." There was a contract therefore that he was to have possession of that property for a term commencing on the 23rd of September 1877. It turned out that the estate had been seized into the hands of the collector under a decree against the Defendant, and it was impossible for him to put the Plaintiff into possession.

Then the question arises what were the damages for their not being put into possession? The damages awarded were for the Rs. 16,000 which had been received, and interest upon that amount from the date of the contract, at 12 per cent. If the Defendant had given possession, as was intended by the terms of this contract, the Plaintiffs would have had the property for a period to commence from the 23rd of September 1877 as a security for Rs. 16,000 and interest.

The Plaintiffs not having been put into possession, and the Defendant not being able to give them possession, the damages which they sustained by not having that security for the Rs. 16,000 and interest were the Rs. 16,000 and interest which the Judicial Commissioner has allowed.

Their Lordships will therefore humbly advise Her Majesty that the decree of the Judicial Commissioner ought to be affirmed, and the Appellant must pay the costs of this appeal.