Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sah Lal Chand v. *Indarjit, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 24th March* 1900.

Present at the Hearing:

LORD HOBHOUSE.
LORD DAVEY.
LORD ROBERTSON.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

In this case the Respondent sued the Appellant and another person for a sum of Rs. 33,133 5a. 3p. alleged to be due to the Respondent as the balance of the consideration for a certain sale deed dated 18th February 1888.

The First Court dismissed the suit but on appeal the High Court of Allahabad by its decree dated the 2nd of June 1896 reversed the decree of the Subordinate Judge and gave judgment for the Respondent with costs.

By the sale deed in question after recitals that the Respondent became entitled on the death of his maternal grandmother to the estate of his maternal grandfather Jiwa Ram but strangers had got possession of the estate and the Respondent had not the necessary means of prosecuting a suit against them and that he had therefore sold a moiety of the property for Rs. 30,000 as to 6 annas to Sah Lal Chand and as to 2 annas to Mussammat Kesar Kuar and that he had received the entire consideration with reference to the

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share of each vendee in the manner detailed below it was agreed that the vendees should institute a claim in the Court of the Subordinate Judge of Agra District jointly with the Respondent to recover possession and enter into possession of the property decreed jointly with him and take mesne profits of their share And the Respondent agreed that after the institution of the suit he would not make any settlement with respect to the subject matter of the claim or withdraw the claim or get the case settled by arbitration without the consent of the vendees. If the decision of the Court should be unfavourable the Respondent was to bear the costs of the opposite party and repay the consideration and be responsible for the costs incurred.

The consideration money of Rs. 30,000 was stated to have been received from the vendees in the following manner:—

	Rs.
Received in cash at time of registration - - -	25,000
By set-off against a previous debt due in respect of five rukkas - - -	3,000
Caused to be paid Chandi Parshad and Jagan Parshad -	2,000
	30,000

In May 1888 the Respondent brought a suit for the recovery of Jiwa Ram's property jointly with the Appellant and Kesar Kuar and a decree was made in their favour by the Judge of First Instance which was affirmed by the High Court on the 26th of May 1891. They subsequently executed the decree and obtained possession of the property.

By his plaint in the present suit which was filed on the 6th of December 1892 the Respondent alleged that the three items in which the consideration of the sale deed was said to have been

paid were fictitious and that the money which was produced at the time of registration went back to Sah Lal Chand and no item was due from the Respondent under old accounts nor was anything paid on Respondent's behalf to Chandi Parshad and Jagan Parshad. And the Respondent alleged that the sale consideration was left with the vendees subject to the condition that the vendees should bear half the costs of the proposed suit and defray the other half (*i.e.* the Respondent's share) out of the consideration money and after obtaining a decree in the First or the Appellate Court pay the Respondent the balance (if any). The Respondent named the expiry of the time allowed for an appeal to Her Majesty on the 15th January 1892 as the date of accrual of cause of action.

The Appellant by his written statement denied the facts alleged by the Respondent and pleaded that the claim was barred by time.

Both Courts have agreed that no part of the consideration money was paid to or on account of the Respondent and their Lordships need not say more on that subject than that they agree with the finding. The Subordinate Judge however held that the Respondent had not made out by evidence the agreement alleged by him and his suit must therefore fail. The High Court on the other hand held that the Respondent's story was in accordance with the probabilities of the case and was sufficiently proved by the evidence adduced by him. In this case no question of limitation arises.

The learned Judges have very fully and carefully stated and commented on the evidence of the Respondent and his witnesses. Their Lordships agree with the conclusions of the learned Judges on the question of fact and with the reasons which they have given for accepting the Respondent's story as true.

The point which was chiefly pressed on their Lordships by the learned Counsel for the Appellant was also raised in the High Court and considered by the learned Judges viz., that no evidence should have been received of the agreement alleged by the Respondent because it varied or contradicted the written contract and was therefore inadmissible under Sec. 92 of the Evidence Act. Their Lordships agreeing with the High Court regard it as settled law that notwithstanding an admission in a sale deed that the consideration has been received it is open to the vendor to prove that no consideration has been actually paid. If it was not so facilities would be afforded for the grossest frauds. The Evidence Act does not say that no statement of fact in a written instrument may be contradicted by oral evidence but that the terms of the contract may not be varied, &c. The contract was to sell for Rs. 30,000 which was erroneously stated to have been paid and it was competent for the Respondent without infringing any provision of the Act to prove a collateral agreement that the purchase money should remain in the Appellant's hands for the purposes and subject to the conditions stated by the Respondent. This objection therefore fails.

Their Lordships will humbly advise Her Majesty that this Appeal be dismissed. The Appellant will pay the costs of it.