

Sinnetamby Chetty Kadiravel Chetty - - Appellant,

v.

Elsie de Livera and others - - Respondents,

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL DELIVERED THE 15TH MAY, 1917.

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*Present at the Hearing :*

EARL LOREBURN.  
VISCOUNT HALDANE.  
LORD SUMNER.  
LORD PARMOOR.

[*Delivered by* EARL LOREBURN.]

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Their Lordships are of opinion that this will created a *fidei commissum* which prevented Mary de Livera from disposing of this property, and also prevented both of her uncles and her son from doing so to the prejudice of the plaintiffs. It was admitted in argument that if there is a *fidei commissum* these parties could not alienate to the appellant, and it follows that the plaintiffs have made out their title.

The judgments appealed from are admirably clear, and dispense with any need for travelling over the ground again.

In regard to the claim for compensation, the claim of right by a trespasser to compensation for money he has expended in *impensæ utiles* involves a wide principle. It does not seem to be necessary to scrutinise the various dicta of learned writers, none of which are exhaustive, or to enter at all upon the law in South Africa, as to which no question arises in the present case. An abstract proposition that a person who is not acting *bonâ fide* can get compensation does not carry anyone the whole length. Obviously, it must also be considered whether, if the *mala fides* involves fraud, any compensation could possibly be recovered. Also it would be necessary to enquire what are *impensæ utiles*, and whether the measure of compensation

should be the enhanced market value. This does not arise for decision in the present case; nor is it necessary to enter upon the decision in *Pulle's Case* (1913, 16 N.L.R. 474). Their Lordships think that the circumstances of the present case do not render it necessary to consider the principle of that decision.

In the facts of the present case, the appellant was not acting *bonâ fide*. He knew the risk, he knew the facts, showing that he was a mere trespasser in what he did, and he knew that he was invading the rights of the heirs, and knew that Mary de Livera had no right to alienate, and knew he was altering the character of this property without the consent of the persons whose interest it was to preserve it, and without any authority from anyone except the trustee whose duty it also was to preserve it. Their Lordships think, in such a case as this, it is quite impossible to suppose compensation would be payable; and they will humbly advise His Majesty that this appeal should be dismissed with costs.

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In the Privy Council.

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SINNETAMBY CHETTY KADIRAVEL  
CHETTY

*v.*

ELSIE DE LIVERA AND OTHERS.

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DELIVERED BY EARL LOREBURN.