

1897.  
July 20.

THE ATTORNEY-GENERAL v. PERERA.

*D. C., Kurunegala, 1,305.*

*Owner of land and planter—Compensation from owner of land for improvements made on it at the request of, and with moneys belonging to, a third party—Claim of owner for damages.*

A, who improves land belonging to B at the request of, and with moneys belonging to, C upon a contract between A and C, is not entitled to compensation from B for such improvements; nor can B claim damages from A for felling timber, &c., on the land improved, as such improvements have rendered his land more valuable than it was, and as, in effecting such improvements, he dealt with the land as agent of C.

THE Attorney-General, on behalf of the Crown, sued the defendant to recover possession of a Crown land and Rs. 20,000 as damages. The defendant denied the right of the Crown and claimed the land for himself; and in the alternative he averred that, as he had cleared and planted and improved the land and held possession of it for over ten years, he was entitled under Ordinance No. 12 of 1840 to be in possession until he was given compensation for the improvements effected.

The evidence for the Crown disclosed that the defendant entered on the land as a contractor under one Tambayah's executors, and that as such contractor he cleared and planted it and did not hold it in his own right. The land was virgin forest before the defendant entered, and there were valuable timber trees, which he felled and removed.

The District Judge gave judgment for plaintiff with Rs. 10,000 as damages and costs of action.

The defendant appealed.

*Dornhorst* (with *Sampayo*), for defendant, appellant.

*Wendt, Acting S.-G.*, for respondent.

*Cur. adv. vult.*

20th July, 1897. LAWRIE, A.C.J.—

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In my opinion it is proved that the defendant has no right to this land. He entered on it as a contractor under Tambayah's executors, as such he cleared and planted it; he did not possess it as owner in his own right.

The superior right of the Crown to this land, which was forest less than ten years before action brought, is presumed, and that right has been admitted by Tambayah's executor under whom the defendant entered.

It appears to me that the defendant has no defence to the action so far as it prays for declaration of title and ejection. He cannot be regarded as one who is entitled to compensation for having improved the land belonging to another, because he did not improve it of his own accord and with his own money, but on the instructions and with the money of another on conditions embodied in a contract. It has been proved that the supposed owner who gave the contract has no title, and that he is willing to yield possession. The contractor and planter under him has no independent position with regard to the plaintiff, the owner of the land. He must cede possession. He has not shown that, even as between him and Tambayah's executors, he has a right of lien or retention. Any money claims he may have, under the contract, against Tambayah's executors are not affected by this judgment.

Taking this view of the defendant's position, I think it necessarily follows that he is not personally liable in damages to the Crown for having felled the timber. His conduct in felling the trees was part of his contract with Tambayah. It was approved by the Government officials, who aided the removal by granting permits. The land was cleared, under the mistaken belief that it was the block which had been sold by the Crown to Tambayah; under the same mistake the defendant planted it. He committed no wrong to the Crown for which he is liable in damages.

I need not consider whether the Crown could get damages against Tambayah's executors, at whose instance the land was cleared. The Crown by this judgment gets possession of an estate of much greater value than the forest land as it stood when Tambayah and the defendant first began operations on it, and in my opinion no damages have been sustained or are payable by any one.

I would set aside so much of the judgment as finds the defendant liable in Rs. 10,000 damages, and I would decree ejection against the defendant.

WITHERS, J., I concur.