

1902.  
September 10  
and 22.

ENDORISA v. ANDORISA.

C. R., Galle, 6,496.

*Possession—Improvement by malâ fide possessor—Compensation.*

One who has planted and improved a laud, while in *malâ fide* occupation of it, is not entitled to claim compensation from the owner.

THE plaintiff in this case sought to vindicate a portion of land, alleging a title acquired under a Crown grant of 1893. The Commissioner found that the defendants had been in possession for a number of years; that they had not acquired a right by prescription; that they had occupied, planted, and improved the premises, but that they had done so *malâ fide*, and with a view, ultimately, to depriving the plaintiff, by stealth, of the land to which he was entitled by virtue of the Crown grant.

The Commissioner gave judgment for the plaintiff, and refused to give the defendants any compensation.

The defendants appealed.

The case was argued on the 10th and was set down to be mentioned on 15th September, 1902.

A. L. Aserappa, for appellant.

No appearance for plaintiff, respondent.

*Cur. adv. vult.*

---

\* *Suffell v. Bank of England*, L. R. 9 Q. B. D., at p. 568.

September 22, 1902. MONCREIFF, J.—

1902.

September 10  
and 22.

In my opinion the defendants have not acquired a right by prescriptive possession.

It was urged that they were entitled, although occupying *malá fide*, to compensation. The case was adjourned in order that counsel might produce some authority for his proposition, but when the case was called on for further argument there was no appearance on behalf of the appellant.

As a matter of fact the subject of compensation to a *malá fide* occupier is discussed by Justice Berwick in 3 S. C. C. 30. The learned Judge cited some passages from Voet's *Commentaries* bk. VI., tit. 1, sections 31 and 36, which seem to indicate an opinion on the part of that jurist that a *malá fide* possessor was entitled to compensation; and I gather from the judgment that the Judge himself was inclined to that view. However, speaking of the subject, Van Leeuwen, in vol. I., p. 183, says: "But he who possesses property *malá fide* well-knowing it to belong to another can derive no profit therefrom, *nemo enim ex suo scelere compendium habere debet*, and must not merely restore the property together with the fruits he has actually enjoyed, but also all that the owner might have derived from the property (the expenses being previously deducted)."

I presume that the learned counsel, whatever view he took of the proposition, thought he could not produce any authority tending to show that this Court had gone so far as to adopt what he desired to urge in this case.

Under these circumstances I think the appeal should be dismissed.

