

[JACKSON, C.J., AND HALID, J.]

ALI SELIM,

*Appellant,**v.*THE HEIRS OF EMETE FILO ALI, *Respondents.**(Civil Appeal No. 3746.)*1944
October 27ALI SELIM
*v.*THE HEIRS
OF EMETE
FILO ALI.*Void Contract—Advantage—Contract Law, 1930, section 65.*

By a document dated 14th September, 1938, the owner of shares in certain olive trees sold her shares to the appellant for the sum of £5. The document stated that should the vendor or her heirs at any time in future want to take back the shares they could do so on paying the appellant the sum of £8. The transfer to the appellant was not registered. The transferor died in 1942, up to which time the appellant possessed the trees undisturbed. Some time later the respondents, who are heirs of the transferor, took possession of the trees by right of succession, and refused to pay to the appellant the £8 mentioned in the document of transfer or anything at all.

Held: The first essential for the application of section 65 of the Contract Law, 1930, is that a person claiming under it must show that the person against whom the claim is made must have received an advantage.

Appeal from the judgment of the District Court of Larnaca.

J. Clerides (with *M. Economakis*) for the appellant.

G. Achilles for the respondents.

The facts are sufficiently set out in the judgment of the Court which was delivered by:

JACKSON, C.J.: The facts in this case are not in dispute. By a document dated 14th September, 1938, one Emete Filo Ali declared that she had sold all her shares in eight olive trees in certain localities in the District of Larnaca to the plaintiff-appellant for the sum of £5. The document went on to declare that if, in the future, the vendor, as she called herself, or any of her heirs, wanted to take the trees back, they would not have any right to do so unless they paid the plaintiff-appellant £8.

The transfer to the plaintiff-appellant was not registered, nor is there any evidence of any intention, in the mind of either party to it, that it should be.

The transferor died on the 31st October, 1942, and for the four years between the transfer and her death, the plaintiff-appellant possessed the trees undisturbed.

At some undisclosed time after the death of the transferor the respondents, who are her heirs, took possession of the trees by right of succession and refused to pay the plaintiff-appellant the £8 mentioned in the document of transfer or anything at all.

In the District Court the plaintiff, reducing the claim made in his pleadings, asked only for the return of the £5 that he had paid to the defendants' predecessor in title. The learned District Judge dismissed this claim on two grounds, first, that in accordance with authorities that he cited, the heirs were entitled to recover possession of the trees without refunding anything in respect of the payment to their predecessor in title. Second, that even if section 65 of the Contract Law applied to agreements of the kind in question, and on this point the learned District Judge expressed his doubt, the heirs had received no advantage from that payment.

At the hearing of this appeal Mr. Clerides, for the plaintiff-appellant, contested only the second of the learned District Judge's grounds

1944
October 27

ALI SELIM
v.
THE HEIRS
OF EMETE
FILO ALI.

for his decision. He maintained that while, before the enactment of the Contract Law in 1930, the law applicable to this case may have been as the District Judge construed it, all the authorities cited were prior to 1930 and cases such as this must now be governed by section 65 of the Contract Law. He maintained that the previous law on the questions arising in this case had been altered by that section.

The section runs as follows:—

“When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.”

Mr. Clerides argued that the heirs had received an advantage from the payment made to their predecessor in title, that the advantage was the £5 paid to her and that under the section quoted they were bound to refund it when they re-took possession of the olive-trees. He asked whether, if the payment to the deceased owner had been £1,000, clearly traceable in a deposit account at a Bank at the time of the administration of the deceased's estate, the heirs would have the right to recover the property which the deceased had purported to transfer and to keep the £1,000 as well. That is a very pointed question and no doubt it will some day be necessary for this Court specifically to decide whether section 65 of the Contract Law applies to a case of this kind or not and whether it makes any change in the law as it stood before that enactment.

We think, however, that we are excused by the facts of this case from answering those questions now and we think that it is a sound rule that a Court should not go beyond what is necessary for a conclusion in the particular case before it, however attractive the solution of other problems may seem as an intellectual exercise.

The first essential for the application of section 65 of the Contract Law is that a person claiming under it must show that the person against whom the claim is made must have received an advantage. The facts of this case are not like those in the hypothetical case put to us by Mr. Clerides. Four years before the death of the former owner of shares in the olive trees she received £5 from the plaintiff-appellant. What evidence is there that at the time of her death, four years later, her estate was still richer by £5 as a result of that transaction? In any event the advantage derived from the £5 would have to be diminished by the loss of whatever advantage the deceased would have received during those four years from her shares in the olive trees. In our opinion there is no evidence whatever that the estate which descended to the respondents retained any advantage at all from the transaction which had taken place four years earlier.

We think, therefore, that the first essential for the application of section 65 of the Contract Law has not been established and for that reason alone we are of opinion that the claim under the section must fail in this case. We express no opinion on the question whether or not the section could, in other circumstances, apply to a case like the one before us and whether or not it makes any change in the law as it previously stood. We think, therefore, that the District Judge was right in dismissing the claim before him and that this appeal must be dismissed with costs.