DAWODA HARMON, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 9 and 10, 1975. Decided May 6, 1975.

1. The constitutional privilege against self-incrimination cannot be invoked on the ground that an answer would tend to degrade or embarrass the witness, for a person can only invoke the privilege when answering a question which might subject him to criminal responsibility.
2. Fraud is a false representation of fact, made with a knowledge of its falsity, or recklessly, without belief in its truth with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it to his damage.
3. When fraud is alleged it need not be proved directly but may be presumed from the circumstances surrounding the transaction.
4. There is no legal time beyond which the Republic might not bring an action to cancel a deed it executed by misinformation, mistake, concealment of fact, or deception on the part of the grantee.
5. Generally, it is unnecessary to prove the execution of a document more than thirty years old if it is proved genuine and to have been found in the rightful possession of a person.
6. The Supreme Court will at all times affirm a decree ordering cancellation of a deed when the record clearly shows that there had been fraud in its execution.

A public land sale deed was executed by appellee after appellant had made representation that the land was free of encumbrances. As a matter of fact, the appellant had resided for some time with relatives in the very town of which a portion had been granted to him. The Republic thereafter commenced suit for cancellation of the public land sale deed, to thus reinstate a prior deed given to the forebears of the present inhabitants of the town.

The petition was granted, a final decree entered, and the appellant's deed ordered cancelled. The respondent appealed from said final decree.

The Supreme Court agreed with the lower court's position, emphasizing that the appellant was not an innocent party and that the suit, moreover, did not involve only

private parties, the petitioner in the lower court being the Republic.

The judgment was *affirmed*.

Stephen Dunbar for the appellant. *Jesse Banks, Jr.*, of the Ministry of Justice, and *M. Fahnbulleh Jones* for the appellee.

MR. JUSTICE HORACE delivered the opinion of the Court.

In an action for the cancellation of a public land sale deed brought by the Republic of Liberia against Dawoda Harmon, the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, upon finding in favor of petitioner after a trial on the merits of the cause, decreed cancellation of the said deed. In the case before us, appellant attacks the soundness of the trial court's decision and prays for its reversal.

We gather from the record certified to us that on April 25, 1973, the Republic of Liberia filed a bill in equity for cancellation of a public land sale deed which appellee had executed in favor of appellant. The grounds upon which the bill was predicated were alleged misrepresentation and fraud and deceit by appellant.

To the petition appellant filed an eight-count answer, mainly attacking the sufficiency of the writ of summons, the petition and the affidavit to the petition for lack of revenue stamps; which also questioned the validity of appellee's deed for alleged nonprobation, even though the deed in question was obtained from the archives at the Ministry of Foreign Affairs under the seal of said Ministry. Appellee filed a reply. In the disposition of issues of law, appellant's answer was dismissed and he was placed on a bare denial of the facts stated in the complaint and reply.

The issues of law having been thus disposed of, the trial

took place. Evidence, both written and oral, was introduced by both sides, and upon completion of the trial the judge, acting without a jury, the case being one in equity, rendered a decree cancelling the public land sale deed, executed by the Republic of Liberia in favor of Dawoda Harmon, and declared it to be null and void, on the grounds that it had been sufficiently proven by the evidence that appellant had misrepresented to appellee that the land involved was unencumbered, and that appellant had perpetrated fraud upon appellee which resulted in the execution to him of a public land sale deed for land which appellee had many decades earlier conveyed to others of the citizens.

It is from the final decree cancelling the public land sale deed that this case is now before us on a twelve-count bill of exceptions.

Counts one through eleven of the bill of exceptions deal with alleged errors of the trial court in disallowing certain questions asked by appellant, in overruling certain objections raised by him, and in deying admission of two of appellant's exhibits into evidence. An examination of the record shows that most of the trial judge's rulings on the issues raised were correct, and that although we do not agree with one or two of his rulings, we do not think those rulings to be of sufficient magnitude to constitute reversible error so as to warrant reversal of the trial court's final decree. Before traversing the last count of the bill of exceptions, we think it necessary to set forth and comment on count seven of the bill of exceptions, because it involves invoking the constitutional safeguard against self-incrimination.

> "7. And also because on the 16th day of October, 1973, the following question was put on cross-examination to respondent Dawoda Harmon; 'Mr. Witness, the 15 acres of land that you surveyed, does it not include houses of Foday Kaidi and Varney Kaidi, E. B. Burphy, Molley Gray?' To which

respondent objected on the ground: unconstitutional, which objection Your Honor did not sustain, to which respondent then and there excepted."

The Constitution is the supreme law of the land and when issues are raised as to the constitutionality of an act, courts treat them with prime importance.

The privilege against self-incrimination raised here by appellant dates back to seventeenth-century England and its crominal procedure. In our own jurisdiction, the privilege is as old as the Constitution. For in Huberich's *Legislative History of Liberia* it is stated: "No person shall be compelled to give evidence against himself." See Vol. I, page 643, § 12.

> "The privilege against self-incrimination is not restricted to criminal cases, but applies alike to civil and criminal proceedings wherever the answer to a question put to a witness might tend to subject him to criminal responsibility. . . . The privilege protects an individual not only from giving answers that are in themselves directly incriminating, but also from giving answers that may provide a link in the chain of evidence against him." 21 AM. JUR., 2d, *Criminal Law*, § 353 (1965).

The appellant here invoked the privilege but it cannot apply to the question posed to him. He did answer the question, and it is clear that the answer does not subject appellant to any criminal responsibility. From the circumstances, it seems that appellant's reluctance to answer the question is founded on the notion that it would degrade or embarrass him, but the Constitution does not protect one against such embarrassment under the circumstances, the reason being that one can only refuse to answer a question and invoke the privilege when answering such a question may subject him to punishment for a crime.

We come now to the count of the bill of exceptions that we deem to be of great importance, the resolution of

which would determine the issues before us. Count twelve of the bill of exceptions, therefore, is set forth.

> "12. And also because on the 5th day of November, 1973, Your Honor proceeded to hand down your final decree, ordering the cancellation of respondent's deed, and made same null and void to all intents and purposes, to which final decree respondent then and there excepted to and announced an appeal before the Supreme Court at its March Term of Court."

The question which we are called upon to deal with is whether misrepresentation or fraud was sufficiently shown in the evidence adduced at the trial to warrant the trial court's decreeing the cancellation of appellant's public land sale deed.

Fraud, according to precedent set by our Supreme Court, is where a party intentionally or by design misrepresents a material fact or produces a false impression, in order to mislead another or to obtain undue advantage of him. *Murdock* v. *U.S.T.C.,* 3 LLR 288 (1932). It is a "false representation of fact, made with a knowledge of its falsehood, or recklessly, without belief in its truth, with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it to his damage." *Davies* v. *Republic,* 14 LLR 249, 255 (1960).

In CORPUS JURIS SECUNDUM, fraud is defined as any false representation, deceit, devices, or artifice used by one person with the intent or for the purpose of deceiving or misleading another to his injury; deception brought about by misrepresentation of fact or silence when good faith requires expression, resulting in material damage to one who with right so to do relies on same; false representation of fact, made with knowledge of its falsity, or recklessly without belief in its truth, with intention that another shall act thereon, and actually inducing him to do so to his injury; deception practiced in order to induce another to part with property or to sur-

render some legal right and which accomplishes the end designed. 37 C.J.S., *Fraud,* § 1.

From the definitions hereinabove given, one basic point seems to emerge. To constitute fraud some misrepresentation must have been made. The representation need not be deliberate. Even the most innocent representation may, under appropriate circumstances, be sufficient to warrant cancellation of an instrument. See AM. JUR., 2d, *Cancellation of Instruments,* § 16.

It is a universal rule of evidence that where fraud is alleged it need not be proved directly but may be adduced or presumed from the circumstances surrounding the transaction. In equity, fraud may be presumed from circumstances, but in law it must be proved. *Alston* v. *Castro,* 3 LLR 3 (1928).

Let us now examine the evidence produced at the trial in order to ascertain whether the circumstances surrounding the execution of the public land sale deed were sufficient to warrant the trial judge's sustaining the appellee's allegation of fraud.

At the trial of this case in the court below, appellee exhibited a native township grant deed, evidencing that on July 3, 1888, President Hilary R. W. Johnson, acting on behalf of the Republic of Liberia, for himself and his successors in office, conveyed in fee simple to Basie, Hawah Ghai, and the residents of Fanima Town 25.8 acres of land in the area known and described in said deed as "Fanima Town." In addition, appellee also produced witnesses, heirs of Basie, Hawah Ghai, and the residents of Fanima Town, who testified that as far back as the early 1880's, even before the execution of the native township grant deed, their ancestors, Bassie, Hawah Ghai, and the then residents of Fanima Town, had inhabited the said town without any molestation or harrassment from anyone whomsoever, and that they, the heirs aforesaid, had also enjoyed quiet and peaceful possession of Fanima Town until 1951, when the peaceful

enjoyment was disturbed and interrupted by the appellant, who, although knowing fully well that the area known as Fanima Town was encumbered, nevertheless falsely represented to the then President of Liberia, William V. S. Tubman, that the said town area was unencumbered, by which false representation and deception appellant was able to have a public land sale deed issued in his favor by President Tubman for fifteen acres of said parcel of land granted to Basie, Hawah Ghai, and the residents of Fanima Town in 1888, by President Hilary R. W. Johnson.

Appellant, it was brought out in the evidence, is a distant relative of some of the residents of Fanima Town, who had come to live there in the 1930's. Because of the consanguinal relationship existing between him and the aforesaid residents of Fanima Town, he was welcomed by them and given a place to reside. Having resided with the people of Fanima Town for a number of years and fully knowing that the land belonged to those people, being the heirs of Basie, Hawah Ghai, and the other residents of the town, and that the place was occupied by those persons who had constructed houses on the said land long before his arrival, the appellant nevertheless proceeded to the office of the Land Commissioner and falsely informed him that the land was unencumbered. It was upon this false statement and misrepresentation by appellant that the Land Commissioner, without any investigation into the truthfulness of said statement, had a certificate issued for the survey of the land in question.

Our statute specifying the duties of the Land Commissioner states that "each Land Commissioner if satisfied that Public land to be sold is not privately owned and is unencumbered shall issue a certificate to a prospective purchaser to that effect." 1956 Code 32.82. We interpret the above quoted section to mean that before any public land can be sold or before anyone claiming a certain parcel of land to be public land can buy it, the Land

Commissioner must have conducted some investigation to determine whether the land involved is encumbered or not. This, however, according to the record before us, was never done before the issuance of the certificate for the survey or the execution of the deed by the President.

It is worthy to note that the land in question was actually encumbered and that appellant at the time of his misrepresentation to the President that the land was not encumbered, had knowledge thereof. As evidence of such knowledge by appellant, we quote a portion of his testimony on cross-examination.

"Q. When you attempted to procure a deed for the area which you claim as yours, were there buildings or houses or inhabitants living within that area which you surveyed prior to your survey?

"A. Yes.

"Q. Mr. Witness, the 15 acres of land which you surveyed, does it include houses of Foday Kaidi and Varney Kaidi, E. B. Burphy and Molley Gray?

"A. Yes, it is true, Old Man Varney Kaidi and Molley Gray."

Additionally, the appellant even acknowledged living in Fanima Town for a number of years; and according to the testimony of some of appellee's witnesses, appellant even lived for a few years in the house of the very persons he sought to oust from the premises.

Appellant's counsel in his argument before us contended that the parties in whose interest appellee brought this action were guilty of laches because they lay supinely while the survey for the land was being made, nor did they object to the probation and registration of appellant's public land sale deed. In this connection it should be remembered that this is not an action between two private individuals or parties. It is an action brought by the Government of Liberia against one who had obtained title to a portion of what was alleged as part of the public

domain by misrepresentation. Further, the Republic of Liberia being the grantor, she is contractually bound by perpetual obligation to defend the grantee's ownership of property transferred by deed. Moreover, laches will not run against the Republic where it becomes necessary to file suit to fulfill her obligations under the terms of a contract, and especially where it is shown that she has been led into breaching her obligation, by deceptive acts. It is for this reason that there is no legal time within which the Republic might not bring an action to cancel a deed it executed by misinformation, mistake, concealment of fact, or deception on the part of the grantee. *Davies* v. *Republic,* 14 LLR 249 (1960).

Appellant's counsel also contended in his argument before this Court, that there was no showing that the native township grant deed had ever been probated. We consider this line of argument quite weak, because in the first place the native township grant deed dated July 3, 1888, and made profert with appellee's petition in the court below, shows that it was extracted from the authentic records of the archives at the Foreign Ministry of the Republic of Liberia, and duly authenticated by a certificate to that effect signed by the Minister of Foreign Affairs, with the seal of the Ministry affixed to it. Besides, our Civil Procedure Law applies.

> "It shall be unnecessary to prove the execution of a document more than thirty years old which is proved to have been found in the possession of a person who may reasonably be supposed to have possession of it if it is genuine and which is attended by no circumstances tending to throw suspicion on it." Rev. Code 1:27.17(5).

In view of the facts and circumstances, as hereinabove stated, and the prevailing law, we are firmly of the conviction that the trial judge was correct in cancelling the public land sale deed executed in favor of appellant by the Republic of Liberia, the appellee. Indeed, it is

generally accepted that the validity of a deed is affected by the existence of fraud or deception in its procurement or by deception practiced or fraudulent inducement held out to gain title. 23 AM. JR., 2nd, *Deed,* § 142. And in "an equitable suit or recision or cancellation of a (deed) on the ground of fraud, it is generally considered immaterial that the false representation including execution of the contract (deed) was made innocently rather than with the knowledge of its falsity. . . . The basis of a suit in equity to rescind is not actual fraud, nor whether the party making the statement knew it to be false, but whether the statement made as true was believed to be true and, therefore, if false deceived the person to whom it was made." 13 AM. JUR., 2d, *Cancellation of Instruments,* § 19.

The Court will at all times affirm a decree ordering cancellation of a deed where the record clearly shows that there was fraud in its execution. *Mombo* v. *Nah,* 15 LLR 491 (1964).

The position of this Court on the question was unequivocally expressed in *Davies* v. *Republic,* 14 LLR 249, 256 (1960), when Mr. Justice Pierre, now Chief Justice Pierre, spoke for the Court.

> "Generally, a deed procured through fraud perpetrated upon the grantor, even though not void at law, is voidable in equity; and as against the grantee and his privies, and those chargeable with knowledge of the fraud, the grantor may elect to rescind and be restored to his original position. As has been said, upon no other ground is jurisdiction in equity so readily entertained and freely exercised as in the case of fraud. The jurisdiction of courts of equity to decree cancellation or recision of conveyances procured by fraud or false representation is well established and frequently exercised. The mere fact that the transaction has been executed does not prevent the court from annulling a deed."

Having carefully considered the facts and the law, it is our holding that the final decree of the trial court be and the same is hereby affirmed, and the Clerk of this Court is hereby directed to send a mandate to the court below to the effect of this decision. Costs disallowed. And it is so ordered.

Affirmed.