HENRY A. PAGE et al., Appellants, v. **Z. A. JACKSON**, Appellee.

ARGUED JULY 11, 1912. DECIDED JULY 11, 1912.

ToLiver, O. J., and Johnson, J.

1. In an action on a written contract the contract should be fully set out in the complaint, or a copy thereof filed with the complaint**.**

2. In cases of fraud, the party complaining, must apply for redress at the earliest convenient moment after the fraudulent character of the transaction comes to his knowledge, or the court will refuse to grant relief.

3. Where an agent acts beyond the scope of his authority, and the principal, having a knowledge of his action, fails to promptly disavow such unauthorized act, the contract will not be set aside by the court.

Mr. Justice Johnson delivered the opinion of the court:

Bill in equity; relief against fraud—Appeal from Judgment. This *was a* case, commenced in the Court of Quarter Sessions and Common Pleas of Montserrado County, at its June term, A. D. 1909, by appellants against appellee, for the cancellation of a deed of lease, on account of fraud.

It appears from the records, that the cause of action is substantially as follows : appellants employed Henry A. Page, one of said appellants, to make and deliver to appellee a deed of lease for Lot Number 327 in the City of Monrovia for a term of ten years, at an annual rental of fifty dollars. Jackson having declined to, accept said deed unless the term was enlarged to twenty years, Page promised to consult his clients with reference to the suggested alteration and subsequently informed Jackson that his clients had consented to enlarge the term to twenty years whereupon the said alteration was made. An erasure and an interlineation were apparent upon the lease, but it was claimed by appellee and proved at the trial of the case that they were made by the said Henry A.
Page.

Appellants contend that the alteration was made without their knowledge and consent, and charge the appellee with having fraudulently altered and changed or caused to be fraudulently altered and changed the term of years agreed upon by the parties. The court below decreed that there was no evidence to substantiate the issue; therefore, appellants were not entitled to recover, and it is from said decree that the appeal is taken.

There are several questions raised in the bill of exceptions as to the admissibility of certain testimony, but this court will only consider such points as will enable it to arrive at a just and equitable conclusion.

The first point in the bill of exceptions is taken to the ruling of the judge of the lower court, sustaining appellant's motion to strike from the records the first count in appellant's bill, because in said count all the terms in said lease were not set out. This court is of the opinion that in all actions upon written contracts, there should be set out in the complaint the entire consideration, and the entire act to be done in virtue thereof, together with the time, manner and circumstances. This proposition is supported by the statute laws of Liberia ; for in all of the forms of complaints on written instruments, laid down in the appendix to the "Blue Book" it is provided that such instruments should be fully set out or a copy thereof filed with the complaint. The court below therefore did not err in striking from the records of the case said first count of appellants' bill.

The third point in the bill of exceptions is taken to the court sustaining appellee's objection to the admission of the depositions of H. A. Page and A. J. L. Page as evidence on the ground that they were taken without the authority of the court. This ruling being in accordance with the decision of this court in the case *H. Max McCarthy v. A. C. Weeks, Slander* (see opinion of Supreme Court, Series No. 2, p. 12), it was not error of the court below to reject said deposition.

The seventh point in the bill of exceptions is taken to the decree of the court below, and this brings the court to a consideration of the charge of fraud, set up by appellants and denied by appellee.

It is undoubtedly the fact that if a lessee fraudulently make or cause to be made a material alteration in a deed of *lease,* by which his rights are enlarged, such an alteration is held to destroy the deed and to deprive the lessee of all benefits from the covenant.

It is held that if a party has no other evidence but an altered deed, he can not recover thereon, having by his own act destroyed the evidence of his interest. These principles would have had a decisive effect against the appellee, if the charge of fraud had been established by the evidence.

There are two questions that present themselves for the consideration of the court:

(1) Did appellee fraudulently cause the alteration to be made in the deed ?

(2) Was there a conspiracy, as is suggested in the brief of counsel for appellants, between Jackson and Page to defraud appellants ?

This court after carefully considering the evidence in this case, must here remark that appellee seemed to have acted *bona fide, as* it appears from the records that before probating and registering said deed of lease, he sent to appellants a copy of the lease containing the altered clause, under cover of a letter addressed to appellants, calling their attention to the enlargement of his term, the receipt of which letter was acknowledged by appellants. The silence of appellants for over three years after receiving this notice, and their neglect to question the validity of appellee's claim, must be presumed by this court to have been an acquiescence in the arrangement made between their attorney and appellee. If they disapproved of the arrangement, they should have expressed their disapproval within a reasonable time after receiving notice of the alteration in the deed of lease.

The court considers the delay of three years, under the circumstances of this case, an unreasonable one.

In Story's Equity Jurisprudence (vol. 2, sec. 1540) it is held that in cases of

actual fraud, courts of equity feel great reluctance to interfere where the party complaining does not apply for redress at the earliest convenient moment, after the fraudulent character of the transaction comes to his knowledge. A party upon whose right or interest a fraud is attempted, should not be allowed, after the fact comes to his knowledge, to speculate upon the possible advantage to himself of confirming or repudiating the transaction.

He must repudiate it at once and surrender his securities. See also legal maxim, "He who is silent is considered as assenting, where his advantage is debated." It was contended by counsel for appellants, that the acts of an agent, beyond the scope of his authority, do not bind his principal, and that Jackson could therefore derive no advantage from the unauthorized acts of Page.

This is undoubtedly true in principle. Where an agent has a special authority to act for his principal in an individual transaction, such an authority does not bind his employer, unless it is strictly pursued. Thus if "A" instructs "B" to make a lease to "C" for ten years and he makes one for twenty years, the lease is valid *pro tanto* and void as to the excess. The principal should, however, promptly disavow the unauthorized act of his agent, or the doctrine of estoppel would operate against him. Upon the whole we see no reason why the judgment of the court below should be disturbed.

Therefore this court adjudges that the judgment of the court below, rendered in this case, is affirmed, and that the appellee recover from the appellants, the costs in the action. The clerk of this court is commanded to issue a mandate to the judge of the Circuit Court of the first judicial circuit of Montserrado County, to the effect of this judgment.

[Mr. Justice McCants-Stewart, having been counsel to appellee, took no part in the consideration or decision of this case.]

T. W. Haynes, for appellants. C. *B. Dunbar,* for appellee.