PATERSON, ZOCHONIS AND COMPANY, LIMITED, represented by its manager, Appellant, *v.* AMOS JAMES WITHERSPOON and W. V. S. WITHERSPOON, Appellees.

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

Argued November 5, 1969. Decided January 29, 1970.

1. The property of an infant may not be disposed of without making proper application to a probate court and in the absence of the court approval the disposition of the infant's property right is voidable.
2. In the case at bar, therefore, the leases are properly subject to cancellation, having been disaffirmed by those who were the actual owners of the property.
3. Under statute, real property may not be leased to a foreign person or concern for a period of time in excess of twenty-one years, with two optional periods of similar length, provided that the rental provided for in each of the extended periods is at least ten percent more per annum than the rental for the last prior twenty-one year period.

In 1946, the father of the appellees purchased two lots in the names of his infant sons, born in 1932 and 1934. The same year the father, as the natural guardian, leased the property to the appellant, a foreign corporation, for a total period of time, including options to renew, amounting to sixty years, at a fixed annual rental for the duration. In 1969, the sons brought suit for the cancellation of the leases, alleging they had been deprived of the full enjoyment of their property without their consent and that the leases were invalid, and further, on the ground that they exceeded the permissible limits of occupancy accorded to foreigners under real property leases. The trial court awarded judgment to the petitioners and the respondent took an appeal. The *judgment* was *affirmed, but modified* in that money damages to the petitioners were stricken from the judgment.

Laurence A. Morgan and *John W. Stewart, Sr.,* for appellant. *Joseph Findley* and *Jacob H. Willis* for appellees.

MR. JUSTICE SIMPSON delivered the opinion of the court.

On June 17, 1946, Anthony Barclay and his wife, Etmonia, sold two parcels of land known as lots 351 and 352, within the confines of the City of Monrovia, to Amos James and William V. S. Witherspoon, respectively. The two grantees, then minors, were issue of William N. Witherspoon, now deceased, William having been born in 1932 and Amos in 1934.

On December 18, 1946, William N. Witherspoon, as natural guardian of his sons, William and Amos, executed two agreements of lease with Paterson, Zochonis and Company, Limited. The appellants continued in possession of the premises from the time of the execution of the two leases up until March 28, 1969, when the appellees, then petitioners, filed a bill in equity for cancellation of the lease agreements. Due to what we consider the special gravity and peculiarity of the nature and scope of the petition and the averments therein contained, we have deemed it proper to include herein the six counts of the petition.

> "1. That they are the owners in fee of lot Nos. 351 and 352, situated, lying and being on Ashmun Street, City of Monrovia, as will more fully appear by copies of the warranty deeds issued to them by Anthony Barclay and his wife, copies of which are hereby made profert to form part of this petition.
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> "2. And petitioners further pray your Honor that these parcels of land having been acquired for them in fee during their minority, their father, the late William N. Witherspoon, being their natural guardian, undertook for and on their behalf to lease the said

parcels of land to respondents for a period of sixty years, knowing well that during such period they would have reached their majority, as they have, and would be entitled to the possession and enjoyment and control of their properties, which act shows patent fraud on part of the lessors to dispose of their fee simple properties, as will more fully appear by copies of said lease agreements.

"3. And petitioners further submit that for their late father to have deprived them of the use and benefit of their property for such a period of time at a meager sum of $100 and $75 per annum, respectively, for the full period of sixty years, a period almost equivalent to the entire life span of petitioners, is basically fraudulent and should be frowned on by this court.

"4. And also because petitioners say that the said lease agreements were fraudulently executed, in that the lessor, as well as the lessee, knew fully well that at that time of execution the statute in vogue granted only twenty-one years certain within which a lease agreement could be entered into between a Liberian citizen and a foreign national, company or corporation, and for them, respondents and the late William N. Witherspoon to have entered into said agreements for a period of sixty years certain was in total violation of the statute controlling the leasing of realty to foreigners.

"5. And petitioners further pray that notwithstanding the fraudulent acts of their late father, together with respondent, in spite of several attempts to give respondent the right to continue enjoying the properties under reformed leases, respondent has flatly refused to accept petitioners' proposal and are fraudulently depriving petitioners of the use and benefits of their said parcels of land, as will more fully appear from copies of letters written to respondent by peti-

tioner's several counsel, the Simpson law firm and the Henries law firm, herewith proferted.

"6. And petitioners further pray that for their natural guardian, their late father, to have executed such agreements beyond the age of their maturity, his acts were *ultra vires* and, hence, fraudulent, and were not in keeping with the true intent and meaning of the law and equity creating guardianships over minors, lunatics and aged persons."

The petitioners thereupon prayed that a decree be issued canceling and making null and void the above described agreements. The prayer further included the usual request for such other and further relief as equity and law might deem applicable in the premises.

Thereupon, respondents filed a formal appearance and answered on March 11, 1968, contending, firstly, that two separate actions should have been filed, since the two properties involved were distinct and owned by two separate individuals in their separate individual capacities and not jointly. Further, answering the petition, the defendants, now appellants, contended that the late William N. Witherspoon purchased the two tracts of land with his own funds in the names of his minor children and that he did have the right to make contracts with reference to land purchased with his own funds in any manner which he deemed best, and that his children are bound by his acts, being in privity with him.

While pleading in the court below, the respondent further contended that there was no specification of the fraud allegedly perpetrated by petitioners' father and respondent, and that a mere allegation of fraud is insufficient to confer jurisdiction in equity. Lastly, the respondent contended that count four of the petition was both false and misleading, in that the statute at the time of the execution of the agreements of lease did not restrict the lease of land to foreigners to only twenty-one years, but provided for options.

After pleadings had progressed to the rejoinder, the parties rested and after hearing arguments on the issues of law, Judge Emmanuel N. Gbalazeh proceeded to rule on them during the June 1969 Term of the Circuit Court for the Sixth Judicial Circuit, Montserrado County. In his ruling, the judge held that the averment as contained in respondent's answer relating to the matter of fraud did not properly traverse the allegations laid in the complaint because the mere act of leasing the property of the appellees without an order of court constituted fraud. He additionally held that even though the allegation of fraud must be proved at the trial, direct proof is unnecessary. He held that although these properties were bought by petitioners' late father for them, the transfer of them without the knowledge and consent of the mother who had custody at the time, in his opinion, constituted concealment to defeat ownership. The case was thereupon ruled to trial.

On July 10, 1969, the trial was held, presided over by Judge Emmanuel N. Gbalazeh. A final decree was rendered by the judge on July 16, 1969. In his decree he held that no parent, except upon orders of the probate court, has any legal right to dispose of a minor's real property. Additionally, the said probate court may grant temporary or total disposition thereof only after a showing of proper reason for this action. In support of this position the Judge cited authority. Unfortunately, the authority failed to support the propositions expounded. Nevertheless, the Court at this point hastens to add that it concurs with a legal proposition propounded by the trial judge in respect to the particular issue, in view of the provisions of our Judiciary Law, 1956 Code, tit. 18, § 530(f), which holds that the Monthly and Probate Court for Montserrado County is possessed of sole jurisdiction to appoint and remove guardians of minors and to direct and control their conduct and to settle their accounts. By virtue of this provision,

we must hold that where the properties of minors are concerned, they may not be disposed of by anyone without making proper application to and obtaining permission of the probate court upon grounds that the particular act sought to be done is deemed essential for the maintenance, support and/or education of the minor. Unless these prerequisites are complied with, the act of alienation of the minor's property becomes voidable.

The next issue that we find ourselves concerned with relates to the provisions of our Property Law as it limits the right of citizens to create estates in foreigners. The petitioners in their complaint averred, *inter alia*, that the estate created by their father in the respondent exceeded in time the period allowable by statute. In countering this contention, in the answer of respondent, it is held that the particular law cited by the petitioners for a specific limitation of such estates, was not in being at the time the indentures of lease were executed in 1946. A study of our laws shows that this point was dealt with by the Legislature in an act passed by that body during the session in 1897–98 and again during the succeeding session of the Legislature. The particular provision of law as is now found in our Property Law, holds that,

> "Lease to foreigners.—A Liberian citizen shall not lease real estate to any foreign person or foreign concern for a term longer than twenty-one years; provided, however, that the provisions of this section shall not prevent a citizen from granting to a foreigner or foreign concern a lease of real estate for two optional twenty-one year periods of a term certain, but for each additional term there shall be an increase of rentals fixed for the term certain of not less than ten per cent. . . ." 1956 Code 29:20.

According to this statute, a citizen of this Republic may not lease real estate to a foreign person or foreign concern for a period exceeding twenty-one years. Where the foreign person or concern desires a lease for a period

of time in excess of twenty-one years, it may be substantially effected only by obtaining from the lessor one or two options, each covering an additional period of twenty-one years, but no more. In addition, for these optional periods to be valid there must be a rental increase for each such optional period of an amount not less than ten per cent of that amount payable during the last preceding term certain granted in the particular indenture.

In the case at bar, a look at the leases shows that the consideration charged for the optional periods stipulated in the agreement were the same as those required during the terms certain. This, of course, renders the agreements voidable, subject to cancellation under proper circumstances.

Lastly, the trial judge, though not specifically requested to do so in the counts contained in the petition, nor in the prayer for relief, proceeded to award damages at the time of the rendition of final decree in the amount of $5000.00, to each of the petitioners. The judge again cited authority therefor, which this Court seems unable to locate. Doubtlessly the error was unintentional. However, for the future guidance of bench and bar this Court would like to make clear that it considers deliberate attempts to mislead this Court a serious offense, and could subject the offender to contempt proceedings.

We hold now that where the parent of a minor executes an agreement in favor of such minor issue the agreement becomes a voidable instrument that may be disaffirmed by the actual property owner.

In the case at bar, the law is that such agreements are subject to cancellation, and for this reason the judgment of the court below is hereby affirmed, with the modification that the damages awarded are to be stricken from the decree. Costs in these proceedings are ruled against appellant. And it is hereby so ordered.

Affirmed as modifed.