AFRICAN INDUSTRIAL COMPANY, by L. SAJOUS, Chairman, and R. GAUCHY, Treasurer, Appellant, *v.* J. ABAYOMI COLE, Appellee.

APPEAL IN EQUITY PROCEEDING FOR CANCELLATION OF A LEASE.

Argued January 13, 15, 21, 27, February 2, 10, 11, 1942. Decided February 20, 1942.

1. An individual cannot at one and the same time contract with himself as lessor and lessee.
2. A private citizen cannot lease land to a foreigner for more than twenty-one years with a privilege of a renewal for one additional term of the same duration.
3. Emblements are the right of a tenant to take and carry away, after his tenancy has ended, such annual products of the land as have resulted from his care and labor.
4. Whenever a freeholder demises a tract of land upon the signing and execution of the deed of lease, he immediately parts with the right of possession; but he retains within himself the right of property.

Appellant instituted a suit in the lower court for cancellation of a lease. On appeal from judgment in favor of appellee, *judgment modified.*

Charles T. O. King for appellants. *W. O. Davies-Bright* for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

On a date not mentioned in the record before us, but admittedly before the institution on the twenty-first day of January, 1941, of this suit of cancellation, Dr. J. Abayomi Cole, Dr. Leo Sajous, and Mr. Raoul Gauchy entered into an agreement of partnership under the name and style of "African Industrial Company." At some time subsequent to the making of the agreement aforesaid, to wit, on the first day of November, 1938, the said company leased from the aforesaid J. Abayomi Cole one hundred

and fifty acres of land for a period of ninety-nine years; but the lessor and the lessee, becoming mutually dissatisfied with each other on account of alleged violations of contract on both sides, each instituted suits against the other. The lessor instituted this suit for cancellation of the contract, and the lessee instituted a suit for a specific performance of the contract.

The suit for cancellation first reached this Court and was first assigned for hearing on the thirteenth day of January. Upon calling the parties at this bar and inspecting their respective briefs, it was pointed out from this Bench that all the contracts were illegal. First of all, J. Abayomi Cole, as a member of the company, was unable as an individual to contract with himself as a member of a partnership and in such dual capacity to be lessor and lessee in a lease agreement. This point has been settled by this Court in the case of *McAuley* v. *Republic,* 1 L.L.R. 354 (1900). Secondly, according to a statute passed and approved January 7, 1898, a private citizen cannot lease land to a foreigner for more than twenty-one years with a privilege of a renewal for one additional term of the same duration.

At that stage, the attention of the Honorable Attorney General was called to the facts in the case, and he was invited to remain in the Court and follow up the case so as to protect any rights or interests that he might feel the government was entitled to exercise in the premises. Counsel on both sides thereupon petitioned the Court for an adjournment so as to be able to ascertain whether or not they could prepare stipulations that would settle the case.

After five days they reappeared on the twenty-first day of January with a set of stipulations which the Court refused to accept because of certain ambiguous items; but, after a further leave granted, they subsequently, to wit, on the twenty-seventh day of January, filed amended stipulations which we quote as follows:

"1. That the judgment of the court below be so modified and amended as to read, inter alia:

"(a) That the number of years of said lease be reduced from 99 years to 20 years, with the option of another 20 years at the expiration of the first term; and also eliminating the words 'by their own will only.'

"(b) That a new survey be made which would eliminate the dwelling house of appellee from the lease, with a frontage of seven chains allowed appellee, commencing at the corner adjoining the block of land owned by Mr. C. G. Cheeks, on the Monrovia-White Plains Motor Road, and with a further extension inward of approximately 25 chains deep. See sketch herewith filed.

"(c) That appellee, as soon as practicable and convenient to both parties, will deliver to appellants the remaining acreage of land to make up the 150 acres for which the deed of lease calls, including a frontage also of seven chains, commencing at the corner adjoining Mr. H. R. E. Robinson's property on the Monrovia-White Plains Motor Road. See sketch herewith filed.

"(d) That the said new survey be made at the expense of appellants and appellee.

"(e) That all outstanding and unpaid rents for three years, due to be paid in advance, viz.: November 1, 1939 to November 1, 1942, will be paid by appellants on only 60 acres of land, being the quantity of land actually occupied by the company; the amount per annum to be calculated on a £20.– basis and not £22.– as stated in said lease agreement: That is to say, appellants will pay said un-

paid rents on only two-fifths of the total acreage of 150 acres, and which when calculated on said £20.– basis will equal to £8.– per annum, or £24.– for the three years now outstanding.

"(f) That the rent in the modified agreement be reduced from £22.10.– to £17.10.– per annum.

"(g) That the agreement in all other respects remain the same, with the exception of the following point not agreed upon by Counsel, viz.:

"APPELLEE'S PROPOSAL

"(h) That appellee be entitled to the emblements on such portion of land as will be surrendered by him to appellants under the modified agreement; and that in lieu thereof, the appellants be relieved of appellee's claim of indebtedness in the aggregate amount of £16.– made up as follows, to wit:

"To appellant's one-half share of the cost of the former survey of said land made by Mr. Charles G. Cheeks, and which appellants promised to reimburse appellee ..	£6.–
"To amount due appellee by appellants for services performed in supplying and replanting sugar cane tops for a large area of land (30 acres) at the special request of appellants and for which they promised to pay	£10.–
TOTAL	£16.–"

This Court says that the word "emblements" is inaccurately used in the stipulations because: (1) "Emblements [are] the profits of land sown. . . . The right of a tenant to take and carry away, after his tenancy has

ended, such annual products of the land as have resulted from his own care and labor." 1 Bouvier, *Law Dictionary* "Emblements" 1006 (Rawle's 3d rev. 1914). This privilege is accorded him not only as compensation for his labor "but chiefly upon the policy of encouraging husbandry, by assuring the fruits of his labor to the one who cultivates the soil." 1 Washburn, *Real Property* § 255, at 120 (6th ed. 1902). The sugar cane and other crops, the basis of the contention, were not planted by either of the other two members of appellant. (2) Emblements are incidents of only such estates as are of uncertain duration, such as estates for life and estates at will. Emblements do not attach to estates at sufferance because the original entry of the tenants thereon was without the consent of the landlord, and they are not incident to a tenancy for years since indeed the date for the determination of such an estate is fixed in the lease deed, and a tenant for years therefore plants at his own risk crops which he knows beforehand could not be harvested before the expiration of his tenancy.

Counsel for appellant argued that appellee planted those crops as its agent, and said counsel stressed the point that what one does through his agent he does himself, bringing some evidence to prove that the said J. Abayomi Cole, as the appellant's agent, had made out a bill for supplying cane tops to the lessee and had planted them in the land appellee had demised to said lessee, appellant herein. But counsel for appellee countered with the contention that the land upon which the sugar cane crop was planted has never been in the actual possession of appellant.

Says Blackstone in his *Commentaries:*

> "There are several stages or degrees requisite to form a complete title to lands and tenements. . . .
>
> "The lowest and most imperfect degree of title consists in the mere *naked possession,* or actual occupation of the estate; without any apparent right, or any shadow

or pretense of right, to hold and continue such possession. . . .

. . . . . .

"The next step to a good and perfect title is the *right of possession,* which may reside in one man, while the actual possession is not in himself but in another. . . .

. . . . . .

"The mere *right of property,* the *jus proprietatis,* without either possession or even the right of possession. This is frequently spoken of in our books under the name of the *mere right, jus merum,* and the estate of the owner is in such cases said to be totally divested, and put to *a right.*" 2 Blackstone's Commentaries *195–97 (Jones ed. 1915).

Emory Washburn, a modern writer, in his standard treatise on real property, makes a more exhaustive comment on this matter of title.

"Blackstone divides title to lands, considered in its progressive development, into several stages; namely, naked possession, right of possession, right of property without possession, and right of property united with the right of possession. This idea of Judge Blackstone, which has been adopted by Mr. Cruise and other writers, is illustrated by an act of disseisin, followed by possession by the disseisor. If a disseisor enters upon the land of another, and evicts or turns the true owner out of possession thereof, although in one sense, as between him and the true owner, he has no right or title whatever to the land, yet, as to all the world but him, the possession so gained gives him complete dominion over and right to the land, and constitutes, in the eye of the law, a *prima facie* title thereto. In the meantime, however, the one who has been wrongfully evicted has a right to the possession

which the disseisor has usurped and retains, so that here is a naked possession in one, and a right to the immediate possession in another. In every State, where the common law prevails, possession of lands, for a period of time sufficiently long, is held to divest the owner thereof of his right to regain his possession by his own act, without the aid of legal process. If, therefore, in the case supposed, this possession shall have been continued by the disseisor for the requisite length of time, nothing will remain in the original owner but a right of property, while the possession, and right of possession, will have become united in the disseisor. It only remains, then, for the right of possession, to perfect the disseisor's title." 3 Washburn, Real Property § 1822, at 2–3 (6th ed. 1902).

This brings us to the kernel of the contention in this case. Whenever a freeholder demises a tract of land, upon the signing and execution of the deed of lease he, retaining within himself the right of property otherwise known as his reversionary interest, immediately parts with the right of possession; but the tenant's inchoate leasehold title is not complete until that right of possession is coupled with the actual possession which passes only upon the putting of the tenant in possession or occupation of the premises. That the company was never placed in actual possession of that part of the land under lease upon which the sugar cane crop was sown is an undisputed fact, not only because of the oral admission of counsel while arguing this cause at the counsel table of this Court, but also, and more emphatically so, because it formed part of the stipulations filed in this Court, the relevant portion of which reads:

"(c) That appellee, as soon as practicable and convenient to both parties, will deliver to appellants the remaining acreage of land to make up the 150 acres for which the deed of lease calls, including a frontage also of seven chains, com-

mencing at the corner adjoining Mr. H. R. E. Robinson's property on the Monrovia-White Plains Motor Road. See sketch herewith filed.

. . . . .

"(e) That all outstanding and unpaid rents for three years, due to be paid in advance, viz.: November 1, 1939 to November 1, 1942, will be paid by appellants on only 60 acres of land, being the quantity of land actually occupied by the company; the amount per annum to be calculated on a £20.– basis and not £22.– as stated in said lease agreement: That is to say, appellants will pay said unpaid rents on only two-fifths of the total acreage of 150 acres, and which when calculated on said £20.– basis will equal to £8.– per annum, or £24.– for the three years now outstanding."

The next question which arises in the case is, if the lease were executed in good faith, why have the tenants not yet been placed in the actual possession of all the land demised?

It seems from the arguments, supported by the evidence on the record, that neither party was at fault. Out of the 300 acres owned by the lessor, it appears they entrusted the delimitation of the 150 acres, the subject of the lease, to a surveyor who endeavored to include a certain stream in the area he was sent to mark out, and he, having surveyed an irregular polygon, showed the result of his work to the parties as 150 acres when in deed and in fact his survey covered but nominally 60 acres, actually 56.2 acres. The error in this survey was first discovered by the lessor who promptly informed the lessee by letter of March 21, 1940, of the mistake which had just then been brought to his attention. He had then already planted the sugar cane crop, the subject of this dispute, upon the 150 acres demised, but without the 60

acres which had been turned over to the tenant, which 60 acres both parties erroneously believed at that time was the total 150 acre plot. Obviously, then, it was not the intention of the lessor at that time to trespass upon land which he believed he had demised to his tenant, nor to plant said crop as agent for the tenant, when indeed up to that time the parties believed that the area planted was without the area demised.

It follows then from the foregoing that the sugar cane and other crops should be reaped by the lessor, appellee in this case, that the cost of planting said crops should not be collected by lessor from appellant, and that the costs of suit should be divided equally between appellant and appellee; and it is hereby so ordered.

Judgment modified.