1968
May 30, 31
Oct. 1, 4

ANTHOULLA PAPADOPOULOU
v.
XENOPHON POLYKARPOU

[VASSILIADES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

ANTHOULLA PAPADOPOULOU,
Appellant-Plaintiff,

v.

XENOPHON POLYKARPOU,
Respondent-Defendant.

(Civil Appeal No. 4686).

Contract—Minor—Contract by a minor in 1950*—Sale and transfer of land—Section* 11 *of the Contract Law, Cap.* 192 *(*1949 *edition) as it stood prior to its amendment by Law No.* 7 *of* 1956*—Minor seller then not competent to contract—Contract of sale void, not merely voidable—Hence, so is the transfer—Transfer back of the property to the seller (minor), subject to the payment by him to the buyer of compensation in respect of improvements made by the latter on the property in question—Position as to the infants' agreements now altered by Law No.* 7 *of* 1956 *repealing aforesaid section* 11 *and substituting therefor a new section* 11*, which is now section* 11 *of the Contract Law, Cap.* 149 *(*1959 *edition)—See also sections* 2(1) *(*2*) (e) (g) (h) (i),* 10(1)*,* 65 *and* 68 *of the Contract Law, Cap.* 149*—Cf. Mejelle articles* 941 *to* 997*, repealed as from January* 1*,* 1931 *by section* 247 *of the new Contract Law (Law No.* 24 *of* 1930*, embodied in Cap.* 192 *(*1949 *edition) and later in Cap.* 149 *(*1959 *edition)—Cf. The Indian Contract Act, section* 11*—Cf. The English Infants Relief Act,* 1874*, section* 1*—The Guardianship of Infants and Prodigals Law, Cap.* 277*, sections* 6(b) *and* 19(2).

Minor—Contract by—See above.

Prescription—Limitation of actions—Void transfer of land made in 1950 *under a void contract of sale—Action instituted in* 1966 *for setting aside the said transfer—The action is not statute barred under section* 5 *of the Limitation of Actions Law, Cap.* 15*—In the present case the matter is governed by the Immovable Property (Tenure, Registration and Valuation) Law, Cap.* 224 *and the period applicable is that laid down in section* 10 *thereof, i.e. thirty years, which has not yet expired as the respondent's possession only started in* 1950.

Limitation of actions—See above.

Immovable Property—Adverse Possession—Thirty years—Section 10 of Cap. 224 (supra)—See above under Prescription.

Possession—Adverse Possession—See above under Prescription.

Judgment—Conditional Judgment—Judgment setting aside a void transfer of land made under a void contract of sale—Subject to, or conditional upon, the return of the sale price already paid and the payment by the seller-transferor to the buyer-transferee of appropriate compensation in respect of improvements made by the latter upon the land in question—Principles of natural justice—Section 65 of the Contract Law, Cap. 149—Form of the said judgment and incidental orders—Matter sent back to the District Court for assessment of compensation on the basis of evidence to be adduced for the purpose.

Practice—Judgment—Conditional Judgment—Form —Incidental orders—See above under Judgment.

Statutes—Construction—Principles of construction—Section 11 of the Contract Law, Cap. 192 (1949 edition) as it stood prior to the amendment by Law No. 7 of 1956.

Practice—Appeal—Grounds of appeal—Amendment—Order 35, rule 4 of the Civil Procedure Rules—Application for such amendment granted—Inasmuch as the amendment sought was not an attempt to introduce at a late stage a new ground of appeal, but merely to specify the ground on which the appeal would be argued.

Grounds of appeal—Amendment—See above.

Advocates—Advocate attending Court to hear Judgment—Should keep such notes as may be necessary to give his client the effect of the Judgment and the grounds on which it is founded —Notes shall be sufficient to enable him to prepare the notice in case of an appeal.

On September 18, 1950, the appellant, who was then fifteen years of age (she was born on May 25, 1935), sold and transferred to the respondent a piece of land, which she owned, of about six donums in extent. The agreed price was £15 for the whole plot. It would seem that this was a fair price at the time. After the sale, the buyer (respondent) went into possession and improved the property which he continued to hold and enjoy up to the day

the Judgment in this appeal was delivered. Appellant's assessor estimated its value in May, 1967, at £1050.

In December, 1951, the appellant got married and, thus, she became competent to contract, although she did not attain the prescribed age of 18 years until May 25, 1953 (*infra*). On April 16, 1966, she instituted in the District Court of Nicosia her present action claiming against the buyer (the respondent herein):

(*a*) A Declaration that the said sale and transfer effected on the 18th September, 1950 is void ab initio and/or voidable;

(*b*) an order directing the Land Registry to transfer the property in question back to plaintiff's name;

(*c*) an injuction restraining the defendant (now respondent) from dealing with the property.

The District Court dismissed the action, holding, *inter alia,* that "the transaction in the present case is nothing more than an ordinary contract of sale by an infant which is voidable at the infant's option within reasonable time after attaining majority". From this judgment the plaintiff took the present appeal.

Counsel for the appellant submitted that while under eighteen years of age, the appellant was incapable of selling her property; and that the transfer effected under a legaly void sale, should now be set aside. In support of his submission, counsel relied on the case *Panayiotis Myrianthousis* v. *Despina Petrou* 21 C.L.R. 32, decided in January, 1956, by the then Supreme Court of the Colony of Cyprus. On the other hand, counsel for the respondent argued that a minor's agreement was a voidable contract, as known to the English law; and not an absolutely void transaction as held in the *Myrianthousis* case, *supra*, which, in his submission, was wrongly decided. Further, counsel for the respondent, relying on section 5 of the Limitation of Actions Law Cap. 15 (*infra*), submitted that, in any event, the action is statute barred.

Section 10(1) of the Contract Law Cap. 149 provides:

"(1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object,.....

. . . . . ."

Section 11 of the Contract Law, as it stood prior to its amedment in 1956 by Law No. 7 of 1956 reads:

"11. Every person is competent to contract who—

(*a*) has attained the age of 18 years; and

(*b*) is of sound mind; and

(*c*) is not disqualified from contracting by any law:

Provided that a married person shall not be deemed to be incompetent to contract merely because such person has not attained the age of 18 years". (See section 11 of the Contract Law, Cap. 192 in the 1949 edition).

Section 11 was repealed in 1956 by Law No. 7 of 1956 and the following section was substituted therefor (which is now section 11 of the Contract Law Cap. 149 of the 1959 edition):

"11(1) Subject to the provisions of sub-section (2) every person is competent to contract who—

(*a*) is of sound mind;

(*b*) is not disqualified from contracting by any law;

(2) The law in force in England for the time being relating to contracts to which an infant is a party shall apply to contracts to which a person who has not attained the age of 18 years is a party:

Provided that a married person shall not be deemed to be incompetent to contract merely because such person has not attained the age of 18 years".

Section 5 of the Limitation of Actions Law, Cap. 15 provides that:

"No action shall be brought upon, for, or in respect of, any cause of action not expressly provided for in this Law, or expressly exempted from the operation of this Law, *after the expiration of six years* from the date when such cause of action accrued".

The Supreme Court allowing by majority (Vassiliades P. *dissenting)* the appeal:

Held, Per Stavrinides J.:

(1) The first question to be determined is whether the sale was void or merely voidable. This turns on the construction of section 11 of the Contract Law as it stood at the time of the sale in 1950, when our law relating to agreements to which a person under the age of eighteen was a party was the same as that in force under the Indian Contract Act, 1872, in India, regarding agreements one of the parties to which was under "the age of majority according to the law to which he was subject".

(2)(*a*) Now, it was held by the pre-Independence Supreme Court of Cyprus in *Myrianthousis* v. *Petrou* 21 C.L.R. 32 (decided in January, 1956), following the Privy Council's decision in *Mohori Bibee* v. *Dhurmodas Ghose* (1903) 30 I.A. 114; 30 Cal. 539, that such agreements are void, not merely voidable.

(*b*) Following, as I do these decisions, I hold that the sale was void. Hence so was the transfer.

(3) But it was argued on behalf of the respondent that the appellant has lost her right to recover the property because of prescription. This argument fails, because in this case the period applicable is that laid down in section 10 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, *i.e.* thirty years, which has not yet expired as the respondent's possession only started in 1950.

(4)(*a*) It follows that the appellant is entitled to judgment for a declaration under (*a*) of her claim (*supra*). However, as the respondent has improved the property in the meantime, it would be contrary to natural justice that the judgment should be unconditional (Cf. the cases cited in Spencer Bower and Turner's Estoppel by representation (2nd edn.) p. 267 et s.) It must be subject to a condition for the payment of compensation in respect of the improvements.

(*b*) Accordingly I would send the case back to the District Court to hear such evidence as the parties may adduce with a view to determining both the measure and the amount of compensation that the appellant must pay to the respondent as a condition of the judgment in her favour becoming enforceable.

Held, Per Hadjianastassiou, J.:

(1) In my view sections 10 and 11 of the Contract Law (as it stood before its amendment in 1956) must be read and interpreted together. The words of the statute are in themselves precise and unambiguous; and leave no doubt in my mind as to the intention of the legislature to render infants' contracts void, and not merely voidable. That is exactly the position in India under the Indian Contract Act, 1872, section 11 of which corresponds to our section 11 prior to its amendment in 1956 (*supra*) (see *Mohori Bibee* v. *Dhurmodas Ghose* 19 Times Law Reports, 295).

(2) I would, therefore, prefer to follow the authority of *Myrianthousis* case (*supra*) which, I think, was rightly decided.

(3) Furthermore, that at the time of the agreement between the parties in 1950 the state of the law was that an agreement to which a minor is a party was void, became clearer, when after the decision of the then Supreme Court in *Myrianthousis* case, section 11 of the Contract Law Cap. 192 (1949 edition) was repealed by Law No. 7 of 1956 and a new section 11 substituted therefor (*supra*).

(4) In setting aside the transfer at the instance of the appellant, I would order the appellant, in the exercise of my discretion under section 65 of the Contract Law, to pay compensation to the respondent, because she has received advantage under the agreement discovered to be void. (Cf. the case *Ali Selim* v. *The Heirs of Emete Filo Ali* 17 C.L.R. 143). I would, therefore, remit this case to the District Court of Nicosia to be tried on the question of the amount of compensation payable to the respondent under the provisions of section 65 of the Contract Law, Cap. 149. Each party is entitled to adduce evidence on this issue of compensation.

Appeal allowed.
Conditional Judgment and incidental orders as herein-below stated.
Order for costs as herein below.

Cases referred to:

Vassiliou v. *Vassiliou* 16 C.L.R. 69;

The Universal Advertising and Publishing Agency v. *Vouros* 19 C.L.R. 87;

Marcou v. *Michael* 19 C.L.R. 282;

The Queen v. *Haralambos Erodotou* 19 C.L.R. 144;

Panayiotis Myrianthousis v. *Despina Petrou* 21 C.L.R. 32;

Mohori Bibee v. *Dhurmodas Ghose* 19 T.L.R. 295;

Attorney-General for Canada and Another v. *Hallet and Carey Ltd. and Another* [1952] A.C. 427, at p. 449, per Lord Radcliffe, P.C.;

Young and Co. v. *Mayor and Corporation of Royal Leamington Spa.*, [1882-83] 8 App. Cas. 517, at pp. 526-27 per Lord Blackburn;

Yorkshire Insurance Co. v. *Clayton* [1881-82] 8 Q.B.D. 421, at p. 426, per Brett L.J.;

Kish v. *Taylor* [1911] 1 K.B. 625 C.A.;

Munro v. *Butt* [1858] 8 E. and B. 754;

Reg v. *Warner* [1968] 2 W.L.R. 1303, at p. 1316, per Lord Reid;

Churcher v. *Martin* [1889] 42 Ch. D. 312;

R. Leslie Ltd. v. *Sheill* [1914] 3 K.B. 607, at pp. 614, 618-19, per Lord Sumner;

Ali Selim v. *The Heirs of Emete Filo Ali* 17 C.L.R. 143.

Re Perkins [1890] 24 Q.B.D 613 at p. 618 per Lord Esher M.R.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Ioannides Ag. P.D.C. & Demetriades D.J.) dated the 29th November, 1967, (Action No. 1224/66), dismissing her claim for a declaration, *inter alia*, that the sale of a piece of land to the defendant is void or voidable.

L. Clerides, for the appellant.

G. Ladas with *S. Nikitas*, for the respondent.

Cur. adv. vult.

The following ruling was delivered on the 30th May, 1968 by:-

VASSILIADES, P.: Dealing with the application for amendment of the notice of appeal at this stage, we must first observe that the notice filed on the 9th January, 1968, does not go any further, in our opinion, than give notice on the part of the plaintiff of her intention to appeal against the judgment. What is given as a ground of appeal, i.e. that the trial Court wrongly decided plaintiff's action, cannot be considered as a ground of appeal in the sense of the respective rule.

According to r.4, Or. 35-

> "The notice shall also state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated".

Learned counsel for the appellant gave as reason for such inadequacy in the notice of appeal, that he had not been supplied with a copy of the judgment, at the time he prepared the notice. We cannot accept this as sufficient reason. An advocate attending Court to hear judgment on behalf of his client should keep such notes as may be necessary to give him the effect of the judgment and the grounds on which it is founded. Such a note should be sufficient to enable him, in case of an appeal, to prepare the notice as required by the rules.

In this particular case, the amendment applied for, is intended to specify the grounds upon which the appellant proposes to argue the appeal; and is, therefore, undoubtedly helpful for the purposes of the appeal. Apart of the question of costs, what the Court has to consider is whether the amendment sought takes the other side by surprise, or introduces new matter at such a late stage in the proceedings, which should not be allowed as tending to confuse the issue decided by the trial Court.

Learned counsel for the respondent frankly admitted that notice of this application for amendment, was received by the advocate in charge of the case, several days before the hearing; and that, as far as he could say at this stage, he will be able to argue the appeal, if the amendment be ultimately allowed.

According to the rule on which the application for amendment is based, the notice of appeal may be amended at any time as the Court of Appeal may think fit. Generally speaking, amendment of the notice at such late stage, tends to

disturb the proceedings and to embarrass the other side. They should be discouraged; and should be very sparingly allowed.

In the present case we take the view that the amendment sought is not an attempt to introduce a new ground, but mere'y to specify more precisely the ground on which the appeal shall be argued on behalf of the appellant. We, therefore, grant leave for the amendment of the notice, as proposed in the application, subject to the reservation that the other side shall be afforded, if necessary, a full opportunity of preparing their answer; and, subject to the payments of costs resulting from the application, which will be decided at the end of the appeal.

Leave to amend granted accordingly.

Order in terms.

The following judgments were read on the 1st October, 1968:-

VASSILIADES, P.: This appeal turns on the question of law whether the sale and transfer of property by a person under the age of eighteen, in the year 1950, is a void transaction without any legal effect; or, it is only a voidable contract. I refer to the year 1950, because the law on the point, was different then, to what it is now.

It is contended on behalf of the appellant-plaintiff that the effect of the provisions of section 11 of the Contract Law, as it stood at that time, was to render the transaction absolutely void; and the transfer of the property made thereunder, should, therefore, be set aside, as claimed by the action. This is strongly opposed on behalf of the defendant-buyer (respondent in this appeal) on several grounds, the first of which is that the transfer having been made on a voidable contract, which has not been avoided in due course, cannot now be put into question.

The material facts as found by the trial Court are not disputed by the appeal. Indeed, they are established beyond question.

The appellant, born on May 25, 1935 *(Exh. 1)* was fourteen years of age, when her father died in 1949. Earlier, when she was still a "young child"—as she put it in her evidence—

her father gave her a piece of property which he transferred into her name (P.W.1., p.10-11, A.). She did not know the property, she said; "or what its value was". (p. 11, A.). Soon after her father's death, the appellant got engaged to be married to her present husband (P.W.1., p. 12, D.). And a few months later, in the summer of 1950, she offered for sale the property in question to the respondent, a close relative, as she needed money to prepare for her marriage.

The property consisted of a piece of land of about six and half donums in extent, described in registration No. G.24 (P.W.2, p. 17, B.). According to an assessor called on her behalf, the value of the property at that time "would be about £4.- per donum" with a "margin of error up to 30% either way". (P.W.2, p. 18, F.). Comparable sales of property in the vicinity during that period, show the price of land at about £3 per donum (P.W.2 p. 18, D.). The agreed sale price in appellant's case was £15 for the whole plot.

On September 18, 1950, when the appellant was fifteen years of age, the sale was completed by transfer to the respondent-buyer, at the Land Registry Office, under declaration No.S/4866/50—(Vide W/S.p.4). The formal declaration was not produced in these proceedings; and there is no evidence as to who prepared the necessary documents; who signed them as seller; or who accepted the declaration at the Land Registry Office. But there is evidence which the trial court accepted, that appellant's father-in-law took an interest in the sale of the property; and was present at the transfer (p. 23, BC). The appellant was then still living with her mother.

After the sale, the buyer went into possession and improved the property which he holds and enjoys to the present day. Appellant's assessor estimated its value in May, 1967, at £1050.- (P.W.2, p. 17 CD).

In December, 1951, the appellant got married. She was then sixteen and half years old, and she had already had her first child (P.W.1 p. 12, D). About eighteen months later on May 25, 1953, she became of age. Some thirteen years later, on April 16, 1966, the appellant instituted her present action claiming:

(a) A declaration that the sale and transfer effected on 18.9.1950 is void ab initio and/or voidable;

(b) An order directing the Land Registry to transfer the property back to plaintiff's name;

(c) An injunction restraining the defendant from dealing with the property; and

(d) Costs.

In her statement of claim, the appellant alleged fraud; and that in any case the transaction was to her detriment while she was under age; moreover that on attaining majority she claimed avoidance of the sale and return of her property, which the respondent-buyer agreed to do. All this was denied by the defence; and was eventually decided against her by the trial court. These matters are no longer in issue between the parties to the appeal.

At the closing of the trial, appellant's advocate sought to rely on section 19 of the Guardianship of Infants and Prodigals Law, Cap. 277; but here, in the appeal, with a different advocate, she relied mainly on the effect of section 11 of the Contract Law, as it stood at the time of the sale, September 18, 1950.

Learned counsel of her behalf submitted that while under eighteen years of age, the appellant was incapable of selling her property; and that the transfer effected under a legally void sale, should now be set aside. In support of this submission, counsel referred us to the view of the law taken by the Supreme Court of the Colony of Cyprus in *Panayiotis Myrianthousis* v. *Despina Petrou*, decided in January, 1956, (21, C.L.R. p. 32).

On the other hand, learned counsel for the respondent-buyer submitted that the correct view of the law as it stood at that time, was the view taken by the trial Court in the *Myrianthousis* case (*supra*) viz. that a minor's agreement was a voidable contract, as known to the English law; and not an absolutely void transaction as held in the appeal.

There can be no doubt that under the law of Cyprus as it stood before the enactment of section 11 in 1930, and as it stands now after the amendment of the Contract Law on the point, in 1956, the sale between the parties would be a voidable contract at the instance of the minor; and would be treated accordingly by the Court.

Until January 1931, when the new statutory codification

of the law of contract came into force as Law 24 of 1930, the law in Cyprus governing a transaction of this nature, was the Ottoman Civil Code known as the Mejellé; and particularly Articles 941 to 997, dealing with contracts by "infants, madmen and people of unsound mind". For contracts by minors, the age of puberty was the material age, the beginning of which was twelve years for males, and nine for females (articles 985, 986). Dispositions made by an infant were subject to permission from his guardian; and were voidable in certain cases, if shown to have been against the interest of the infant—(articles 943-967).

This part of the Mejellé together with a part of the Ottoman Commercial Code ceased to be the law of Cyprus, having been repealed by section 247 of the new Contract Law. This was published in May 1930, to take effect as from 1st January, 1931, as a "law to amend and consolidate the law relating to contract" (Cyprus Gazette 1930, p. 773-804).

The new Contract Law expressly provided in section 2 that its provisions "shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English Law and shall be construed in accordance therewith". The same section provided that certain words and expressions used in the statute are used in the sense given in sub-section (2), "unless a contrary intention appears from the context". Paragraph (e) for instance gives the sense of the word "agreement"; para. (h) that of the word "contract"; para. (g) provides that "an agreement not enforceable by law is said to be void"; (h) that an agreement enforceable by law is a contract; and (i) that "an agreement enforceable by law at the option of one or more parties thereto but not at the option of the other or others, is a voidable contract".

So quite in line with the meaning attaching to these words in English law, the statute classified agreements in three classes:

(a) agreements enforceable by either or all the parties thereto defined in the statute as contracts;

(b) agreements enforceable by one party, but not enforce-

able by the other, defined in the statute as voidable contracts; and

(c) agreements not enforceable in law at all, by any party, defined or said to be void agreements.

This, in my opinion, is clearly expressed also by the heading of Part III which speaks of "Contracts, Voidable Contracts and Void Agreements".

Agreements by minors are well known to the English law; as indeed they were known to the law of Cyprus before the enactment of the Contract Law in 1930; and they are known to most legal systems as far as I know. One can refer, for instance, to the Greek Civil Code (based on the French, the Swiss and other European Codes) where contracts by minors are dealt with in Articles 127 et seq. and are void or voidable, depending on certain circumstances. Articles 134 to 137 speak more particularly, and show that persons over the age of ten can enter into voidable contracts.

Not only the legislator expressly provided a general rule of construction for the new Contract Law in section 2(1), but the Supreme Court of Cyprus in a line of cases took the view that statutory provisions in local legislation, intended to codify the English common law, should be interpreted and construed in line with the common law which they purported to codify. (See *Vassiliou* v. *Vassiliou* (16 C.L.R. 69); *The Universal Advertising and Publishing Agency* v. *Vouros* (19 C.L.R. p. 87); *Marcou* v. *Michael* (19 C.L.R. p. 282); *The Queen* v. *Haralambos Erodotou* (19 C.L.R. p. 144)).

Before I proceed to deal with section 11 of the Contract Law in its original form, I propose to deal shortly with section 19 of the Guardianship of Infants and Prodigals Law, (Cap. 277), on which appellant's case was argued at the trial Court. At the material time i.e. during appellant's minority this was Cap. 102 in the 1949 edition of the Cyprus Statute Laws; it is now Cap. 277 in the 1959 edition. Section 19 in the latter, was section 14 in the former; and deals with the limitation of a guardian's powers in dealing with the minor's property. Sub-section (2) provides that-

> "Any disposal of the property of an infant in contravention of this section may be declared by the Court to be *null* and *void*, and upon such a declaration the Court may make such order in relation thereto as may

appear requisite for restoring to the infant the property so disposed of".

The trial Court rejected the submission made on behalf of the appellant, based upon these statutory provisions, taking the view that "the section clearly intends to protect the infants from their guardians dealing with their property in a manner which is not beneficial to them. Even so, the infant must repudiate the transaction and seek the relief of the Court within reasonable time after attaining majority". (p. 24, BC.). I have no doubt in my mind that the District Court took a correct view on the point; and that learned counsel for the appellant rightly abandoned the point in the appeal.

I now come to section 11 which, in its original form (Cap. 192 in the 1949 edition) reads:

"11. Every person is competent to contract who—

(a) has attained the age of 18 years; and

(b) is of sound mind; and

(c) is not disqualified from contracting by any law:

"Provided that a married person shall not be deemed to be incompetent to contract merely because such person has not attained the age of 18 years".

Until *the Myrianthousis* case, (*Panayiotis Myrianthousis* v. *Despina Petrou*, 21 C.L.R. p. 32) the trial courts in Cyprus, as far as I know, treated contracts by minors on the principles applicable to such contracts by the English courts. They were considered as voidable contracts at the instance of the minor, where the court was satisfied that the age of the minor was taken advantage of by the other side, to the detriment of the minor.

In *the Myrianthousis* case the plaintiff was a girl under the age of 18 who sued for breach of promise. The trial court held that the contract to marry was, in the circumstances of that case, for the minor's benefit; and was enforceable at her instance against the other side. In other words, the District Court held that it was a voidable, and not a void contract; and awarded the plaintiff damages for the breach. On appeal, it was held that "a person who does not come within section 11 is by inference not competent to contract

and under section 10(1) such agreement is void". The common law of England was held inapplicable to contracts by minors in Cyprus; and earlier decisions to the effect that statutory provisions based on the common law should be interpreted accordingly, were considered to be distinguishable, with particular reference to the *Universal Advertising and Publishing Agency* v. *Vouros* (19 C.L.R., p. 87), and *Marcou* v. *Michael* (19 C.L.R. p. 282). In reaching their decision, the Supreme Court followed the Indian case of *Mohori Bibee* v. *Dhurmodas Ghose* (19 Times Law Reports, p. 295). The correctness of the decision in *the Myrianthousis* case *(supra)* was challenged on behalf of the respondent in the present appeal.

In fact, soon after that decision, in January 1956, the legislative authority in the colony, (which at that time was the Governor with the advice of the Attorney-General) published an amending law (No. 7 of 1956) solely for the purpose of remedying the position created by the decision in the *Myrianthousis* case. Section 11 of Law 24 of 1930 was repealed and the following section was substituted therefor:

"11.(1) Subject to the provisions of sub-section (2) every person is competent to contract who—

(a) is of sound mind;

(b) is not disqualified from contracting by any law;

(2) The law in force in England for the time being relating to contracts to which an infant is a party shall apply to contracts to which a person who has not attained the age of 18 years is a party:

Provided that a married person shall not be deemed to be incompetent to contract merely because such person has not attained the age of 18 years".

The object of this amendment is obvious; and the law of Cyprus stands on this footing ever since, as section 11 of the Contract Law (now Cap. 149 in the 1959 edition of our Statutes). A mere comparison between the original and the new section, is sufficient to indicate the intention of the legislature regarding contracts where one of the parties is a minor. And such intention is of paramount importance in construing section 11 as it stood at the material time.

What falls to be decided in this case, is whether *the Myrian-*

thousis case was correctly decided on appeal. The full report in the *Mohori Bibee* case, upon which the Court of Appeal in Cyprus came to their decision in *the Myrianthousis* case, was not made available to this Court; and I have not been able to trace it in our present library. However, there is sufficient in the 8th edition of Pollock and Mulla on the Indian Contract and Specific Relief Acts, to make the position in my mind quite clear.

Section 11 of the Indian Contract Act, which corresponds to section 11 of our Contract Law, reads:

> "11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject".

The first comment of the learned commentators to this section, (8th Ed. p. 69) is that it deals with personal capacity "in three distinct branches: *(a)* disqualification by infancy; *(b)* disqualification by insanity; *(c)* other special disqualifications by personal law". It is clear to me that the age limit of 18 years, in section 11 of the new Contract Law for Cyprus in 1930, was to replace the provisions about puberty—the indefinite age of puberty—by a fixed age; and not to abolish minors' contracts. If anything is required to support this proposition, it can, I think, be found in the following section 12, which deals with the incapacity connected with the soundness of mind of contracting parties. It is also supported by the clear distinction which the statute makes between void and voidable contracts.

As the learned commentators put it: "To 'contract'—that is to bind himself by a promise. A minor, who gives value, without promising any further performance, to a person competent to contract, is entitled to sue him for the promised equivalent". (Indian Contract and Specific Relief Acts—Pollock and Mulla, 8th Ed. p. 69). With respect, I adopt this as the correct construction of section 11. It enables a minor to enforce a contract made for his benefit, against a party competent to contract; and to avoid the contract, if he can show to the satisfaction of the Court that it has been made to his detriment. The essence in the provision regarding age, same as in that regarding soundness of mind, lies in enabling a party under such disadvantage to avoid contracts to his detriment, where his disadvantage has

been taken advantage of, by the other party. And the section should not be construed in a manner leading to the opposite result, by enabling the competent party to avoid his obligations to the minor, on the ground of the latter's disability, if the competent party discovers that such avoidance will give him an advantage.

The following passage in Pollock and Mulla, (same page 69), is also helpful in this connection. It reads:-

> "Infancy: As to infancy, the terms of the Act as compared with the Common Law, were long a source of grave difficulty. By the Common Law, an infant's contract is generally not void but voidable at his option; if it appears to the Court to be for his benefit it may be binding and especially if the contract is for necessaries".

At page 72 of the same book one reads:-

> "The former current of Indian decisions was that as under the English law, a minor's contract is only voidable at his option. But in 1903, as mentioned above, the Privy Council (dealing with the mortgage of a minor in the *Mohori Bibee* case, *supra*) ruled that the Act makes it essential that all contracting parties should be competent to contract and especially provides that a person who by reason of infancy is incompetent to contract, cannot make a contract within the meaning of the act".

This view of the statutory provisions in the Indian Contract Act was taken in a case between a money-lender and a minor to whom the former advanced money on the security of a mortgage. With all respect to the Court who took this view, I can only find justification for it, by assuming merits in the facts of that particular case; as I find strong support for the opposite view, on the merits of the facts in this case.

As pointed out earlier, the statute calls a "contract" an agreement enforceable by law against all parties. Agreements enforceable by law at the option of one or more of the parties, but not at the option of the other or others, are described as voidable contracts (Section 2(2) (i) of Law 24 of 1930). This distinction between a "contract" and a "voidable contract", in the definition-section of the statute, is the subject of comment in Pollock and Mulla (8th Ed. *supra*) at page 33, where one reads:-

"For technical reasons, the language in sub-sections (g) and (i) could not be accurate in England; it would be useless to dwell on this here. The state of things really indicated by sub-section (i) is that one of the parties (or possibly more) can at his option maintain the contract, or resist its enforcement, or take active steps to set it aside. When rescinded by a party entitled to rescind, it becomes void. Nevertheless it is in the first instance a contract, being valid until rescinded."

The circumstances of this case provide a good example, I think, in support of the proposition that a minor's contract should only be voidable; and not void. It is sufficient to show the force of the proposition if one were to reverse the parties in this particular contract. If in this case the minor were the buyer of the property, would it not lead to obvious injustice, and would it not be absurd to suggest that the seller of the property should be able to claim successfully, by an action, the return of the property to him by relying on the buyer's minority and on section 11, as construed in *the Mohori Bibee* case (*supra*) and as applied in *the Myrianthousis* case?

I am clearly of opinion that that was neither the intention of the legislator in making the provisions about age in section 11 of the new Contract Law for Cyprus in 1930; nor is it the effect of such provisions if read and interpreted in accordance with English law, as expressly provided in section 2 of the statute.

Adopting with great respect a parallel phraseology to that used by Lord Reid in his speech in a recent case before the House of Lords (*Reg.* v. *Warner* [1968] 2 W.L.R. p. 1303 at p. 1316) in connection with the intention of the legislator in construing a statutory provision, I would put the matter in this form: Normally the plain, ordinary, grammatical meaning of the words of an enactment affords the best guide to the intention of the legislator and to the construction which will give effect to such intention. But in cases where doubt arises as to whether the legislator intended the effect resulting from the words used, the question is not what the words mean, but whether there are sufficient grounds for inferring that the legislator intended the position resulting from the words used, as seen in the case under consideration. Lord Morris of Borth-Y-Gest in the same case, stated the position in very clear terms. His speech (at p. 1327, B.) reads:-

"The problem presented in this case, is, in my view, purely one of construction and interpretation. The intention of Parliament is to be ascertained. Parliament uses words to express its intention. The words that are employed must be considered in their context and in the setting of the purpose which Parliament has proclaimed".

What the intention of the legislator was in enacting the Contract Law, is obvious; and what his intention was in drafting section 11 in its original form, appears not only from the context in which the section was put in the statute, but also appears in unequivocal terms and beyond all doubt, from the amendment which the legislator found it necessary to make immediately after and in consequence of the construction put on section 11 in *the Myrianthousis* case.

I do not propose saying anything further on *the Mohori Bibee* case, the full report of which, I have not had the advantage of reading. But I have no doubt in my mind that *the Myrianthousis* case (*supra*) was wrongly decided by drawing far-fetched inferences (at p. 34 of the report); by departing from the line of cases dealing with statutory provisions purporting to codify the common law (the cases referred to earlier); and by disregarding the wisdom of the maxim *semper in dubiis benignora praeferenda sunt*. I do not propose to follow the decision in *the Myrianthousis* case in deciding the present appeal.

There is moreover another reason which makes it impossible for me to accept the submission that the appellant was entitled to succeed in her present action. This is the position arising from the defence based on the Limitation of Actions Law. The respondent in para. 4 of the defence alleges that plaintiff's claim is prescribed. Section 5 of the Limitation of Actions Law (Cap. 21 of the 1949 edition of the Cyprus Statutes; and Cap. 15 in the 1959 edition) which is applicable to this case, provides that:-

"5. No action shall be brought upon for, or in respect of, any cause of action not expressly provided for in this law, or expressly exempted from the operation of this law, after the expiration of six years from the date when such cause of action accrued".

The cause of action in this case i.e. the avoidance of the sale and transfer of the property in question from the appel-

lant to the respondent, made on the 18th September, 1950, while the appellant was under 18, whether under a void or under a voidable contract, arose forthwith. The appellant under section 11 of the Contract Law ceased to be under disability from age when she was married in December 1951; and in any case, when she attained majority on May 25, 1953. After the expiration of six years from the latter date, at the latest, no action upon the cause in question or in respect thereof could be brought. Appellant's present action was not brought until about 13 years later. on the 16th April, 1966. On this ground alone, I am firmly of the opinion that plaintiff's action should in any case fail. One need not add anything as to the reasons for which the Limitation of Actions Law was put on the statute book in 1945, to consolidate and amend the existing provisions relating to the limitation of actions. Nor need one give here the reasons for which such provisions should be strictly enforced by the Courts.

To sum up, this is a case where a young female of the age of 15, preparing for her marriage, negotiated with the help of her father-in-law (and most probably with that of her fiancé and other interested relations, including her mother), the sale of a piece of property which she eventually sold and transferred to the buyer, at the Land Registry Office, in the presence of her father-in-law and others. The buyer paid the agreed price and took possession of the property which he proceeded to improve. More than a year later, the seller got married to her present husband; and about 18 months later she attained majority. Some thirteen years later, when the value of the property had increased by about 60 times (from £15 to over £1000), the seller instituted the present action, claiming avoidance of the sale and transfer to the buyer; and return of the property to her; on the ground that she was a minor at the time of the sale.

In my opinion the action was misconceived; it was rightly dismissed by the District Court for the reasons stated in their judgment; and must fail both on the merits and by operation of the Limitation of Actions Law. I would dismiss this appeal.

STAVRINIDES, J.: This is an appeal from a judgment of the District Court of Nicosia dismissing an action whereby the plaintiff was seeking-

"*(a)* a declaration of the court that the declaration of

transfer and/or sale of a property. to the defendant.. is void ab initio and/or voidable;

(b) an order of the court ordering the Director of the Lands Office to register and transfer in the name of the plaintiff (that property);

(c) an order of the court restraining the defendant from alienating. (the property) until the final determination of the case".

The first question to be determined is whether the sale was void or merely voidable This turns on the construction of s. 11 of the Contract Law as it stood at the time of the sale, when our law relating to agreements to which a person under the age of eighteen was a party was the same as that in force under the Indian Contract Act, 1872, in India, regarding agreements one of the parties to which was under "the age of majority according to the law to which he was subject"

Now it was held by the pre-independence Supreme Court of Cyprus in *Myrianthousis* v. *Petrou*, 21 C L.R 32, following the Privy Council's decision in *Mohori Bibee* v *Dhurmodas Ghose*, (1903) 30 I A. 114; 30 Cal. 539, that such agreements are void, not merely voidable. The full report of the latter decision is not available here, but its ratio decidendi, as given in Pollock and Mulla's commentary on the Indian Contract and Specific Relief Acts (8th Edn), p 72, para. 2, is, to me, perfectly convincing Following, as I do, these decisions I hold that the sale was void Hence so was the transfer

But it has been argued on behalf of the respondent that the appellant has lost the right to recover the property because of prescription As the respondent's possession only started in 1950, the period applicable is that laid down in the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, s 10, i.e. thirty years, which has not yet expired; so this argument fails

It follows that the appellant is entitled to judgment for a declaration under *(a)* of her claim However, as the evidence shows, the respondent has improved the property in the meantime, and therefore it would be contrary to natural justice that the judgment should be unconditional (Cp the cases cited in Spencer Bower and Turner's Estoppel by Representation (2nd Edn), p 267 et s.). It must be subject to a condition for the payment of compensation in respect of the

improvements. Accordingly I would send the case back to the District Court to hear such evidence as the parties may adduce with a view to determining both the measure and the amount of compensation that the appellant must pay the respondent as a condition of the judgment in her favour becoming enforceable.

HADJIANASTASSIOU, J.: The decision of this ppeal appears to me to involve a question with regard to the true construction of section 11 of the Contract Law, Cap. 192 (1949 ed.).

In this case the main contention of counsel for the appellant was that at the time of the sale and transfer of the property to the defendant-respondent, the appellant being a minor was incompetent to contract, and that the said agreement was not enforceable in law and was, therefore, void *ab initio*.

The undisputed facts are as follows:

The plaintiff was born on May 25, 1935, and was about 14 years of age when her father died in September, 19, 1949. It appears, however, that before his death, he gave and transferred to the plaintiff a piece of property which later on she sold to the defendant, while she was still living with her widowed mother. The defendant was the half brother of the plaintiff. In 1950 she got engaged to be married to a certain Andreas Malays and in December, 1951, they got married.

Apparently, the plaintiff finding herself in need of money had decided to sell her property consisting of 6 1/2 donums in extent, situated at Lakatamia village, under Registration No.G.24; she offered it to the defendant some time in August, 1950, and he agreed to buy the land at £15 per donum. The transfer of the property was effected in the name of the defendant on September 18, 1950, under a declaration of sale No.S. 4866/50. The plaintiff at the time of the transfer was 15 years of age. It appears that the said declaration of sale was not produced before the trial Court and I am not now in a position to know whether the sale was procured by the minor by fraudulent misrepresentation as to her age. The transfer was effected in the absence of her mother, although her present father-in-law was present. Furthermore there was evidence on behalf of the defendant that he was not aware of the correct age of the plaintiff, but the trial Court although it believed the evidence of the respondent made no

specific finding on this issue.

The buyer cultivated and improved the property, which he still holds and enjoys from the date of the said transfer and its value has greatly enhanced with the present day increased prices for land. Some 13 years later on April 16, 1966, the plaintiff instituted the present proceedings, claiming, *inter alia, (a)* a declaration that the sale and transfer effected on 18.9.50 is void *ab initio* and/or voidable; *(b)* an order directing the Land Registry to transfer the property back to plaintiff's name; *(c)* an injunction restraining the defendant from dealing with the property.

It would be observed that the plaintiff has attained the age of 18 years on May 25, 1953, although she has ceased to be incompetent to contract on the day she became married to her present husband.

It is evident that under section 6*(b)* of the Guardianship of Infants and Prodigals Law Cap. 277 where an infant has no lawful father living, the mother of the infant shall be the guardian of the infant's person and property, and in my opinion, therefore, the mere fact that the father of appellant's fiance was present when the transfer of the property took place, does not help the case of the respondent, because as I said earlier the natural guardian of the minor, in the absence of the deceased father remained her mother; and who apparently, in view of the relationship between them was never asked by the respondent for her consent for the sale of the property of the appellant.

The trial Court after dealing with section 19(2) of the Guardianship of Infants and Prodigals Law, Cap. 277 had this to say at p.24:

> "We fail to see how the present case can be brought within the scope of the above provision. The section clearly intends to protect the infants from their guardians dealing with their property in a manner which is not beneficial to them. Even so, the infant must repudiate the transaction and seek the relief of the Court within reasonable time after attaining majority.
>
> "In our view, the transaction in the present case is nothing more than an ordinary contract of sale by an infant which is voidable at the infant's option within reasonable time after attaining majority, a course, which,

in view of our findings above, the plaintiff failed to follow".

With due respect, to the view taken by the learned trial Judge, that "the transaction in the present case is nothing more than an ordinary contract of sale by an infant which is voidable at the infant's option within reasonable time after attaining majority" I hold a different view for the reasons I shall advance later on in this judgment and, because the learned trial Judge has never considered the effect of section 11 of the Contract Law, Cap. 192.

The first question for consideration, I think, is whether on the true construction of section 11 of our law, the agreement was void or voidable at the option of the appellant.

Now, as it has been stated time after time, the statute is to be expounded according to the intent of them that made it. If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such a case best declaring the intent of the legislature. The object of all interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly, by the language used, so far as is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. In the case of *Attorney-General for Canada and Another* v. *Hallet and Carey Ltd. and Another* [1952] A.C. 427 P.C. Lord Radcliffe delivering the judgment of their lordships had this to say at p. 449:

> "In their Lordships' view there is no better way of approaching the interpretation of this act than to endeavour to appreciate the general object that it serves and to give its words their natural meaning in the light of that object. There are many so called rules of construction that courts of law have resorted to in their interpretation of statutes, but the paramount rule remains that every statute is to be expounded according to its manifest or express intention".

In *Young & Co.* v. *Mayor & Corporation of Royal Leamington Spa.*, [1882-83] 8 App. Cas. 517 D.C. H.L., Lord Blackburn, dealing with the interpretation of statutes had this to say at p.526:

> "The legislature in the earlier part of the Act of 1875

had incorporated all urban authorities which were not already corporations; those which were already corporations continued such; and then in Part V of the Act it makes provisions as to contracts. We ought in general, in construing an Act of Parliament, to assume that the legislature knows the existing state of the law."

In *Yorkshire Insurance Co.* v. *Clayton*, [1881-82] 8 Q.B.D. 421 Brett L.J., as he then was, had this to say at p. 426:

> "It might have been difficult to have come to this conclusion if one had not known the state of the law as to taxation of houses at the time the statute was enacted, but it is a well-known rule or cannon of construction that in construing an act of Parliament one ought to take into account the state of the law and of judicial decisions at the time the act is passed".

Now what was the state of the law in force at the time of the transfer?

I propose to deal with the relevant legislation.

On January 1, 1931, the Contract Law was passed in order to amend and consolidate the Law relating to Contracts. Section 2(1) deals with the rule of construction of the Law and provides:

> "This Law shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English law and shall be construed in accordance therewith".

Sub-section (2) deals with the interpretation of words and expressions used in the following senses, unless a contrary intention appears from the context. Section 2(g) provides:

"An agreement not enforceable by law is said to be void" and section 2(h) reads:

> "An agreement enforceable by law is a contract".

I now turn to section 10(1) to see what agreements are contracts within the provisions of the law. It reads:

> "All agreements are contracts if they are made by the

free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void, and may, subject to the provisions of this Law, be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties".

Then comes section 11, which gives the answer who are the competent persons to contract. It provides:

"Every person is competent to contract who—

"*(a)* has attained the age of eighteen years; and

"*(b)* is of sound mind; and *(c)* is not disqualified from contracting by any Law: Provided that a married person shall not be deemed to be incompetent to contract merely because such person has not attained the age of eighteen years".

In my view, sections 10 and 11 must be read and interpreted together.

The next question is: What are the judicial decisions? It appears that our section 11 corresponds to section 11 of the Indian Contract Act and the interpretation of the Indian section was considered by the Judicial Committee of the Privy Council in 1903, in the case of *Mohori Bibee* v. *Dhurmodas Ghose*, 19 Times Law Reports, 295. This case is referred to in Pollock & Mulla, 6th ed. at p. 66. The Judicial Committee ruled that "the act makes it essential that all contracting parties should be competent to contract", and especially provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act. I would like to add that prior to that decision the High Court in India had endeavoured to avoid construing the section so as to make minors' contracts void since to do so would involve a wide departure from the English Common Law which it was the general purpose of the Indian Act to embody.

That case decided by the Privy Council was followed and applied by the then Supreme Court of Cyprus in the case of *Panayiotis S. Myrianthousis* v. *Despina Petrou*, on January 7, 1956; reported in 21 C.L.R. 32. Shortly, the plaintiff sued for breach of promise. At the time of the promise she was

under 18. Section 11 of the Contract Law specified the persons competent to contract and included every person who has attained the age of eighteen years. The trial Court held that despite section 11, the contract made by the minor was not void; the Common Law of England applied; the contract was voidable not void and the minor could sue thereon. Upon appeal held: "A person who does not come within section 11 is by inference not competent to contract and under section 10(1) such agreement is void. The Common Law of England not applicable".

Hallinan C.J. delivering the judgment of the Court had this to say at p.34:

> "We are unable to accept this view because although sections 10 and 11 tell us what are the essential ingredients, in an agreement so as to make it a contract and also who are the persons competent to contract, nevertheless, by inference, a person who does not come within the provisions of section 11 is not competent to contract; and by inference, under section 10(1) an agreement made with a party who is not competent to contract is not a contract and is, therefore, void. In our view the legislative authority has provided that a contract entered into by a minor is void; nor reading these sections is there any ground for holding that it was the intention of the legislature merely to reproduce the common law and, therefore, in our view the common law principle that infants' contracts in general are voidable rather than void should not in this case be applied. Indeed, the legislative authority appears to have had in mind the desirability of not avoiding certain infants' contracts when it enacted the proviso to section 11, making competent married persons under the age of 18 to contract; and when it also enacted section 68 of the Contract Law concerning necessaries supplied to persons uncapable of contracting".

Later on at p. 35 they have this to say:

> "However, in the case of *Mohori Bibee* v. *Dhurmodas Ghose*, 19 Times Law Reports 295 it was decided by the Privy Council that the section must be given its literal interpretation and that infants' contracts are void".

In the course of their judgment their Lordships said at p. 296:

"Having regard to the various sections of the Indian Contract Act 1872 dealing with the case, their Lordships were satisfied that the Act made it essential that all contracting parties should be 'competent to contract', and expressly provided that a person who by reason of infancy was incompetent to contract could not make a contract within the meaning of the Act. In the present case there was not any such voidable contract as it was dealt with in section 64; the Act provided, in clear language that an infant was not a person competent to bind himself by a contract of that description".

Counsel for the appellant strongly relied on the decision of *Myrianthousis* case *(supra)*; but on the contrary counsel for the respondent, who has cited that case, argued that that case was wrongly decided and invited this Court not to follow its reasoning and to overrule it. He further argued that the agreement reached between the parties was a voidable contract only and should be construed by the appeal Court as such, in order to avoid hardship and injustice in the case in hand.

I would like to observe that it is true that there is a long line of authorities in England, and on the general principle of avoiding injustice and absurdity, any construction would, if possible, be rejected (unless the policy and object of the act required it) which enabled a person to defeat or impair the obligation of his contract by his own act, or otherwise to profit by his own wrong. See the case of *Kish* v. *Taylor* [1911] I K.B. A.C. 625. But where, having regard to the general policy of the Act as to the language and the structure of its wording, it would not have that effect, the words abridging or avoiding the effect of instruments, contracts and dealings would receive their primary and natural meaning.

It has to be remembered however, that the argument of hardship to quote the words from the judgment in *Munro* v. *Butt*, (1858) 8E & B. 754 reported in Maxwell on Interpretation of Statutes, 11th ed., at p. 199, has been said to be always a dangerous one to listen to. It is apt to introduce bad law and has occasionally led to the erroneous interpretation of statutes. The Court, therefore, ought not to be influenced or governed by any notions of hardship. See Re *Perkins*, [1890] 24 Q.B.D. 613 at p. 618 per Lord Esher M.R. And in the case of *Young & Co.* v. *Mayor & Corporation of Royal*

Leamington, Spa., (supra) Lord Blackburn had this to say at p.527 on the question of hardship and injustice:

> "It is true that this works great hardship upon the now appellants. They had an agreement, but it was not sealed; and though it is possible that if the agreement had been under seal the defendants might have established a defence on the merits to all or part of what is claimed, it is hard on the appellants that they should not be allowed to raise the question. It is, however, for the legislature to determine whether the benefits derived by enforcing a general rule are or are not too dearly purchased by occasional hardships. A Court of law has only to inquire, what has the legislature thought fit to enact?"

I would like, at this stage, to sum up that from the trend of the authorities, it would mean that where the enactment has relation only to the benefit of particular persons, the word "void" would be understood as "voidable" only at the election of the persons for whose protection the enactment was made and who are capable of protecting themselves, but when the enactment has some object of public policy in view which requires the strict construction the word "void" receives its natural full force and effect. On the question whether the word "void" may properly be construed as "voidable", see also *Churcher* v. *Martin*, [1889] 42 Ch.D.312.

I have no doubt that in the case in hand our law intended to safeguard the weakness of all infants at large. I propose, therefore, in view of our section 68, to show that even England, under the Infants Relief Act 1874 (c. 62) section 1, makes all contracts for the supply to an infant of goods which are not necessaries absolutely void, the infant cannot recover the money he has paid for them if he has used or consumed them. In the case of *R. Leslie Ltd.* v. *Sheill*, [1914] 3 K.B. 607 Lord Sumner dealing with a contract of a minor had this to say at p. 614:

> "For a very long time and in many forms equity has interfered to give relief against frauds committed by infants, or has refused it to infants, guilty of fraud; but the practice and even the principles applicable to such cases were long ill-defined. 'An infant', says Knight Bruce V.C. in *Stikeman* v. *Dawson* 1 De. G. & Sm. 90 'however generally for his own sake protected by an

incapacity to bind himself by contracts, may be doli capax in a civil sense and for civil purposes in the view of a Court of Equity, though perhaps only when pubertati proximus or older ..... and may therefore commit a fraud for which or the consequences of which he may after his majority be made civilly liable in equity ..... I agree..... ... that in what cases in particular a Court of Equity will thus exert itself it is not easy to determine".

Later on he says at p. 618:

"I think that the whole current of decisions down to 1913, apart from dicta which are inconclusive, went to shew that, when an infant obtained an advantage by falsely stating himself to be of full age, equity required him to restore his illgotten gains, or to release the party deceived from obligations or acts in law induced by the fraud, but scrupulously stopped short of enforcing against him a contractual obligation, entered into while he was an infant, even by means of a fraud. This applies even to *In re King, Ex parte Unity Joint Stock Mutual Banking Association* 3 De. G. & J.63. Restitution stopped where repayment began".

His Lordship went on to say at p. 619:

"In the present case there is clearly no accounting. There is no fiduciary relation: the money was paid over in order to be used as the defendant's own and he has so used it and, I suppose, spent it. There is no question of tracing it, no possibility of restoring the very thing got by the fraud, nothing but compulsion through a personal judgment to pay an equivalent sum out of his present or future resources, in a word nothing but a judgment in debt to repay the loan. I think this would be nothing but enforcing a void contract. So far as I can find, the Court of Chancery never would have enforced any liability under circumstances like the present, any more than a Court of law would have done so, and I think that no ground can be found for the present judgment, which would be an answer to the Infants' Relief Act".

The position in India is and has similarly been held that when a sale of his property by a minor which, of course, is

void under the ruling of the Privy Council in the case of *Mohori Bibee (supra)* is set aside by the Court, the Court may, if satisfied that the sale was procured by a minor by a fraudulent misrepresentation as to his age, direct the minor to make compensation to the purchaser.

Furthermore that at the time of the agreement between the parties the state of the law was that the agreement of a minor was void, became more clearer, when after the decision of the then Supreme Court in *Myrianthousis* case, section 11 of the Contract Law Cap. 192 was amended by Law No. 7 of 1956.

Section 11 reads:

"11(1). Subject to the provisions of subsection (2), every person is competent to contract who—

(a) is of sound mind; and

(b) is not disqualified from contracting by any Law.

(2). The law in force in England for the time being relating to contracts to which an infant is a party shall apply to contracts to which a person who has not attained the age of eighteen years is a party."

For the reasons I have advanced I have reached the conclusion, that the agreement reached between the parties was void and is contrary to section 10(1) of our law, as it stood at the time of the agreement. I would prefer to follow the authority of *Myrianthousis* case *(supra)* which, I think was rightly decided. I would, therefore, allow the appeal and set aside the transfer of the property as being invalid. The judgment of the trial Court is set aside; judgment, therefore, to be entered in favour of the appellant.

I would like, however, to add that in setting aside the transfer of the land at the instance of the appellant, I would order the appellant, in the exercise of my discretion, under the provisions of section 65 of the Contract Law, to pay compensation to the respondent, because the appellant has received advantage under the agreement discovered to be void, C/f the case of *Ali Selim* v. *The Heirs of Emete Filo Ali*, 17 C.L.R. 143.

I would, therefore, remit this case to the District Court of Nicosia to be tried on the question of the amount of compen-

sation payable to the respondent, under the provisions of section 65 of the Contract Law.

Each party, is entitled to adduce evidence on this issue of compensation.

VASSILIADES, P.: In the result the appeal is allowed by majority; and judgment setting aside the transfer of the property to the respondent shall be entered in favour of the appellant-plaintiff, conditionally on the payment of compensation to the respondent-transferee to be ascertained by the District Court in a new trial on that issue. As this, however, is a fresh matter arising from the majority decision in the appeal, we wish to hear the parties on the question of compensation before we can formulate the judgment in the appeal.

Counsel not ready to-day. Suggestion by Court discussed. Adjourned to 4th October, 1968 to hear counsel on the question of the compensation.

1968
Oct. 4

Counsel heard on the question of compensation and costs:

. . . . . .

VASSILIADES, P.: It is now quite clear. The costs of the fresh proceedings will be left completely to the trial court to decide as they may think fit at the end of the proceedings.

We can now formulate the judgment.

The appeal is allowed by majority; and the judgment of the District Court dismissing plaintiff's action as well as defendant's counter-claim, is set aside. Conditional judgment to be entered for plaintiff with a declaration setting aside the transfer to the defendant under S/4866/50 of the 18th September, 1950, on the satisfaction of the following condition that is to say on the payment of compensation by the appellant-plaintiff to the respondent-defendant within three months from the decision of the District Court where this case is remitted to hear such evidence as the parties or either of them may adduce to enable the Court to find the compensation payable under the judgment herein, by the plaintiff to the defendant, consisting of—

(a) the sale price for the transfer made on 18/9/50; plus

(b) the difference between the market value of the property (the subject matter of the action) in its present

condition including the improvements made by the defendant and now found thereon, and the present market value of the property in question as it should have been if such improvements had not been made.

Failing payment of the compensation so determined by the District Court within the said period of three months, the judgment in this action avoiding the transfer, to lapse; and registration of the property to stand as at present.

Possession and enjoyment of the property to go with the registration.

Pending determination and payment of the compensation as above, the property to stand subject to an interlocutory order restraining sale, mortgage, transfer or other charge on the property unless by consent of the parties herein, or until further order of the Court.

Appellant-plantiff to have her costs in the appeal; each party to bear their own costs so far incurred in the District Court; costs in the new proceedings to be determined by the District Court.

Appeal allowed.
Conditional judgment and incidental orders as hereinbefore stated. Order for costs as above.