D. VAN EE, Agent for OOST AFRIKAANSCHE COMPAGNIE, a Dutch Firm transacting Mercantile Business in Monrovia, Appellant, *v.* SAMUEL B. GABBIDON, Natural Guardian for his Minor Son, JOSHUSA GABBIDON, Appellee.

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

Argued January 24, 28, 1952. Decided March 7, 1952.

A party in privity with a lessor is estopped from having a contract for the lease of lands to a foreigner voided on a claim that such a contract is illegal.

On appeal from judgment canceling a lease for a foreigner for thirteen years with an option to renew for twenty years, *judgment reversed.*

R. F. D. Smallwood for appellant. *Richard A. Henries* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

The records certified to us in this case present the following facts:

Oost Afrikaansche Compagnie, appellant, entered into a renewed lease agreement with T. L. Richardson and Deborah T. Stubblefield, heirs of the late Maria A. Richardson, for a parcel of land lying on Water Street in the Commonwealth of Monrovia. The appellee in these proceedings is the natural guardian of his minor son, Joshua Gabbidon, who, in turn, is the legatee to said property by will of T. L. Richardson, one of the lessors above-named. This renewed lease agreement was entered into on February 15, 1937, for a period of thirteen years with an op-

tion for a second term of twenty years after the expiration of the first, both terms having the same rental. It is also to be noted that, besides the monetary consideration of yearly rentals to be paid as stipulated, the lease agreement was executed "for and in consideration of a bonus of seven hundred and twenty dollars ($720.00) equal (then) to one hundred and fifty pounds sterling (£150.0.0.) paid to lessors by the lessee." The receipt thereof was duly acknowledged at the time of the execution of the lease agreement and also noted therein.

The lessee, by virtue of this agreement, enjoyed quiet and peaceful possession of said demised premises for an unbroken period covering the first term of thirteen years, paying rental therefor as per terms and conditions of the lease. During this period both original lessors died; but T. L. Richardson, one of the lessors who outlived his co-lessor, devised said premises by will to Joshua Gabbidon, his grandson and the minor son of the appellee in this case, in whose interest appellee appears herein. There is no record that the legality of this lease agreement was ever contested, either by the original lessors, or by the legatee, until somewhere around the year 1950, just before the expiration of the first term, and after the lessee had given intimation of its desire to take advantage of the second term of twenty years as stipulated. Appellee, acting for his minor son, projected the question of the alleged illegality of the lease agreement together with his view of the state of the said agreement, which he considered closed. Because of disagreement on this issue, appellee, for his minor son, Joshua Gabbidon, filed a suit in equity against the Oost Afrikaansche Compagnie, lessors, for the cancellation of said lease agreement. The rejoinder of the respondents, now appellants, was the last pleading.

The case came up for hearing before Circuit Judge J. Dossen Richards, who decreed the cancellation of the lease agreement in question. It is from this decree that the matter is before us on appeal on a bill of exceptions containing two counts.

The successor to the lessors, appellee herein, contends that the provision in the lease agreement which grants a term of thirteen years and another subsequent term of twenty years, a total of thirty-three years, renders same illegal, unconstitutional, and against public policy; and hence same should be canceled and said property revert to the lessor's successor. The lessee contested the legal sufficiency of this; however, the trial judge, after hearing the case, decreed the cancellation of said lease agreement.

Before this Court, appellee's counsel was asked whether, hypothetically conceding that his contention was correct, he would be, or should be, allowed to take advantage of his own wrong, since the instrument which he seeks to have cancelled was undeniably executed by the company and T. L. Richardson and Deborah Stubblefield, and appellee is privy to said lessors. Appellee replied that, under the law, and in equity, the doctrine of *in pari delicto* does not apply against a party to an agreement which he seeks to have cancelled as against the organic law of the land and public policy. In support thereof he read common law which would have been somewhat convincing in the absence of decisions of our courts to the contrary.

The trial judge seems to have ruled without considering that some greater public good was subserved by such a decree rather than by inaction. It is true that this Court has always looked with disfavor upon lease agreements which have been executed to cover periods of longer than twenty years, and has declared them to be against the organic law of the land. *Bingham* v. *Oliver,* 1 L.L.R. 47 (1870), *Couwenhoven* v. *Green,* 2 L.L.R. 301 (1918); 2 L.L.R. 350 (1919). However, this has not been true where parties who were *in pari delicto* have attempted to take advantage of their own wrong. Instead, we find the following in the syllabus of *West* v. *Dunbar,* 1 L.L.R. 313 (1897):

> "A lease for lands to a foreigner for fifty years, although repugnant to the Constitution, will not nevertheless be set aside at the instance of a party thereto;

a party will not be allowed to impeach his own deed."

There is no record that this decision has ever since been set aside or recalled notwithstanding the legislation of 1899–1900 which seems to have been enacted as a result of the decision in the *West* case.

In the more recent case of *Couwenhoven* v. *Green, supra,* the lease agreement in question presented more irregularities and illegalities than the one in this present case. In the *Couwenhoven* case one of the illegal clauses read as follows:

> "[s]hould the Constitution of Liberia ever become open for foreigners to hold real estate in fee simple in Liberia, then and from that date this deed shall entitle the lessee to have and to hold said premises in fee simple, to them and their heirs forever." *Id.* at 302.

Nevertheless the Supreme Court did not cancel the lease, but, instead, remanded the case "in order to allow the parties to reconstruct the deed of lease by eliminating the illegal clauses in the instrument, taking into consideration the equitable rights of all parties concerned," requiring them to report to a later term of the Court. The parties did not come to an agreement on the terms of the lease, and, upon the lower court's making returns to that effect, the matter was taken up by this Court which ordered that the illegal clauses in the said lease agreement be eliminated, and decreed an annual rental to be paid, thereby perpetuating said lease instead of cancelling it as prayed.

This Court always has been hesitant and cautious in decreeing the cancellation of lease agreements which have been entered into in good faith by parties, many of whom have been foreigners who have invested capital in our country. In so acting this Court feels itself serving the public good and subserving public policy which, in this connection, is to encourage investments that would conserve and maintain our economic stability. Nevertheless this Court has not been loathe to discourage any veiled

attempt to subvert existing fundamental laws of the Republic, especially our Constitution.

Our probate courts are given the right to examine every document which is the subject of admission to probate before ordering it admitted. Many controversies could be obviated if our probate courts would fairly, diligently, and correctly exercise this right as our present Solicitor General, S. Raymond Horace, did when he was Commissioner of Probate for Montserrado County, in the matter of certain lease agreements then offered before him by Counsellor H. Lafayette Harmon.

Because of what has been stated herein, we hesitate to affirm the decree of the lower court ordering the cancellation of the lease agreement in issue at the instance and upon a suit brought therefor by appellee, one of the parties in privy thereto, who unreservedly admits, in his briefs, that he is *in pari delicto;* especially when to do so would certainly be placing us in the position to invoke the provisions of the Joint Resolution of January 7, 1899 (L. 1899–1900, p. 50), prohibiting the granting of leases to foreigners in any places except ports of entry and delivery.

Perhaps our conclusions would have been different, and where the proof was evident and uncontroverted we might have found it necessary to invoke and apply the 1899 act, had the proceedings been at the instance of an interested party other than the lessor, now appellee.

The decree of the lower court is consequently reversed with costs against the appellee; and it is hereby so ordered.

Reversed.