

JOSEPH J. WRIGHT, Brother and Next of Kin to the Late **EDDIE D. WRIGHT**,
Deceased, Appellant, v. **J. W. A. RICHARDS**, Curator of Intestate Estates,
Montserrado County, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT OF
MONTSERRADO COUNTY.

Argued October 16, 17, 1956. Decided February 22, 1957.

Where issues of law and fact are raised by the pleadings, the issues of law must be decided before trial of the issues of fact.

In proceedings for administration of an intestate estate, appellant interposed objections to the probate of a lease in the court below and petitioned for letters of administration in lieu of appellee. A prior decision of the court below was appealed and remanded for rehearing on submission of counsel for both parties. The court below granted letters of administration to a third party. Both the original parties again moved that this Court remand for new trial. The motion was granted and the cause was *remanded*

T. Gyibli Collins for appellant. *Kolli S. Tamba* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.

On or about December 26, 1948, Eddie D. Wright of Paynesville, Montserrado County, brother to the appellant in this case, died intestate. T. W. D. Leigh, Curator of Intestate Estates for Montserrado County, who took over the administration of the estate was succeeded in office by the appellee who was alleged by the appellant to have carelessly and wastefully administered the said estate by reason of the fact that he had unauthorizedly executed a lease agreement between Joseph A. Gemayel and himself for Lot Number 67, situated at Kakata, and had drawn one year's lease money in advance without reporting same to the Monthly and Probate Court. Appellant interposed objections to probation of the said lease when it was presented to the Monthly and Probate Court, and immediately thereafter petitioned for letters of administration in lieu of appellee.

The pleadings below progressed as far as the reply. The then Probate Commissioner, J. Everett Bull, recused himself on the ground that he would be required to testify as a witness concerning his acts with respect to the case when he was clerk of the

Probate Court, but subsequently resumed jurisdiction and rendered judgment against the appellant, who took exceptions and announced an appeal to this Court.

When the appeal was called for hearing before this Court, counsel for both sides joined in a submission praying that the case be remanded for rehearing and that determination of costs be suspended until final adjudication of the cause. The case was accordingly remanded on June 1, 1954, with instructions that the court below resume jurisdiction and dispose of the issues of law before proceeding to trial of the facts. On May 17, 1955, the court below handed down a ruling denying the appellant the letters of administration prayed for in his petition, but granting letters of administration to Jeneya Johnson Duff, purported niece of the decedent, and Joseph B. Wright, purported son of the decedent. The appellant excepted to said ruling, and has again appealed to this Court for final hearing and determination of the case.

This Court finds from the records certified to us that the law issues contained in the pleadings were not disposed of by the court below in keeping with our mandate. We remain uncertain as to how the court below reached its conclusion that Eddie B. Wright is the legitimate son of the late Eddie D. Wright, in the absence of any evidence to that effect. When the case was called for trial before us, counsel for both parties again requested this Court to remand it on the grounds that the ruling of the trial court was not predicated upon the disposition of any issue of law or upon any finding of fact and that neither of them was present when the said ruling was handed down.

Because of the loose and careless manner in which the court below handled the case, this Court grants the request of counsel. We trust this will be the last time this case will have to be remanded on account of the lower court's non-adherence to the mandate of this Court. We remand this case with the following instructions :

1. That the court below, immediately upon receiving the judgment and mandate of this Court, resume jurisdiction, dispose of the law issues in the pleadings and, if the case is not dismissed upon any point of law going to the merits, try the issues of facts raised in the pleadings and render judgment.
2. That this order be strictly carried out and returns made to this Court not later than the first day of the March, 1957, term of this Court; and upon failure to do so, the trial Judge will be held to answer in contempt proceedings before this Court.

Costs to abide the final determination of the case. And it is hereby so ordered.

Remanded.