ANGIE R. PERRY, SARAH F. PERRY, and ANTHONY A. PERRY, Appellants, *v.* J. EMERY KNIGHT, W. FRED GIBSON, ISAAC E. PERRY and A. DASH WILSON, JR., Executors, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued December 10, 14, 1937. Decided January 14, 1938.

One who has availed himself of the privilege of homesteading his property may not devise same without first raising the homestead.

Appellants objected to the validity of the will of Samuel W. Perry when respondents offered it for probate. Judgment was rendered for the proponents of the will in the Circuit Court of the Fourth Judicial Circuit, and respondents appeal to this Court on a bill of exceptions. *Judgment reversed.*

Daubeney Cooper for appellants. *Abayomi Cassell* for appellees.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This is a case from the Circuit Court for the Fourth Judicial Circuit appealed to this Court upon a bill of exceptions containing nineteen counts.

The history of the case reveals the fact that one Samuel W. Perry on the twenty-eighth day of November, 1932, executed his last will and testament. After his death, when this instrument was presented for probate, appellants offered objections. Issue was joined by the respondents and the several law issues raised in the pleadings were decided by the trial judge who ruled that the will should be admitted to a jury to be tried upon its merits or in other words "the genuineness of the signature only."

On the 4th day of August, 1935, the case was called for trial and the jury brought in a verdict to the effect that the will was valid, whereupon the trial judge, after hearing and overruling the motion for new trial filed by the objectors, proceeded to render final judgment, to which judgment the objectors excepted and brought the case to this Court for review and final determination.

While several very important questions of law have been ably raised by both parties in this case, it is our opinion that the most vital question around which the entire case revolves and to which we must direct our attention is whether or not the late Samuel W. Perry had the legal right to devise property set apart under and by virtue of the "Homestead and Household Exemption Act" of this Republic, without first raising the exemption. Our analysis of and answer to this all-important question is confirmation of the opinion handed down by this Court during its January term, 1904, in the case *Wiles* v. *Wiles,* 1 L.L.R. 423, the relevant portion of which reads as follows:

> "Before going further we would remark that the law of homestead exemption is of comparatively recent origin. Anterior to the last century this species of real estate was unknown to the law. It is one of the two great doctrines which have been introduced into the law during the nineteenth century and which have marked the development of the legal science in the United States. This species of real property was first brought forward under the constitution and statutory enactments of Texas, when it existed as a separate and distinct Republic. A doctrine founded upon such a sound and judicious basis, instituted not for the purpose of encouraging and stimulating a tendency to fraud, but, on the contrary, with a view to protecting the honest and upright land-holder against failures in the ordinary affairs of life,—failures which may at any moment dispossess the honest but un-

fortunate land-holder and his family of a home,—could not fail to commend itself, and hence we find that in the United States of America the doctrine was readily taken up and state after state passed statutes adopting it, with such modifications as were deemed suitable to their respective conditions.

"In 1889, the Legislature of Liberia passed an Act entitled, 'The Homestead and Household Exemption Act.' Section 1 of said act reads as follows: 'That from and after the passage of this act all householders and heads of families, owning real estate, shall have so much of that real estate exempt from the writs of their creditors, that is to say, one town lot or one acre of farm land upon which the house is situated, with all the appurtenances and out-dwellings of same, which exemption shall mean the homestead of the family, and this exemption *shall last as long as any of the heirs of the family so occupying it shall live.*' (Act Leg. Lib. 1889.) This is practically the law controlling this cause. The language of the above cited Act conveys to the mind of the court the idea that property set aside by the head of a family as a homestead for himself and family creates an estate in which all parties connected with and forming a part of said family, within the meaning and purview of said act, acquire an interest and a share therein.

"The object of the lawmakers in passing this statute, which enables a householder to take out of market a limited portion of his real and personal property, and to have the same secured against the claims of his creditors, appears to be not only for the purpose that the head of the family shall have secured unto him an unassailable estate, but also that the wife and children, forming a part of said family, shall likewise take an estate therein, which cannot be set aside or destroyed, either by their own acts or by the acts of him who first held an absolute fee therein, or by the claims

of third parties against any of the tenants thereto. And this view is upheld by the terms of a subsequent statute, which makes it a misdemeanor for either the clerk of court to issue, or the sheriff to serve, any writ upon a homestead estate. (Act of Leg. Lib. 1897.) Undoubtedly this statute was not passed to screen property held in fee by debtors against the writs of their creditors. But it is because the putting an estate under the Homestead and Household Exemption Act creates an estate in coparcenary among all the parties constituting and forming the family, within the meaning of the original act, that this statute forbids all interference with it by the officers of the law. To hold to the contrary, we think, would be to declare this statute fraudulent and pernicious.

. . . . . .

"The Statute contemplates a lapse of a homestead estate only after the heirs of the original 'head' and *occupant* have become extinct.

"We are aware that the statutes of some of the American States enunciate a somewhat different principle, but in this case it is the *lex scripta* of the country and not the statutes of foreign states which is the controlling law.

"We have already shown that a homestead under the laws of Liberia is an estate in which the wife and children constituting the family, hold an undivided interest therein. Such an estate could not be regarded as an estate in joint tenancy, as was suggested by one of the counsel, for an estate in joint tenancy is one acquired by purchase and is not subjected in all respects to the rule of descent. This species of tenancy is governed by the subtle principle of survivorship, which does not apply to homestead estates. Equally so, nor would the law regard it an estate in common, because the title thereto is not distinct and several; nor an estate in fee tail, because in homestead

estates the wife acquires and holds an equal interest therein with the heirs of the original householder, whereas in fee tail the title is reserved to the 'heirs of the body' only of him last seized. By analogy of the law of real property we find that a homestead under the laws of Liberia answers to an estate in coparcenary. The three units [*sic*] which the law demands to establish such estate, namely, time, title, and possession, are to be found in this species of property.

. . . . .

"We have already endeavored to show what kind of an estate a homestead estate is, and who the parties are that acquire an interest therein, by force of the law of the country. If our conclusions are supported by the law of real property and the Homestead and Household Exemption Act of Liberia, and we do not hesitate to say that we feel that they are, then it follows as a legal consequence, that the property in question cannot be disposed of by will. If James T. Wiles and his family held the property in question as a homestead, it could not afterwards be devised, as long as the heirs existed, without setting aside an inflexible rule of the law of real property. 'A man cannot dispose of the rights of other parties.' 'He who would be generous must first be just.'" (pp. 425–429.)

From the principles outlined in the foregoing excerpts, we have come to the conclusion, that the judgment of the court below should be reversed with costs against the appellees; and it is hereby so ordered.

Reversed.

MR. CHIEF JUSTICE GRIMES dissenting.

Whenever application is made to have a will probated, the issue presented for the consideration of the court is: Did the testator indeed make a last will and testament while of sound mind and disposing memory? The ev-

idence adduced in support of this simple issue must prove to the satisfaction of the court having authority to admit said will to probate that said will was duly signed by the testator himself, or by some other person upon his authority, and that two or more competent persons witnessed his signature, or his acknowledgment of his signature either signed by himself or by someone else delegated by him to so do. They should all be present at the time of his having signed or having acknowledged or adopted said signature, and in his presence and in the presence of each other should sign their names as attesting witnesses.

This is a succinct statement of the law as I have paraphrased it from 2 Greenleaf on *Evidence,* sections 673, 674 and 676; 3 Washburn on *Real Property,* sections 2423, 2424, 2425; 40 *Cyc.* 1101–1109; and *Brown* v. *Brown,* 1 L.L.R. 14–15 (1861).

In order to better clarify the point, and obviate any complaint that the digest of the law above made is my own *ipse dixit,* I will now proceed to quote as follows:

First from Greenleaf:

> "Nor is it deemed necessary that the witnesses should *actually see* the testator sign his name. The statute does not in terms require this, but only directs that the *will* be 'attested and subscribed in the presence of the testator by three or four credible witnesses.' They are witnesses of the entire transaction; and therefore it is held that an acknowledgment of the instrument, by the testator, in the presence of the witnesses whom he requests to attest it, will suffice; and that this acknowledgment need not be made simultaneously to all the witnesses, but is sufficient if made separately to each one, and at different times. Nor is it necessary that the acknowledgment be made in express terms; it may be implied from circumstances, such as requesting the persons to sign their names as witnesses. But in such cases, it must appear that the instrument

had previously been signed by the testator." 2 Greenleaf, Evidence § 676.

Now from Washburn:

"The witnesses to a will are, in the theory of the law, placed around the testator when executing it, as judges of his capacity to make it; and when called to testify in respect to this capacity, they are, unlike all other witnesses who do not come within the class of 'experts,' at liberty to express an opinion upon the subject, which is to be taken as competent though not conclusive evidence by the court or jury.

". . . It is not necessary for the witness to see the testator sign, if he requests the witness to attest it, and he does so in the testator's presence. But it does not matter upon what part of the instrument the witnesses subscribe their names, nor need they sign in each other's presence: if done in that of the testator, it is sufficient. The attestation clause appended to a will is no part of the instrument; nor is it important that it should recite the details of its execution, though useful, if the witness is dead, to show why he subscribed it. It may be by mark, instead of writing the name. It will be sufficient if there are three genuine names attested to the will, although none of the witnesses recollects the act of signing his name. But it is essential that the attestation should be made *after* the testator has signed the will. It will not be sufficient that the witness subscribes his name first, though the testator knows and intends to adopt his signature as an attestation. But if the court are [sic] satisfied that the testator's signature was upon the paper when he asked the witnesses to attest it, though they did not see the signature, nor see him sign it, it will be sufficient." 3 Washburn, Real Property (6th ed., 1902) §§ 2423, 2424.

Lastly from *Cyc.:*

"The signature is not rendered invalid by the fact that another guided the hand of the testator when he

signed the will. Such act is the testator's own, performed with the assistance of another, and not the act of another done under the authority of the testator; and in order to uphold the validity of such signature it is not necessary that an express request for the assistance be given. It may be inferred from the circumstances of the case.

". . . The signing of a will in an assumed or fictitious name has been held sufficient if the testator intended it as his signature.

". . . Where the statute relating to signing requires no more than the statute of frauds—merely that the will shall be in writing and be signed, it is immaterial where the testator's signature was placed, if it was placed there with the intention of authenticating the instrument. It is essential, however, that the signature, whatever its local position, must have been made with the design of authenticating the instrument and that he should have contemplated no further signing.

". . . The statutes of England and of some of the United States provide that a will shall be signed or subscribed at the end thereof. These statutory requirements have been emphatically indorsed and approved by the courts as a wholesome safeguard against fraud, not to be frittered away by lax interpretation or by the ingrafting of exceptions, and are construed by endeavoring to ascertain the intention of the legislature, rather than the intention of the testator. . . .

". . . A signature imperfect or illegible may be valid as testator's mark where there is no doubt of testamentary intent, but not where he intends to complete the signature and is prevented from doing so." 40 Cyc. 1104, pars. d, e, f.

These principles so incorporated in the common law are based upon the provisions of the statute 29 Car. II, c. 3, p. 5; but note, our Supreme Court, in the case *Brown*

v. *Brown,* decided in January 1861, and reported 1 L.L.R. 4, adopted the more modern rule laid down in I Vict. c. 26, pp. 9, which requires but two competent witnesses.

In my opinion all of the requisites necessary to make the will valid and probatable were met in full, even to the testimony of three rather than two, attesting witnesses to whose testimony I shall have cause to more specifically refer later on. But I wish first of all to connect what has preceded with this most important principle I shall now proceed to cite—that a will having been once proved may only be rebutted, to quote the language of Mr. Greenleaf, by evidence that:

> ". . . it was obtained by *fraud and imposition* practised upon the testator; or, by *duress;* or, that the testator was *not of competent age;* or, was a *feme covert;* or, was *not of sound and disposing mind and memory;* or, that it was obtained by *undue influence.* But it is said that undue influence is not that which is obtained by modest persuasion, or by arguments addressed to the understanding, or by mere appeals to the affections; it must be an influence obtained either by flattery, excessive importunity, or threats, or in some other mode by which a dominion is acquired over the will of the testator, destroying his free agency, and constraining him to do, against his free will, what he is unable to refuse." 2 Greenleaf, Evidence, § 688.

The first anomaly that strikes one upon reading the record in this case is that, when the will was offered for probate, the trial court, instead of first hearing the attesting witnesses thereto, heard first witnesses called to impeach same, the gist of whose testimony, taken en bloc, was that the signature of said will did not appear to them to correspond with undoubted writings of testator's which they produced, written when he was well and about his usual business in Cape Palmas; while, on the other hand, the evidence is clear beyond any doubt that the will was

signed and attested but three days before his death in Monrovia where he had been resident for some time suffering from an illness that appears to have been rather protracted. For example, Miss Selena Langley, one of the attesting witnesses, testifying on this point stated that when Mr. Samuel Watkins arrived in Monrovia on November 28th, 1933, three days before the death of said testator, news of testator's death had already been circulated in Cape Palmas before he, said Watkins, had left said port for Monrovia. (See page 8 of record.) And the witness Watkins himself testifying as recorded on page 5, said that testator had been ill even before he had left Cape Palmas.

Two, and two only, of the witnesses who testified for contestants now appellants, appear to me to have had any correct appreciation of the conditions that actually existed when said will was executed. These were one Frederick Frey and one Henry Renken. The former testifying on page 1 of the record was requested to compare the will under contest with sundry other undoubted writings of testator's, and state whether or not the signature on the will appeared to him genuine. After comparison he said *inter alia:*

> "One is his usual signature; on the other one the complete name as written appears to have been written by someone who was sick; there is no hesitation in the usual signature, S. W. Perry,—one can see that the man's hand was trembling when he wrote that; viz.: the signature on the will."

He was asked on cross-examination whether he could swear that the signature on the will was not that of the late Samuel W. Perry; and he answered that he could not swear that it was not his.

The other witness, Mr. Renken, testifying on direct examination, said he had known the deceased, Samuel W. Perry, when Collector of Customs at Cape Palmas, and had had official and other relations with him, at which

time he became acquainted with his signature. On cross-examination he said that that was the first time (on the will) that he had seen testator's name written out in full; that it looked as if Mr. Perry was very ill when he signed it; and that he could not swear that testator did not sign said will.

Each of the three attesting witnesses, on the other hand, testified most unequivocally that they, being present together, were asked by the late Samuel W. Perry to sign the document which, exhibited to them at the trial, they recognized as his last will and testament, and which they, and each of them, testified that in his presence, and in the presence of each other they had signed as attesting witnesses.

Said testimony of the attesting witnesses was not impeached. An effort made to discredit one of them, in my opinion, miserably failed. But even supposing contestants had succeeded in discrediting one of the attesting witnesses, even then the unimpeached testimony of two subscribing witnesses in support of the will, in my opinion backed by that of this Court in the case *Brown* v. *Brown* above cited, would have been sufficient to admit said will to probate.

Nevertheless an issue so simple and so clearly proven appears to me to have been so distorted and embedded in irrelevant matter during the trial in the court below that when the record was read in this Court it required not a little skill and patience to dig through the rubbish thus piled upon the kernel down to the pith of this controversy; and that was the second anomaly that this case presents.

However, I am happy to be able to say that it does not appear to me that my learned colleagues, with whom I find my views at variance in this case, have been oblivious to the principles of law above cited, but have rather been much more influenced by that part of appellants' contention based on an adjudicated case on the law of homestead,—that of *Wiles* v. *Wiles,* decided in

1904 and reported on page 423 of volume 1 of the *Liberian Law Reports;* but the conclusions therein reached are based on premises so patently unsound that in my opinion said decision of this Court should long ago have been recalled.

Let us now take time to examine said case more carefully, and see upon what erroneous premises it is based.

The legislative enactment, upon which said decision was based, was passed and approved January 4, 1889. It provides that:

> ". . . from and after the passage of this Act, all Householders and heads of families owning real estates, shall have so much of that real estate, exempt from the writs of their Creditors; that is to say, One Town lot or one acre of farm land upon which the House is situated with all the appurtenances and outdwellings of the same, which exemption shall . . . *last as long as any of the heirs of the family so occupying it shall live.*" (L. 1888–89, p. 10.) (Italics added by the Court.)

The Court so construed this enactment as to make the heirs of the homesteader coparceners with the original holder in fee simple, or other estate. This leads us to the further inquiry, what is an estate in coparcenary?

> "An estate held in *coparcenary* is where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law or by particular custom. By common law: as where a person seised in fee simple or in fee tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, female cousins, or their representatives; in this case they shall all inherit, as will be more fully shown when we treat of descents hereafter; and these co-heirs are then called *coparceners,* or for brevity, *parceners* only; though in some points of view the law considers them as together making only one heir. Parceners by particular custom are where lands descend, as in

gavelkind, to all the *males* in equal degree, as sons, brothers, uncles, etc.

"An estate in coparcenary resembles, in some respects, that in joint-tenancy, there being the same unity of title and similarity of interest. But in the following respects they materially differ:—1. Parceners always claim by *descent,* whereas joint-tenants always claim by *the act of parties.* Therefore, if two sisters purchase lands, to hold to them and their heirs, they are not parceners, but joint-tenants; and hence it likewise follows, that no lands can be held in coparcenary but estates of inheritance, which are of a descendible nature; whereas not only estates in fee and in tail, but for life or years, may be held in joint-tenancy." I Stephen's Commentaries (12th ed., 1895) 335–336.

Thus it will be seen that an estate in coparcenary presupposes two essential requisites: (1) It must be created by descent; and (2) It must consist of three unities, viz.: unity of title, possession, and interest. According to 38 *Cyc.* 5,

"An estate in coparcenary is an estate acquired by two or more persons, usually females, by descent from the same ancestor; parceners or coparceners being defined as 'several persons taking lands, or any undivided share of lands held for an estate of inheritance by descent,' all the coparceners, whatever their number, constituting but one heir and having but one estate among them. The estate arose according to the course of common law in the case of descent of realty to female heirs, and according to particular custom, as for instance the gavelkind custom of the county of Kent, to male heirs, being in the latter instance an exception to the rule of primogeniture. The estate resembles joint tenancy more closely than tenancy in common, having the same three unities of title, possession, and interest as the former, and in addition generally the unity of time. But there is no survivor-

ship, in which respect the estate partakes more of a tenancy in common. The estate never arose by purchase, but only by descent, therein differing from the other cotenancies. While joint tenancies refer to persons, coparcenary refers to the estate, their right of possession is in common, each may alien her share and the alienees will hold as tenants in common; their respective shares descend severally to their respective heirs."

To take but one example in a homestead exemption there is no unity of title; for the title must have previously vested in the homesteader, and his notice of exemption neither divested him thereof nor was it capable of antedating that of the beneficiaries to the time when title originally vested in him. And it appears to me clear that to destroy any one of these unities would as effectually defeat an estate in coparcenary as would a quadrilateral of equal sides fail to be any longer a square if any angle in the figure were not also rectangular. Were this a mathematical problem I would now write *quod erat demonstrandum,* and my task would be ended. But, inasmuch as it is a legal and not a mathematical problem, I am compelled, even at the risk of being considered rather prolix, to continue my examination of the principles a little further so as to be the better able to elucidate the fallacies in the decision I am now endeavoring to expose.

But, before proceeding further, I must digress for a moment to point out that supposing a property homesteaded did in fact become an estate in coparcenary, is there anything in the decision of this Court in the case of *Wiles* v. *Wiles* that would lead to the invalidating of the will of the late Samuel W. Perry?

The answer in my opinion is emphatically "no." It was conceded during the arguments at this bar that there was no issue of the marriage of Mr. Perry, the deceased, and Mrs. Perry, the principal devisee under the will. Nor had they any children by adoption or other minors under

their care. Contestants were not members of the household. And what is most unique is that testator and his wife, who jointly signed the notice of homestead exemption, were the only members of the family occupying the home; and admitting that the decision under consideration was correct, the part emphasized by underscoring on page 426 reads, "shall last as long as any heirs of the family so occupying it shall live." In view of the premises, what was there to prevent testator from devising said property to Lulu B. Perry as was done in clause 4 of said will, the only point upon which the objections were based, and upon which devise alone the majority opinion has invalidated said will?

But, to return to my main theme, property homesteaded does not become a new or separate estate, but is only what it professes to be, viz.: an exemption, in other words a protection from the writs of creditors, a guarantee of a permanent home for the unfortunate householder who has fallen upon evil times, and a shelter for his wife and children. The object of the lawmakers was obviously to prevent them, because of any adverse circumstances which had overtaken them, from being turned out of doors and thrown upon the street; hence, a prerequisite to the property's being homesteaded was that whether town lot or an acre of farm land, that portion of land so exempted must have a house thereon.

> "The policy which dictates provision for the support of the family immediately after the death of its natural provider and protector also requires the homestead to be secured to the surviving husband, widow and minor children. Since there is no such provision at common law, the homestead rights exist only as provided in the constitution or statutes of the States. The obvious intent of homestead laws is no less to secure a home and shelter to the family, when bereft of its father or mother, beyond the reach of financial

misfortune, which even the most prudent and sagacious cannot always avoid, than to protect citizens and their families from the miseries and dangers of destitution by protecting the wife and children against the neglect and improvidence of the father and husband. The homestead exemption would be divested of its most essential and characteristic feature, if by and upon the death of the head of the family, it should be withdrawn from the widow and children; hence nearly all the statutes upon this subject provide for its continuance to the surviving constituents of the family. It has been held that the exemption is not to the debtor, as such, but to the head of a family. The Subject of the protection is the family,—the head of the family being referred to as its representative. It would be an unreasonable and unnatural conclusion to hold that this provision was not intended for the security of families deprived of their natural protector. That the head of the family must be the debtor, in order to secure such protection, is neither within the letter nor within the spirit in the United States of America where Homestead Exemption originated."

My last point it that one can hardly read the decision in the case *Wiles* v. *Wiles* without reaching the conclusion that said decision tends to create an estate in perpetuity. For example the opinion on page 426 reads *inter alia,* that same "appears to be not only for the purpose that the head of the family shall have secured unto him an unassailable estate, but also that the wife and children, forming a part of said family, shall likewise take an estate therein, which cannot be set aside or destroyed, either by their own acts or by the acts of him who first held an absolute fee therein, or by the claims of third parties against any of the tenants thereto." The effect of this is to create by interpretation what the law

prohibits a feoffor or devisor himself to create with his property either by testament after his death, or by deed during his lifetime.

The question next arising is what is the rule against an estate in perpetuity?

> "This rule operates to prevent the undue postponement of the vesting of future interests, while certain subsidiary rules are recognized by the courts and enforced as a means of preventing the unreasonable accumulation of property, the imposition of unreasonable restraints on alienation, and to prevent undue restrictions on the enjoyment of property. . . . By reason of the rule against perpetuities and these related rules the efforts of the owner of property to alienate it may prove abortive because he has inserted illegal conditions concerning the time when his gift is to take effect in the future, or because he has tried to impose illegal restrictions on the future disposition of the property by the recipient. . . .
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> ". . . The rule against perpetuities is usually stated as prohibiting the creation of future interests or estates which by possibility may not become vested within a life or lives in being and twenty-one years, together with the period of gestation when the inclusion of the latter is necessary to cover cases of posthumous birth. Less accurately the period is sometimes stated as being one which covers a life or lives in being and twenty-one years and ten months or nine months thereafter, on the theory that the period of gestation is necessarily covered by the words 'within a life or lives in being,' and that a child en ventre sa mere is a life in being. Still another method of stating the rule is by describing it as prohibiting future interests which may not vest within twenty-one years after some life in being at the testator's death or the execution of the instrument creating the future interests." 21 R.C.L. 281–2, §§ 1, 2.

The writer proceeds further to point out that said rule against perpetuities

> "may perhaps best be defined as a grant of property in which the vesting of future interests may be postponed beyond the period of time allowed by law for the creation of future estates, and in which the future grant cannot be destroyed by those having the immediate estate without the concurrence of those entitled to the future grant. Another definition is that a perpetuity is a limitation which takes property subject to it out of trade and commerce for a longer period of time than a life or lives in being and twenty-one years thereafter, and when necessary the period of gestation. The artificial use of the word has been explained by saying that such grants of property are called perpetuities, not because the grant as written would actually make them perpetual, but because they transgress the limits which the law has set in restraint of grants that tend to a perpetual suspense of the title, or of its vesting." *Id.*, at p. 287, § 9.

It appears to me that the opinion of the majority of my brethren of this Bench just read has ignored the principles of law I have herein endeavored to explain; hence, I have withheld my signature from their judgment invalidating the will under consideration, and have with the utmost satisfaction prepared and filed these my reasons for dissenting from their opinion.