DAVID F. ROBERTS and NORA ROBERTS, Executors of the Estate of the Late SANDY S. ROBERTS, Appellants, *v.* ANNIE M. ROBERTS, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Argued January 19, 1942. Decided February 6, 1942.

1. In all cases of contested wills, the objections and all other issues of whatever nature should, under the statute, be sent to the Court of Quarter Sessions [now Circuit] to be tried by a jury upon its merits, and by it either rejected, set aside, quashed, or approved.
2. Every statute must be construed with reference to the object intended to be accomplished by it.

The Commissioner of Probate heard and disposed of a case involving objections to the probate of a will. On appeal *judgment reversed and case remanded* with instructions to forward same to the circuit court for a jury trial.

B. G. Freeman for appellants. *W. O. D. Bright* for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.*

Once more we find His Honor the Chief Justice differing with us and consequently dissenting from us radically on the statute relating to wills, as he did in the case of *Jones* v. *Dennis,* May 5, 1939. [ED NOTE: Case missing.]

This time it is in the case of David Roberts and Nora Roberts, executor and executrix of the estate of the late

* Mr. Justice Barclay having been counsellor for appellee prior to his elevation to the Bench recused himself.

Sandy S. Roberts, appellants, against Annie M. Roberts, widow of the late Sandy S. Roberts, appellee, involving objections to the probate of the last will and testament of the late Sandy S. Roberts.

So confident is our esteemed colleague, His Honor the Chief Justice who dissents, of the legal correctness of his opinion of the issue involved in this case that he has predicted that within the next ten years his minority opinion will have become the majority opinion of this Court.

In turn, we the majority members of the Bench are so unquestionably certain of the legal correctness of our majority opinion of the issue that no prediction by us is necessary, for ours is already the opinion of the Court, and we are of the opinion that it will so remain as long as the present statute remains the law of the land controlling contested wills and the rules for construing statutes continue to be what they are.

Appellants in this case complain in their bill of exceptions that His Honor the Commissioner of Probate illegally heard and disposed of the issues raised in the objections to the probate of the last will and testament of the late Sandy S. Roberts and illegally set aside the will and placed the estate in the hands of the curator; so now we are to consider whether the said commissioner was legally authorized to dispose of the objections and to set said will aside or even to sustain it.

It first becomes our duty here to reiterate with emphasis what we said in the case *Jones* v. *Dennis,* decided May 5, 1939:

> "The majority of us are of opinion that in all cases of Contested Wills, the objections and all other issues of whatever nature should, under Statute, be submitted to a Jury to be decided by them; and that a Judge cannot decide issues raised in objections to the Probation of a Will under our Statute without a Jury, for the Statute makes the trial of Contested Wills a singular procedure, extra from all other legal trials.

"'[A]nd said probate court shall cause the probate of any will, or testamentary paper that shall possess the features of one;—shall have a record of wills proven in that court. Contested Wills shall be sent to the Court of Quarter Sessions to be tried by jury, upon its merits, and by them either rejected, set aside, or quashed, or approved; and if rejected, the same may be removed by appeal to the Supreme Court on petition made by any person aggrieved, according to the laws which relate to appeals; and if found valid, shall be sent back to the probate court to be placed on its records. Said court shall grant letters of administration, and shall have all the power necessary to settle estates; and to do all other matters and things of a court of probate.' [Stat. of Liberia, Old Blue Book, 117, Art. II, § 1.]"

It is also our duty to elaborate now upon what was laid down then by developing further legal syllogisms. For this reason we quote again the relevant portion of the statute above:

"Contested wills shall be sent to the Court of Quarter Sessions [now Circuit Court] to be tried by jury, upon its merits, and by them either rejected, set aside, or quashed, or approved. . . ." *Ibid.*

In the first place, here is a statute which regulates how objections to wills shall be disposed of and, in plain and unequivocal language without ambiguity or obscureness, mandatorily declares how the proceedings shall be conducted, that is, by a jury, and by them, says the statute, meaning by them alone, it may be either rejected, set aside, quashed, or approved. How, then, can a judge, a commissioner of probate, or any other officer of court set aside, quash, approve or reject a contested will? From whence does he derive his authority?

Speaking of the rules for construing statutes, it is well-established that where the lawmaking power distinctly states its design, no place is left for construction.

"Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended. For the purpose of determining the meaning, although not the validity, of a statute, recourse may be had to considerations of public policy, and to the established policy of the legislature as disclosed by a general course of legislation. *Ordinarily where the law-making power distinctly states its design, no place is left for construction. . . .*" 36 Cyc. of Law & Proc. *Statutes* 1110–11 (1910). (Emphasis added.)

Our premises are further bulwarked by the following:

"In the interpretation of statutes words in common use are to be construed in their natural, plain, and ordinary signification. It is a very well-settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy; and it is the plain duty of the court to give it force and effect." *Id.* at 1114–15.

What we have not been able to reconcile is how the Commissioner of Probate could, with the plain statute before him together with the opinion of this Court in the case *Jones* v. *Dennis* partially quoted in a previous part of this opinion, assume to decide the objections, set aside the will, and hand the estate over to the Curator of Intestate Estates without the intervention of a jury as the statute requires.

The statute being plain in its language and the law unambiguous, there is nothing left for construction. It is the duty of the court to enforce the statute, as the court has no authority to change, amend, or revise it.

His Honor the Chief Justice in his dissenting opinion endeavors to read into this special statute of the Legislature relating to wills the principle of the general statute governing trials; but we are of the opinion that this is not the rule for construing statutes and is therefore inadmissible where a general and a special statute conflict.

In this country we have had for decades a general statute wherein it is laid down that:

"1. The trial of all questions of mere law shall be by the court.

"2. The trial of all questions of mere fact, shall be by a jury, if required by either party, and the value of the matter in dispute exceed twenty dollars. . . .

"3. The trial of all mixed questions of law and fact, shall be by jury, with the assistance, and under the direction of the court. . . ." Stat. of Lib. (Old Blue Book) ch. VII, §§ 1–3, 2 Hub. 1542.

But the Legislature also enacted a statute especially to control the probate of wills, and that statute requires all contested wills to be sent forward to the circuit court to be tried by jury and vests it and it alone with the authority, power, and privilege to set aside, quash, approve, or reject a will. In such a case, the general statute cannot affect the special statute in relation to the probate of wills and, to all intents and purposes, cannot be consulted to affect the plain and mandatory provision of the special statute.

> "All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it. They are therefore to be construed as a part of a general and uniform system of jurisprudence, and their meaning and effect is to be determined in connection, not only with the common law and the constitution, but also in connection with other statutes on the same subject, and, under certain circumstances, with statutes on cognate

and even different subjects. This rule of construction, however, so far as prior statutes are concerned, is to be restricted to cases where the statute in question is really doubtful; if the statute is clear on its face, prior statutes may not be consulted to create an ambiguity. In the construction of private statutes the rule is more restricted, and resort may not be had to any other private act not relating to the same parties and the same subject-matter. Where two statutes are in apparent conflict, they should be so construed, if reasonably possible, as to allow both to stand and to give force and effect to each. So the meaning of doubtful words in one statute may be determined by reference to another in which the same words have been used in a more obvious sense; although it does not necessarily follow that the words have the same meaning in the two statutes, as they may have been used in entirely different senses. If it is not possible to reconcile inconsistent statutes, the dates of their enactment will be examined in determining the legislative intent, and effect given to the later one." 36 Cyc. of Law & Proc. *Statutes* 1146–47 (1910).

We are more pertinently and pointedly borne out in this, our contention, by the following from the same authority:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be con-

strued as remaining an exception to its terms, unless it is repealed in express words or by necessary implication." *Id.* 1151–52.

In this case the special statute deals with the trial and conduct of proceedings of probate matters and contested wills only. Its provisions therefore take precedence and are the sole law to control such matters.

If the position taken by the Commissioner of Probate now concurred in by His Honor the Chief Justice, who is dissenting from us, be correct, then the trial of all causes in equity and in admiralty would have to be governed by the same principles of the statute on trials, and all questions of mere fact would have to be decided necessarily by a jury; but this is not the case, since the statute and other laws specially relating to these special forms of trial allow the court ordinarily to be judge of the law and of the facts. The statute on trials which requires the trial of all questions of mere fact to be decided by a jury is inapplicable in these classes of cases, and thus the court decides questions of both law and of fact. This is not considered absurd or inconsistent with the general statute regulating trials for the obvious reason that these are special proceedings, different, separate, and distinct from the general rule of trials. In cases of contested wills, which are also special proceedings, different, separate, and distinct treatment is required: the trial of objections, whether on questions of law or of fact, is entirely with the jury. We fail to see by what reasoning any court can legally or consistently consider it absurd when it is the will and intention of the law-makers that it should be so, as evidenced by the plain terms of their enactments.

There is a difference between this cause and the Maria Dennis will case, 6 L.L.R. 220 (1938), for in that case the circuit court disposed of the objections; but in this case the objections were not even sent forward to the circuit court. The objections were heard and the will was set aside by the Probate Commissioner, contrary to the express language

of the statute and an adjudicated case decided by this Court.

The Commissioner of Probate seemed to have overlooked the fact that another rule for construing statutes is that when a statute directs a thing to be done in one way or by one officer or tribunal, or when it mentions one thing, it implies the exclusion of another thing; hence the doctrine in the construction of statutes, *expressio unius est exclusio alterius,* and I quote from *Ruling Case Law:*

> "It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; expressio unius est exclusio alterius. The affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases. The enumeration of certain powers in a statute relating to corporations implies the exclusion of all others not fairly incidental to those enumerated. Enumeration in a charter of incorporation of the purposes for which the corporation may acquire title to real estate is necessarily exclusive of all other purposes. A statute directing a thing to be done by a specified officer or tribunal implies that it shall not be done by a different officer or tribunal. A statute that directs a thing to be done in a particular manner ordinarily implies that it shall not be done otherwise. Thus, an act providing a mode by which a county could incur liability on subscription to the stock of a railroad company and a mode of discharging that liability was held to exclude all other modes. It is a general principle that where a statute creates a right and prescribes a particular remedy, that remedy, and none other, can be resorted to." 25 R.C.L. *Statutes* § 229, at 981–82 (1919).

Our distinguished colleague, who dissents from us and upholds the position taken by the Commissioner of Probate, premises that had the Legislature adopted the Re-

vised Statutes as they were written, instead of with the qualifying phrase "except . . . where they affect the original unrepealed Acts of the Legislature and Statutes upon which they were revised," the Commissioner's position would have been correct. L. 1929, ch. VII, §§ 1, 2. Our colleague goes on to quote the Revised Statutes on this point *in extenso*. But the fact remains that the Legislature did not adopt the Revised Statutes as they were written, but wrote into the Act approving them the qualifying clause just mentioned. For a clearer understanding of the position, I recite the Act of 1929 approving the Revised Statutes:

> "Section 1. That from and after the passage of this Act, Volumes 1. and 2 of the Revised Statutes of the Republic of Liberia be and they are hereby adopted and legalized as the Statute Laws of this Republic to all intents and purposes, except in such parts thereof where they affect the original unrepealed Acts of the Legislature and Statutes upon which they were revised.
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> "Section 2. This Act shall take effect immediately. . . ." *Ibid.*

The Revised Statute on the question of contested wills provides as follows:

> "If a will offered for probate should be contested and such contest should involve questions of fact, the will shall be sent to the Court of Common Pleas (37) where the questions of fact shall be tried by a jury. If the will should be rejected by the jury, an appeal may be taken from the judgment of the Court of Common Pleas setting aside the will to the Supreme Court. If the will should finally be held to be valid, it shall be sent back to the Probate Court to be there disposed of under the law and rules of said Court relating to the probate of wills." 2 Rev. Stat. § 1272.

These provisions of the Revised Statutes with reference to contested wills are inconsistent with the original statute, and the Legislature in adopting said Revised

Statutes expressly provided that where they conflict with the original statute the provisions of the original statute shall be the criteria; consequently, it is perfectly clear that the Legislature intended all contested wills to go to a jury to be by it disposed of.

We, the majority of the Court, think it expedient to enunciate another rule relative to the construction of statutes, which rule is upheld by the law writers, and it is this: courts in construing statutes should avoid trying to make judicial legislation as it is not within their province of power to do so and, no matter what a court or a judge thereof may feel or think the law should be, he cannot write his ideas and wishes, however eminent they may be, into a statute contrary to the plain words, intent, and meaning of the Legislature.

> "The courts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the legislature. They cannot read into a statute something that is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. If the true construction will be followed with harsh consequences, it cannot influence the courts in administering the law. The responsibility for the justice or wisdom of legislation rests with the legislature, and it is the province of the courts to construe, not to make, the laws. There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject matter, and the purposes of those framing them, find out their true meaning, and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate and recognized rule of construction, while the latter is judicial legislation, for-

bidden by the constitutional provisions distributing the powers of government among three departments, the legislative, the executive and the judicial. A court will not declare a usurious contract of loan utterly void where the statute merely prescribes a loss of interest or other penalty for violation of the statute; the court cannot add to the penalties declared by the law. The priority given by act of Congress to claims by the United States against the estates of insolvent debtors cannot be made by judicial legislation to yield to the claims of any other creditors, however high may be the dignity of their debts." 25 R.C.L. *Statutes* § 218, at 963–64 (1919).

And further the law is:

"As a general rule, where the legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and it is not the province of a court to introduce an exception by construction. And it is an invariable rule that an exception cannot be created by construction where none is necessary to effectuate the legislative intention. The power to create exceptions by construction can never be exercised where the words of the statute are free from ambiguity and its purpose plain. It is only where the necessity is imperious, and where absurd or manifestly unjust consequences would otherwise certainly result, that the courts may recognize exceptions. The courts have no dispensing power over statutes. Where statutes contain no exceptions, and it cannot be said with certainty that exceptions were contemplated by the legislature, the courts can recognize none. If statutes are too rigid in their provisions, the remedy is with the legislature. . . .

. . . . .

"The intention of the legislature must primarily be determined from the language employed, and ordi-

narily the courts have no right to insert words and phrases so as to incorporate in a statute a new and distinct provision. The courts cannot by construction supply a casus omissus by giving force and effect to the language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the minds of the legislature at the time of the enactment of the law. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have provided for specifically, justify any judicial addition to the language of the statute. It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases because no good reason can be assigned why they were excluded from its provisions. In a case in which the court was called upon to construe a federal statute in which the words 'lands claimed under any foreign grant or title' occurred, it was contended that the word 'lawfully' should be placed before 'claimed,' but the court said there is no authority to import a word into a statute in order to change its meaning. The courts have frequently adverted to the fact that if the legislature had intended to accomplish a particular end it would have been a very simple matter for it to have employed appropriate language to express its intention; 'it would,' it has sometimes been said, 'have been easy to say so.' " *Id.* §§ 224–25, at 972–74.

The original statute regulating the handling of contested wills and conferring jurisdiction on the Court of Monthly Sessions and Probate in certain cases further provides that the judge thereof, which it calls a "Chairman," shall have original jurisdiction and shall be competent to judge both the law and the facts in such cases; but when contested wills are the subject of adjudication, the same statute outlines a different mode of procedure, thereby obviating any doubt as to the legislators' intention

to have all contested wills tried by a jury and by it rejected, set aside, quashed, or approved.

We quote the relevant portion of the statute which segment, when its two parts are taken together, reveals the intention of the law makers:

> "The Courts of Monthly Sessions now established in each of the counties of this Republic, shall henceforth be composed of a Chairman and two Justices of the Peace; and shall have original jurisdiction in all cases of debt of more than thirty dollars, and not more than two hundred dollars, in all cases of misdemeanor equal to petit larceny, in all actions of trespass, trover, slander, detinue, ejectment, &c, where the amount in litigation is not more than $20, nor less than $10; all infractions of the peace where the fine is more [*sic*] than $10, and not less [*sic*] than $20, and shall be competent to judge both the law and the facts in such cases. Said courts shall have inquisitional power to judicially examine all cases of criminals committed by Justices of the Peace, examining the evidence only on the side of the State; in all cases where the evidence is not sufficient to put the person accused on his trial, may discharge the suspected person, and where evidence appears, may allow the suspected party to give good and sufficient security for his or her appearance at the Court of Quarter Sessions, to abide his or her trial. Said court shall have power to punish for contempt in a fine of not more than twenty dollars, and imprisonment during its sitting, and shall further have the management and care of the estates of orphans not otherwise provided for; and shall be a court of probate; and said probate court shall cause the probate of any will, or testamentary paper that shall possess the features of one;—shall have a record of wills proven in that court. Contested wills shall be sent to the Court of Quarter Sessions to be tried by jury, upon its merits, and by them either rejected, set

aside, or quashed, or approved; and if rejected, the same may be removed by appeal to the Supreme Court on petition made by any person aggrieved, according to the laws which relate to appeals; and if found valid, shall be sent back to the probate court to be placed on its records. Said court shall grant letters of administration and shall have all the power necessary to settle estates; and to do all other matters and things of a court of probate." Stat. of Lib. (Old Blue Book) 117, art. II, § 1.

This being the case it is the simple duty of the court to give effect to the statutes without conjecture.

"The intention and meaning of the legislature must primarily be determined from the language of the statute itself, and not from conjectures aliunde. When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. This principle is to be adhered to notwithstanding the fact that the court may be convinced by extraneous circumstances that the legislature intended to enact something very different from that which it did enact. The current of authority at the present day is in favor of reading statutes according to the natural and most obvious import of the language without resorting to subtle and forced constructions for the purpose of either limiting or extending their operation. If the words of the act are plain and the legislative purpose manifest, a contrary conception of it, however produced, cannot legitimately be permitted to create an obscurity to be cleared up by construction, influenced by the history of the legislative labors which constructed the law. No motive, purpose, or intent can be imputed to the legislature in the enactment of a law other than such as are apparent upon the face and

to be gathered from the terms of the law itself. A secret intention of the lawmaking body cannot be legally interpreted into a statute which is plain and unambiguous, and which does not express or imply it. Seeking hidden meanings at variance with the language used is a perilous undertaking which is quite as apt to lead to an amendment of a law by judicial construction as it is to arrive at the actual thought in the legislative mind. It has been said that where an ambiguity exists, whether because of an uncertainty as to the meaning of the words employed, or because of an apparent conflict with other statutes, or between the statute and the construction, then, and then only, are the courts permitted to look beyond the words of the particular statute to discover the legislative intent." 25 R.C.L. *Statutes* § 217, at 961–63 (1919).

"It is a general principle, which is embodied in the maxim ut res magis valeat quam pereat, that the courts should, if reasonably possible, so construe a statute as to give it effect. When an act is equally susceptible of two constructions, one of which will maintain and the other destroy it, the courts will always adopt the former. A construction which gives some meaning to the statute, or to an obscure part or clause, will be preferred to one which renders it entirely nugatory and meaningless. No construction of a statute creating a court to take jurisdiction of crimes should be adopted, if another equally admissible can be given, which would result in there being an indefinite period during which crimes committed after the passage of the act could not be punished. . . ." *Id.* § 242, at 999–1000.

"The maxim ut res magis valeat, quam pereat, requires not merely that a statute shall be given effect as a whole, but that effect shall be given to each of its express provisions. It is a cardinal rule of statutory construction that significance and effect shall, if pos-

> sible, be accorded to every section, clause, word or part of the act. In applying the rule it frequently occurs that a particular construction of a provision which the court is urged to adopt cannot be sanctioned, because, according to the view suggested, certain other provisions would thereby be rendered unnecessary, and it should not be presumed that any provision is redundant or useless. . . ." *Id.* § 246, at 1004–05.

Because of the legal premises hereinbefore laid down, we fail to see how the Commissioner of Probate arrived at his conclusion or from whence he acquired jurisdiction to decide objections to and to set aside the said will, either from a legal, moral, or logical point of view, with the existing statute.

We are therefore of the opinion that the action of the Commissioner of Probate in this respect was void *ab initio,* his ruling *ultra vires,* and that same should be reversed and the case remanded with instructions that the objections and all other pleadings be ordered sent forward to the Circuit Court for the First Judicial Circuit to be tried by a jury and by them either rejected, set aside, quashed, or approved; costs to abide the final determination of the case. And it is so ordered.

Reversed.

MR. CHIEF JUSTICE GRIMES dissenting:

On March 14, 1940, His Honor N. H. Gibson, Commissioner of Probate for Montserrado County, after having considered the objections filed by Annie M. Roberts, the widow, against the probate of the last will and testament of her deceased husband, Sandy S. Roberts, and the answer and other pleadings subsequent thereto, decided that the said will be set aside because the provision therein made for the widow's dower, being less than one-third of the real and personal property of deceased, was less than the quantum of dower prescribed by law, and that the

estate of deceased should be administered by the Curator of Intestate Estates for Montserrado County.

This appeal attacks the authority of the judge to render said judgment, contending that in every case of a contested will, even though issues raised be purely questions of law, said will should be sent to the circuit court of the county for trial by a jury, and it is upon that issue that this Bench is now divided, laying upon me the necessity of once again filing a minority opinion on that subject as I felt myself morally compelled to do on the fifth day of May, 1939, in the case of the contested will of the late Maria L. Dennis, when this same issue was pending for our consideration.

In the original setup of the probate courts of this Republic the Old Blue Book provides the following:

> "The Courts of Monthly Sessions now established in each of the counties of this Republic, shall henceforth be composed of a Chairman and two Justices of the Peace; and shall have original jurisdiction . . . [the statute here specifies certain actions] and shall be competent to judge both the law and the facts in such cases. . . . Contested wills shall be sent to the Court of Quarter Sessions to be tried by jury, upon its merits, and by them either rejected, set aside, or quashed, or approved. . . ." Stat. of Liberia (Old Blue Book) 117, art. II, § 1.

This provision containing the essential point of our divergence of views was a restatement almost word for word of section 8 of the judiciary act of our colonial days, which reads as follows:

> "Sec. 8. *Be it further Enacted*:—That the duties of the Probate Court shall be distinct from that of the Court of Pleas and Sessions, though they are performed at the same terms. It shall be the duty of the Chairman presiding at the said Probate Court to cause the probate of any will or testamentary paper that shall possess the features of one, or if contested he

shall cause the will so contested to be brought before the Court of Common Pleas, that it may be submitted to a competent jury upon its merits and by them either rejected, set aside or quashed or unanimously approved; or if rejected, the same may be removed by appeal to other tribunal on petition made by any person aggrieved, according to the laws of this commonwealth which relate to appeals." Acts of Governor and Council 1841, "Judiciary Act," § 8, p. 10; 2 Hub. 1466–67.

That the judge, chairman, or commissioner presiding over the courts of probate in this Republic has ordinarily the authority and the duty to decide all questions of law, as well as of fact, pending therein cannot be disputed, but my colleagues hold in this case as in the case of the contested will of the late Maria L. Dennis, decided by this Court by majority opinion over the dissenting opinion of the Chief Justice, in effect, that cases of contested wills are a peculiar sort of proceeding in which in any and every case, whether the issues be of law or of fact, the said issues must necessarily be sent to the court of quarter sessions, now the circuit court, for a trial by jury. [Missing case, decided May 5, 1939.]

The Legislature of Liberia adopted the Revised Statutes as they were written, with the qualifying phrase "except in such parts thereof where they affect the original unrepealed Acts of the Legislature and statutes upon which they were revised." L. 1929, ch. VII, § 1. This qualifying phrase is indicative of the modern and progressive ideas that have developed since our colonial days. Had that not been the case, the question would long ago have been settled even for those who insist upon a purely literal interpretation of laws, for the pertinent revised statute differs slightly but materially in phraseology from its counterpart in the Old Blue Book, *supra,* as will appear from the following quotation:

"If a will offered for probate should be contested

> and such contest should involve questions of fact, the will shall be sent to the Court of Common Pleas (37) where the questions of fact shall be tried by a jury. If the will should be rejected by the jury, an appeal may be taken from judgment of the Court of Common Pleas setting aside the will to the Supreme Court. If the will should finally be held to be valid, it shall be sent back to the Probate Court to be there disposed of under the law and rules of said Court relating to the probate of wills." 2 Rev. Stat. § 1272.

But it is my opinion that even without the qualifying words "should involve questions of fact" found in the Revised Statutes, confining ourselves to the text of the Old Blue Book, *supra,* the only logical construction to be placed upon said enactment is: if the will is contested only on questions of law, the judge of probate has the right and the power to decide, without the aid of a jury, the issues of law raised.

First of all let me premise that the very etymology of the word "judiciary" (*jus dicere*) indicates that the declaration, construction, or interpretation of a statute has, from time immemorial, been vested in the courts.

Blackstone in his Commentaries points out that:

> "The fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by *signs* the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. . . .
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> . . . . .
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> "Of the same nature and use is the comparison of a law with other laws, that are made by the same legislator, that have some affinity with the subject, or that expressly relate to the same point." I *Id.* *59–60 (Jones ed. 1915).

The same Legislature in prescribing a code of legal

forms and principles in the Old Blue Book, which is also a heritage of our colonial days, provided that:

"1. The trial of all questions of mere law, shall be by the court.

"2. The trial of all questions of mere fact, shall be by a jury, if required by either party, and the value of the matter in dispute exceed twenty dollars. . . .

"3. The trial of all mixed questions of law and fact, shall be by jury, with the assistance, and under the direction of the court, unless where the court could try question, if one of mere fact." Stat. of Lib. (Old Blue Book) ch. VII, §§ 1–3, 2 Hub. 1542.

Our Legislature then drafted our statutes to conform to the old legal maxim, *"Ad questiones facti non respondent judices; ad questiones legis non respondent juratores.* The judges do not answer to questions of fact; the jury do not answer to questions of law." 2 Bouvier, Law Dictionary *Maxim* 2125 (Rawle's 3d rev. 1914), citing Co. Litt. 295.

In the case *Yancy* v. *Republic,* 4 L.L.R. 205, decided by this Court on December 21, 1934, the principal point then submitted for our consideration was the construction of a statute. This Court then quoted with approval the following:

> "Ordinarily, the legislature speaks only in general terms, and for that reason it often becomes the duty of the court to construe and interpret a statute in a particular case, for the purpose of arriving at the legislative intent, and of determining whether a particular act done or omitted falls within the intended inhibition or commandment of the statute. . . ." *Id.* at 213, citing 25 R.C.L. *Statutes* § 211, at 956 (1919).

And, again:

> "'. . . It is an old and well established rule of the common law, applicable to all written instruments, that "verba intentioni non e contra, debent inservire";

> that is to say, words ought to be more subservient to the intent, and not the intent to the words. Every statute, it has been said, should be expounded, not according to the letter, but according to the meaning; for he who considers merely the letter of an instrument goes but skin deep into its meaning. Qui hærit in literâ hærit in cortice. Whenever the legislative intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. . . .'" *Id.* at 214–15, citing 25 R.C.L. *Statutes* § 222 at 968–69 (1919).

In the case *Roberts* v. *Howard,* 2 L.L.R. 226, decided by this Court on January 10, 1916, the case pending was one of ejectment and, the disputed facts having been settled by stipulations filed by the parties, the one issue left unsettled was whether a certain provision in the last will and testament of J. J. Roberts, then under construction, created a vested or a contingent remainder in one of the legatees.

The lower court, upon discovering that that was the only issue involved, *sua sponte* and over the objection of plaintiff in the court below, heard and determined the case "without the intervention of a jury," and it was upon that point that said plaintiff appealed the case to this Court, contending that this Court had repeatedly held that an action of ejectment must be tried by a jury with the assistance and under the direction of the court.

Mr. Justice Johnson, afterwards His Honor Chief Justice Johnson, speaking for this Court, then held:

"As to the first point raised in the bill of exceptions,

we are of the opinion that the court below did not err in hearing and determining the case without the intervention of a jury, as the only questions for the court to determine were issues of law, all the material facts raised in the pleadings, having been admitted by both parties. . . .

"The rule laid down in the case *Harris v. Locket* that actions of ejectment must be tried by a jury, under the direction of the court is based upon the fact that in such cases, mixed questions of law and fact are usually involved. It is obvious however that where, as in this case, the facts are admitted, leaving only issues of law to be determined, the rule will not apply. See law maxim: *'Cessante ratione legis cessat et ipsa lex.* When the reason of the law ceaseth, so does the law itself cease.'" *Id.* at 228.

That opinion was quoted by me in my dissent on this issue in the case *Jones* v. *Dennis,* 6 L.L.R. 220, involving objections to the probate of the last will and testament of Maria L. Dennis, decided February 4, 1938, with the following observations:

"And we see no difference between the correctness of the Judge's settling, in that case, without a jury, whether the remainder was vested or contingent; and his being allowed to determine in this case, also without a jury whether the devise to Maria L. Simon afterwards Maria L. Dennis was a devise in fee simple or in fee tail. Hence, in our opinion the trial judge was correct in alone deciding that question as a pure issue of law." (Portion of opinion apparently missing.)

The opinion then expressed I hereby reiterate and affirm, believing still in the correctness of the views then enunciated that no legislator ever contemplated such an absurdity as submitting to the determination of a jury questions involving dower, uses, trusts, remainders, reversions, entails, or tenures which arise as frequently in

contested wills as do matters of pedigree or other family relationships, the identity of individuals mentioned in a will, or other facts legitimately within the province of a jury to decide.

It is my carefully considered opinion that His Honor the Commissioner of Probate was quite correct in refusing to submit to a jury a will for its determination when the only issue which he conceived to be before him was whether or not adequate provision had been made therein for dower of the widow if none of the personalty had been bequeathed and less than one-third of the realty had been devised to her; hence this dissent.