

MARY E. STRONG, widow of the late William H. Strong, plaintiff in error, v. HENRY D. WILLIAMS, Judge of the Monthly and Probate Court, Grand Bassa County, and H. Lafayette Harmon, legal guardian for Hilary Strong, legal heir of the late William H. Strong, Defendant in error.

ARGUED DECEMBER 23, 1924. DECIDED JANUARY 6, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. In matters of probate a petition in the nature of a complaint against an administrator is not regarded with the same strictness as a complaint in an ordinary action at law.
2. In matters of probate notice to parties interested that a petition has been filed against them, and that their presence is needed in court is sufficient notice to serve in lieu of a formal summons.
3. The judge of the Probate Court is legally bound to hear and investigate all complaints made against administrators; and in so doing he is not bound by the strict rules of law which govern the hearing of other complaints.

Judgment affirmed.

Mr. Chief Justice Johnson delivered the opinion of the court:

Writ of error—Administration of Estate. This case comes up to this court from the Monthly and Probate Court for Grand Bassa County, and is brought by writ of error, sued out by Mary E. Strong, widow of William H. Strong, of Lower Buchanan, county aforesaid, against Henry B. Williams, judge of the Monthly and Probate Court, Grand Bassa County, and H. Lafayette Harmon, legal guardian for Hilary Strong, legal heir of the said William H. Strong. The facts in the case appear to be as follows:

The said H. Lafayette Harmon filed a petition in the Monthly and Probate Court of Grand Bassa County, complaining, *inter alia*, that all of the personal property of the said William H. Strong had not been inventoried and administered to the advantage of the heir by the administrators, in that at the time of the death of the said William H. Strong he left eight (8) cows with calves, and several hundred dollars in 3% bonds, of which one bond had been recently sold by the widow.

At the call of the investigation growing out of said complaint, plaintiff in error made the following objections, through her counsel, to the court's entertaining said petition:

First, because the petition is not addressed to any term or division of the court; second, because it is not supported by an af-

fidavit. There were several other objections raised to the court's entertaining the petition because of alleged formal defects. The court, however, overruled the objections and ordered the investigation.

Witnesses were examined on the part of petitioner and respondent, and at the conclusion of the hearing the judge gave the following ruling, *inter alia*:

“(3) The court is of the opinion that evidence submitted in this matter, proved to the satisfaction of the court that Mr. W. H. Strong owned and left after his death two cows in addition to the one inventoried, and although the widow strove hard to prove that even these two cows were given to her, yet from witness Addo's statement, it was clearly shown that the said W. H. Strong had not completed the gift, though he showed that he intended to make them a gift and these two cows not being the subject of manual delivery, could not consider these expressions of Mr. Strong, to wit: ‘as soon as those calves are out of the way you kill them and put the money in your box’ as perfecting his gift. They should have been placed on the inventory, and also the wearing apparels of the deceased should have been placed on the inventory; and the administrator and administratrix are hereby ordered to place them on said inventory without delay.

“(4) The court is further of the opinion that the failure on the part of the administrator and administratrix are hereby ordered to pay the cost from the estate.”

Whereupon the said Mary E. Strong applied for and obtained a writ of error, by which writ the proceedings and ruling of the court below have been brought up to this court for review.

In the assignment of errors, the first six points and the 9th, 11th, and 12th points relate to alleged defects in the petition, viz.: formal defects, and the omission of an affidavit.

We will observe that in matters of probate, a petition in the nature of a complaint against an administrator is not regarded with the same strictness as in the case of complaints in ordinary actions at law.

In the case *White v. Harmon* (Lib. Ann. Series, No. 1, p. 20) it was held that: “In matters of probate, notifications to interested parties that a petition has been filed against them and that their presence is needed in court is sufficient summons.”

It was also held that: "there is a difference in the legal meaning of complaint and a petition in probate matters."

The judge of the Probate Court is legally bound to hear all complaints made against administrators, and to investigate such complaints, and in cases of petitions he is not bound by the strict rules of law which govern the hearing of other complaints.

We will further observe that the 3rd and 4th points raised in the assignment of errors were questions to which the attention of the court below did not appear to have been called. They are not therefore properly before this court.

We see no reason why the judgment of the court below should be disturbed. Said judgment is therefore affirmed with costs against appellant.

Barclay and Barclay, for plaintiff in error.

H. L. Harmon, for defendant in error.

FRANCIS C. W. HILL, Appellant, *v.* REPUBLIC OF LIBERIA,
Appellee.

ARGUED DECEMBER 18, 1924. DECIDED JANUARY 6, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. The general rule is that a witness who has an interest in the subject of the suit is not competent to testify on the side of his interest; but where a witness is produced to testify against his interest, the rule does not apply and the witness is competent.
2. In criminal actions, both the day and the year of the commission of the offense must be laid in the indictment; but there need not be any express averment, if they can be collected from the whole statement.
3. Where in a case of embezzlement, it is alleged by the State and proved at the trial that the prisoner embezzled goods marked in the manner described in the indictment; a variance between the number stated in the indictment and that proved at the trial may be regarded as immaterial.
4. Where want of jurisdiction over the cause appears upon the records, it may be taken advantage of by a plea in abatement or objection made to the jurisdiction at any stage of the proceedings; for any act of a court beyond the jurisdiction conferred upon it by law is null and void.
5. Territorial jurisdiction is given by law and can not be conferred by consent of the parties.
6. A privilege defeating jurisdiction may be waived, if the court has jurisdiction of the subject matter.