probate those interested to controvert it shall, by *caveat* and action at law duly pursued, contest the validity of such will as to such realty."

By the common law, the admission of a will to probate was conclusive as to *personalty;* that is to say, as to the *factum* of the instrument. All such questions as—

1. Whether it had been revoked,

2. Whether a particular clause was or was not part of the instrument,

3. Whether a codicil was intended as a republication or as a new will,

are questions for the court of probate, and for it alone. Its decision, establishing the *factum*, closes such questions as to personalty against all the world; 1 Williams on Executors, 405, *et seq.*

It was otherwise as to *realty*, and to remedy the mischief arising from the leaving open of such questions indefinitely, our act of 1856 has put realty on the same footing as personalty.

Hence the testator's will, *qua* will, is conclusive both as to realty and personalty, so far as all such questions are concerned; and if the plaintiff should now produce a will leaving all the estate to him, he would have no standing in our courts. So, if he should contend, not merely that the codicil varies the will, but that it revokes it, so as to make it inoperative, he, equally, would have no standing. That question should have been litigated within the five years—after that time, nothing remains but questions of construction.

That is to say, we do not mean to contend that the statute (which is one of limitation) prevents a contest at this day as to the *effect* of the will, either as to its meaning, or as to any of its provisions being void for illegality.