

EAST AFRICAN COMPANY, late Hendrik Muller & Co., Appellant, vs. **HOSEA
McCALLA**, Appellee.

LRSC 5; 1 LLR 292

[January Term, A. D. 1896.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Debt.

1. A bill of exceptions signed by an attorney on behalf of his client is within the statute relating to appeals and is valid; the statute relating to the limit of time in which appeals must be taken out and entered in the appellate court is to be understood as meaning ninety days after the rendition of final judgment in the inferior court.
2. Where in appeals a question arises as to the payment or nonpayment of costs in the lower court, the certificate of the sheriff is the best evidence to prove or disprove that fact.

In this action a ruling of the court is sought on the motion of appellee to dismiss the case for the following reasons: first, because the bill of exceptions is not signed by the appellant in person; second, because the case was not filed in the Supreme Court within the legal time; third, because the costs in the case have not been paid. On the point of non-signing of the bill of exceptions by the appellant, this court says that it is its opinion that the spirit and intent of the Statute of [1894, Sec. 1](#), are not to debar the legal right of attorneys to sign bills of exceptions for their clients, nor does the court consider it to be illegal for the attorneys to sign, whether the signatures of the appellants be secured or not, since the attorneys would be acting by legal authority as the agents of appellants. Any other construction of the law would undermine and overthrow the practice of this court and result in serious inconveniences and trouble. The first point, therefore, is not sustained.

The court sustains the second point, because it is its opinion that the law does not mean that ninety additional days should be allowed from the filing of the bond to the filing of the case in the Supreme Court to consider the limit of time to complete the appeal, but that the whole time from the rendering of final judgment to the filing of the case shall be ninety days. The second point is therefore sustained.

As to the third point in the motion, the objection is well founded, for the best evidence that the costs had been paid would be a certificate to that effect from the sheriff whose duty it was to collect the costs; and since such certificate or other evidence does not appear on the record of the case, the third point is therefore sustained by the court.

Two points in the motion having been sustained, the court therefore rules said case out. The clerk of this court is hereby commanded to send a mandate to the judge of the court from which the case came, to the effect of this ruling.

Key Description: Appeal and Error (Bill of exceptions)