

**THOMAS CASSELL, Appellant, vs. MATILDA  
RICHARDSON, Appellee.**

**LRSC 3; 1 LLR 89 (1876)**

[January Term, A. D. 1876.]

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

Statute of Limitation—Written evidence—New trial.

A plea specially pleading the Statute of Limitation in bar to a suit is a question purely of law, and by statute must be determined by the court, independent of a jury.

Where a written instrument is offered in evidence, it should form a part of the record, even though it be not admitted as evidence, in order that the appellate court, upon an appeal, may ascertain whether it is proper evidence or not.

This case is sent up from the Court of Quarter Sessions, Montserrado County, upon a bill of exceptions.

The case presents many questions, some of which are very important and proper for this court to determine. The desire of this court being to do justice between the parties, it will notice only those questions important to the decision of this case, a solution of which can but force the court to the conclusion it has come to.

It is the opinion of this court that a plea specially pleading the Statute of Limitation in bar to a suit is a question purely of law, and under the statutes of this Republic could only be tried and determined by the court. Hence the court below erred in deciding that this plea is a mixed question of law and fact, as well as in submitting the same on the trial for the determination of the jury. The court is further of the opinion that any written instrument or paper whatever that may be offered in evidence, notwithstanding the court does not receive it as evidence in the case, yet said paper, being part of the proceedings, ought to be sent up for review upon an appeal, with the ruling of the court thereon. Hence it was an error in the court below refusing to allow such paper to be annexed to the record as part of the proceedings.

It is further the opinion of this court that the right of the judge of the lower court to grant a new trial in any question of mere fact or mixed question of law and fact, tried at any regular term of court, grows out of the statutes regulating trials, notwithstanding the party aggrieved by such ruling or order has a right to appeal therefrom.

This court is also of opinion, after carefully examining the record of this case, that substantial justice has been done by the jury's verdict. Therefore the court adjudges from the issue joined by the parties below and the proof thereon, that the appellee, Matilda Richardson, by the Statute of Limitation is barred from all and any legal claims to lot No. 200 in the city of Monrovia, and that appellee pay all costs of trial.