

**JACKSON, BRIERLY and BRIGGS, Appellants, Us. JAMES MILTON HORACE,
Appellee.**

LRSC 7; 1 LLR 99 (1878)

[January Term, A. D. 1878.]

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

Statute of Limitation—Agency.

The plea of limitation is a question of law only, which must be . . . decided by the court.

Where a person or firm residing out of the country creates a local agent, who holds himself out as such to the defendant, the Statute of Limitation will begin to run simultaneously with said act, although the principal be absent from the country; and upon an action brought, the defendant may plead the Statute of Limitation as a bar to the action, unless it can be shown that the agency had ceased or the agent had been absent from the country for a period long enough to take the cause out of the statute.

This case is an action of debt brought before this court on an appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County. The appellants' cause of appeal is the refusal of the judge of said court to set aside the verdict of the jury, to whom had been submitted the questions raised by the defendants' plea of limitation as a bar to the action, as said verdict was contrary to law, the evidence, and legal instructions of the court.

In the examination of this, as in other cases, we must be guided by our statutes, which declare that "as a court of appeal we shall examine the matter in dispute upon the record only"; and that "no judgment shall be reversed for any matter for which the attention of the court below shall not appear to have been called, either by some bill of exceptions or other part of the record."

Upon a thorough and careful review of the record, it is apparent that the judge regarded the plea of limitation as a mixed question of law and fact, which was an error, inasmuch as this court has decided on a previous occasion (Cassell vs. Richardson) that the "plea of limitation was a question purely of law" and "the trial of all 100 questions of mere law shall be by the court." But as no exception was taken to the submission of the question to the jury, this court must consider that all objections thereto were waived by the litigants, as also to any other matter or question that might have arisen during the process of the trial to which exceptions were not taken, or called to the attention of the court below.

We find that appellants' counsel requested the judge to instruct the jury on the Act of Limitation, and that he did so by calling their attention to said act; "that no part of the time either party was absent out of Liberia should be counted; and they should decide whether J. L. Crusoe's acts made him agent in that single instance, or made him agent generally." This is all with respect to the instructions, as to what they were, that can be found either upon the record or in the bill of exceptions, and from this it does not appear to this court wherein the jury went contrary to the instructions of the court, nor does it appear that any part of said instructions were excepted to as being illegal.

According to the record, the evidence shows that Mr. J. L. Crusoe asked for and received amounts from Horace for Jackson, Brierly and Briggs in the year 1872, and that he represented himself as having "full power and authority to demand payment," but there is an absence of evidence to show that Mr. Crusoe was at any time thereafter out of the country, or for what period, or that his agencyship ceased before the appointment of H. J. Neyle by power of attorney dated October 4,

Were there any evidence to show that the agencyship of the one had ceased ere that of the other began, or that there had been an absence of either out of the country during his term of agency for a period long enough to take the cause out of the statute, there would be some reason for deciding that the verdict was contrary to

evidence. Nor is the reference upon the record to an arbitration sufficient for such a decision, as there is nothing definite stated with respect thereto, except that there was an arbitration appointed by the court. While from a moral standpoint it might be said that no man ought to make any plea that could prevent a fair investigation of any matter in which he might be interested, yet it is nevertheless the privilege of every one to avail himself of every advantage allowed by law, and this is a right of which the courts cannot deprive him. On the other hand, when the party fails to use the means placed at his disposal for his security, in the manner prescribed by law, it is not the office of the court, especially in the face of positive legislative enactments to the contrary, to make up said deficiency or neglect. Under all circumstances as presented by the record, this court must adjudge that the judgment of the court below is affirmed, appellants ruled to pay costs.

Key Description: Agent (Statute of limitation begins to run from appointment)