ARNOLD, HENRICHSEN, Agent for WEST AND COMPANY, LTD., Foreign Merchants of Hamburg, Germany, transacting Mercantile Business in Grand Bassa County, Appellants, *v.* JACOB H. LOGAN, Appellee.

APPEAL FROM THE CIRCUIT COURT.

Argued April 26, 27, 1937. Decided April 30, 1937.

1. All actions save ejectment, enforcement, violation of written contracts and damages for personal injuries should be commenced within three years from the time such cause of action occurred.
2. The statute of limitations is not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against false demands after the true state of the transaction may have been forgotten, or be incapable of explanation because of the death or removal of witnesses.
3. There may, however, be a new promise either oral, written or factual which will remove the bar, and throw the burden of proving that it related to a different claim upon the defendant.
4. Hence, a cause of action barred by limitations may be revived by (1) an unconditional promise to pay; (2) an acknowledgment of the debt from which a promise to pay may be inferred; and (3) a conditional promise to pay the debt accompanied by a sufficient showing that the condition upon which the promise was made to depend has been performed.

In an action of debt brought in the Circuit Court, judgment was rendered for the defendant. On appeal to this Court, *reversed.*

William E. Dennis for appellant. No appearance for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

There is but one important question to be settled by this appeal; namely, whether or not at the time appellant, plaintiff in the court below, commenced this action it had been irrevocably barred by the statute of limitations.

According to the current account filed with the com-

plaint, and made a part thereof, the last item but one (to which one item we shall have occasion to refer later) therein entered was one hundred cups of rice given carriers on October 6th, 1929, and in said statement debited appellee. Inasmuch as suit was not entered until July 15th, 1935, and our statute provides that with the exception of ejectment, enforcement, violation of written contracts, and personal injuries, for each of which a different period of limitation is prescribed, "all other actions" must be commenced "within three years after the cause of action shall have accrued" (Lib. Statute, Old Blue Book, ch. I, p. 32, § 18; Rev. Stat. 418, § 263), the contention of appellee raised in the first plea of his answer would seem to have been superficially correct.

Appellants, however, in counts three, four and five of their reply contended: (1) That there had been a subsequent transaction and agreement on part of appellee to have his account on May 4th, 1933, credited with one truck tire and one inner tube therefor, which appellant had previously borrowed from appellee; (2) That the defendant, now appellee, had otherwise acknowledged the genuineness of the debt.

These were the two issues submitted by the parties to His Honor Judge Summerville. Said Judge heard evidence on the question whether the contract of borrowing and lending (the tire and the tube) had subsequently been so altered as to enable appellant with propriety to credit same to appellee's account; and then decided substantially that inasmuch as there was but one witness on each side, the one testifying that appellee had agreed to allow the tire and tube to be so credited to his account, and the other testifying in contradiction thereto, there was not that preponderance of evidence produced by plaintiff which alone would entitle him to have a decision in his favor.

In our opinion that decision of the trial judge appears to us to be fair enough so far as it related to counts three

and four of the reply; but it apparently overlooked the contention advanced in count five thereof, the evidence given in support of which count having been contained in two letters from appellee which are hereafter set out as follows:

The first was a letter numbered "3" by the court below dated May 12, 1933, which reads:

"GRAND BASSA COUNTY,
May 12, 1933.

"J. W. WEST AND COMPANY,
GRAND BASSA COUNTY.

"SIR:

"I am ready to use my truck, and ask that you return the tire and tube borrowed, and I will come down and arrange to haul your produce placing always half of this amount against my credit, until I am able to do better.

"I am, Yours truly,
[Sgd.] JACOB H. LOGAN."

The second letter marked by the trial court "6" dated May 16, 1933, was in answer to one from Counsellor Morgan, attorney for appellants, marked by the court No. "5" dated May 13, 1933, as follows:

"LAW OFFICE,
LOWER BUCHANAN,
13th May 1933.

"THE HONOURABLE JACOB H. LOGAN,
NEW CESS.

"SIR:

"Upon my approaching you re your account with Messrs. West & Company you referred to the hard times and said that the trouble was what to find to give them. You said that you had lent them a tire and was wondering if they would take it on account. I told you that I think they would as it was necessary that something be paid against the account before they would consent to wait longer. You said you would give the tire and anyway I would hear from

you. I did not, and spoke with you again at the Superintendent's Department.

"You said that you had decided to give them the tire and we there arranged the price to be credited you. I promptly told them and they credited you some time ago. That is I think the very day we spoke. I do not understand the letter you wrote to them which they referred to me.

"Yours truly,
[Sgd.] EDWIN A. MORGAN,
Counsellor-at-Law."

The answer to which, marked No. "6," reads as follows:

"NEW CESS,
GRAND BASSA COUNTY,
May 16th, 1933.

"E. A. MORGAN, ESQR.,
COUNSELLOR AT LAW, FOR WEST & CO.,
"SIR:

"Yours of the 13th inst., to hand, I do not agree to place the tire and tube to the amount because I am ready to use my truck. I will come down next week to see you, and the firm's Agent towards an arrangement to see what terms we can come to on doing their transport, to have a portion to go to the account, or against the account. I shall be down next week Friday D. V.

"Yours truly,
[Sgd.] JACOB H. LOGAN."

The rule of law which appears to us to be pertinent to this case, and which the trial court obviously overlooked, is the following:

"It is to be observed, that the statute of limitations is regarded by the courts as a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt, from lapse of time, but to afford security against stale demands, after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of wit-

nesses. Wherever, therefore, the bar of the statute is sought to be removed by proof of a new promise, the promise, as a new cause of action, ought to be proved in a clear and explicit manner, and be in its terms unequivocal and determinate." 2 Greenleaf, Evidence § 440.

"Upon this general doctrine, which, after much conflict of opinion, is now well established, it has been held, that the acknowledgment must not only go to the original justice of the claim, but it must admit that it is *still due*. No set form of words is requisite; it may be inferred even from facts, without words. . . . And where the plaintiff proves a general acknowledgment of indebtment, the burden of proof is on the defendant to show that it related to a different demand from the one in controversy." *Id.* at § 441.

According to another author:

"The earlier decisions with regard to the English statute of limitations held that a mere acknowledgment of the debt, without a promise to pay, would not affect its operation. It was next determined that an acknowledgment of a debt was evidence from which a jury might infer a promise to pay, but would not, if specially found, warrant the court to give judgment for plaintiff. And then the decisions going further held that the slightest acknowledgment, whether by word or in writing, would take a case out of the statute. Under the modern doctrine, however, that statutes of limitations are statutes of repose, the general rule in the United States and England is that a particular case may be removed from the bar of the statute by, and for such purpose there must be, either: (1) An unconditional promise to pay the debt; (2) an acknowledgement of the debt from which a promise to pay is to be implied; or (3) a conditional promise to pay the debt, which is accompanied by a sufficient showing that the condition upon which the promise is made to

depend has been performed. In some jurisdictions by statute, however, it is provided that a mere acknowlment of the debt is sufficient to remove the bar, and under such statutes it is unnecessary that the acknowledgment be such as to raise an implied promise to pay. A cause of action may be revived by a new promise or acknowledgment, although the statute contains no provision therefor; and a statute providing for the revival of causes of action founded upon contract by an admission that the debt is unpaid, as well as by a new promise to pay the same, amounts simply to a declaration of the common-law rule." 25 Cyc. 1325–1327.

In a note thereunder the following is observed:

"The original general statute of limitations, 21 Jac. 1, c. 16, made no provision for the revival of a cause of action barred by its terms, but in recognition of the moral obligation to pay debts without regard to the efflux of time the courts declared that notwithstanding the statute if a debtor acknowledged his debt as an existing liability or promised to pay it it was revived and continued as a binding and enforceable obligation." Note 94.

Continuing, the same author says:

"The general rule is that a new promise, whether made before or after the bar is complete, will avoid the operation of the statute of limitations." *Id.*, at 1328.

In view of the foregoing we are of opinion that the decision of His Honor Judge Summerville, having ignored the principles above expounded, should be reversed; and that the case should be remanded to the court below for such further proceedings as may not be incompatible with this opinion; that appellee should pay the costs of this appeal, and the other costs should abide final judgment; and it is hereby so ordered.

Reversed.

MOSES TISDELL, Appellant, *v.* ZEONVONYON, Appellee.

APPEAL FROM PROVISIONAL MONTHLY AND PROBATE COURT OF THE TERRITORY OF MARSHALL.

Argued April 22, 1937. Decided April 30, 1937.

1. One of the essential prerequisites to the taking of an appeal is the payment of all costs; and should appellant have neglected this legal requirement the appeal will not be heard.
2. Nor will this Court hear an appeal where it appears that the appeal bond has not had the proper revenue stamp affixed.

In an action for trespass, judgment was rendered in the Provisional Monthly and Probate Court of the Territory of Marshall for plaintiff. On appeal to this Court on a bill of exceptions, *appeal dismissed.*

No appearance for appellant. *T. G. Collins* for appellee.

MR. JUSTICE DOSSEN delivered the opinion of the Court.

At the July term, 1936, of the Provisional Monthly and Probate Court of Marshall Territory, in its Law Division, appellee, plaintiff below, instituted an action against appellant for trespass *vi et armis* upon real property. Said cause came on for trial before His Honor William H. Blaine, Judge presiding, who, after hearing the evidence *pro et con* and the law, rendered a final judgment against said appellant. He, the said appellant, being dissatisfied with the several rulings and final judgment of the trial judge, excepted and appealed to this Court upon a bill of exceptions for review. At the call of the case, appellee, through his counsel, tendered a motion to the Court praying that the said appeal be dismissed, appellee discharged, and appellant ruled to pay all legal costs, for reasons the relevant portion of which reads as follows, to wit:

"1. Because said appellant has failed and neglected to pay the costs accruing in the court below.

"2. And also because the appeal bond filed in this case is defective, in that it is not stamped as required by law."

This Court has repeatedly held that the payment of costs is one of the prerequisites to be observed in taking an appeal to this Court, and that when the costs are not paid the appeal will be dismissed.

The amendatory Judicial Act of 1894 (L. 1893–94, 10, par. 1) in reference to how appeals are to be taken to this Court, says *inter alia* that the appeal must be taken within sixty days after the rendition of final judgment and payment of costs.

By a very careful inspection of the records filed in this case we find that the prerequisites of the law have not been complied with in that the costs of the trial court were not paid within the time prescribed by law nor indeed were they paid at all; hence the purported appeal is not legally before this Court. Count one of appellee's motion being in perfect harmony with the law and previous rulings of this Court should receive the favorable consideration of this Court. *Farphiny* v. *McCarey,* 2 L.L.R. 50 (1911).

In the year 1906 the Legislature of Liberia, for the purpose of increasing the revenue, passed a statute entitled a "Stamp Act," which provides that certain documents shall be subjected to a stamp duty to be thereon affixed as per schedule then prescribed; among which are bonds etc. Said act was supplemented and enlarged by a subsequent stamp act approved January 24, 1923, which included appeal bonds etc., and provided that no document of the nature of those mentioned therein, issued after the thirtieth day of June, 1906, should be deemed valid, or be received as evidence in courts of justice unless it should have been properly stamped in accordance with the schedule above mentioned in said Act. Upon

careful examination of the records filed, we find that the bond filed in the cause was not stamped according to law, and is, therefore, void and of no legal effect. Acts of the Legislature, 1906, pp. 42–3; Acts of 1923, ch. VI, p. 12.

Therefore, in view of the said defects appearing upon the records in this case as are set forth and contained in appellee's motion to dismiss the appeal, this Court is of the opinion that said appeal should be dismissed and the trial court given permission to resume jurisdiction and execute its judgment; and appellant be ruled to pay all legal costs; and it is so ordered.

Appeal dismissed.