also properly disallowed because it did not conform to the practice of the court.

The court did not err when it denied the motion in arrest of judgment as the said motion contained the identical points raised in the motion to the court's jurisdiction already passed upon in this decision, neither will the grounds warrant the same.

This court feels that the allegations being satisfactorily proven, the judgment of the court below should be affirmed, with costs in favor of the defendant in error; and it is so ordered.

C. B. Dunbar, for plaintiff in error.

L. A. Grimes, for defendant in error.

P. COUWENHOVEN, Agent for the Oost Afrikaansche Compagnie, Grand Bassa County, Appellant, *v.* LEVI A. BECK and ADDIE A. J. BECK, his wife formerly A. A. J. SMITH, Appellees.

ARGUED DECEMBER 9, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., and Witherspoon, J.

1. Although a foreigner may not hold freehold estates in Liberia he is privileged to hold leaseholds.
2. Actions of ejectment may be brought against any person holding property by possession adverse to the interest of party plaintiff.
3. A party may commence a suit as soon as the right of action accrues.
4. Hence, if such right accrues too late to be commenced during the next ensuing term, he may immediately commence just the same, entitling his pleadings in the next succeeding term.
5. To enable one to successfully plead the statute of limitations in bar of an action of ejectment he must be able to prove: 1. That he, or he and his privies have had open and undisturbed possession of said property for at least twenty years consecutively; 2. That said possession was adverse to the title of plaintiff and/or those in privity with him; 3. That neither plaintiff nor anyone under whom he claimed was under any legal disability to bring suit during said period of twenty years.
6. A non-expert witness might, in such case, give his opinion as to the sanity of such person based upon his long personal contacts, and careful observation of such person.
7. If a title deed although apparently valid shall not have been probated and registered within four months from the date of execution it is not error to reject it as evidence upon objections properly taken.
8. In ejectment the plaintiff must recover, if at all, upon the strength of his own title.
9. Proof of prior possession, no matter how short the period will be *prima facie* evidence of title against a wrongdoer.

Mr. Chief Justice Dossen delivered the opinion of the court.

Ejectment. This case is before us upon an appeal from the rulings and final judgment of the Circuit Court of Grand Bassa County, at the August session of said court, 1917, rendered against appellant, defendant below.

The history of the case as appears from the records is briefly as follows:

On the twenty-first day of April, A. D. 1903, lot number seven, situated in the lower ward of the City of Buchanan, Grand Bassa County, was, by J. W. Gibson and Louisa Harris, acting as guardians for Anna Gibson their ward, leased unto the Oost Afrikaansche Compagnie, the appellants before us, under all the requirements and formalities required by the statute, without protest or objection thereto from any person whomsoever. That by virtue of the said title and under color of the right conveyed thereby, appellant entered upon the property, made certain improvements thereupon, and held open and peaceful possession thereof adversely to the alleged right and title of appellees or their privies. That thereafter, that is to say on the first day of April, A. D. 1912, the said Anna Gibson having reached legal age of maturity conjointly with her husband John E. Dennis made and executed a second lease deed to appellant for a further term of years and that the said instrument passed under the statutory requirement without legal objection thereto. That appellant by virtue of said second lease continued in possession of the property and was in occupancy of the same when this action of ejectment was brought by appellees to recover same. Appellant in his answer to the complaint sought to bar the action by pleading the statute of limitations. The lower court proceeded first to adjudicate the legal issue raised by said plea, and held that the statute of limitations did not apply and that the case was not barred by the statute, and ruled the case to be heard upon its merits. To this and other rulings of the lower court as well as to the final judgment in the premises appellant excepted and has brought the case up upon a bill of exceptions for review. Having thus briefly stated the case as disclosed by the records we proceed to consider the points laid in the bill of exceptions and addressed to our consideration.

The first exception is taken to the ruling of the trial judge on count one of the defendant's answer. From inspection of the

pleadings we find that defendant, now appellant, in the said first count of the answer attacked the complaint upon the ground that it was brought against the wrong party; that appellant being a foreigner was debarred from holding lands in this country; that an action of ejectment could not therefore be brought against him and that his lessor and not himself was answerable.

There appears to our minds no legal merit in this contention. While it is true that under our Constitution foreigners are prohibited from holding freehold estates in Liberia, still the Constitution imposes no inhibition to them holding leaseholds, which fact has been recognized by the custom of the country and upheld by decisions of this court during the whole period of our international intercourse. In *East African Company v. Dunbar* (I Lib. L. R. 279) this court held that a freehold differed from a leasehold estate. That while under the Constitution only citizens can hold the former species of property, the latter was open to the enjoyment of any one "without respect to race or nationality." Ejectment being a possessory action it lies against the person in adverse possession of the property in dispute, whether he be the owner or the lessee and whether citizen or foreigner. Ejectment may properly be brought against one who holds no shadow of title, but is in possession as a mere *trespass.* (*Minor v. Pearson,* Lib. Ann. Series, No. 3, p. 26.) The plea not being well founded in law it was not error in the judge below to overrule the same.

The second exception in the bill of exceptions is taken to the court's denying the motion of the defendant, now appellant, to the jurisdiction of the court. The grounds relied upon in this motion for dismissal for alleged want of jurisdiction are, substantially, that the case was commenced in the August term of court, before the expiration of the preceding May term. We have carefully examined the statutes relating to the jurisdiction of the Circuit Courts and the Rules of Practice of these courts and have failed to discover any legal merit in the contention either expressly or impliedly. The Act of the Legislature of Liberia, approved January 11, 1913, declared the terms of the Circuit Courts of this Republic in the following language: "That from and after the passage of this Act the Circuit Courts now established in this Republic in accordance with the said referred to Act, shall open sessions in the County of Montserrado, Grand Bassa, Sinoe and Maryland on

the second Monday in February, May, August and November in each year." A subsequent Act provides: "that ten days after the adjournment of any regular session of the Circuit Court, shall commence the next session of said court and all matters not requiring a jury may be heard and disposed of upon application as provided for in this Act before the meeting of the regular jury session." The statutes cited constitute the law relating to the terms or sessions of said courts and was the law relied upon in the contention by counsel for defendant, now appellant. But it will be observed that they in no wise support the contention. They can not be construed as implying that a plaintiff is disallowed from entering suit in one term of court before the expiration of the preceding term and they confer no power upon the courts to dismiss actions brought under such circumstances on the ground of want of jurisdiction.

The statutes prescribing the time-limit for filing complaints and written directions and for summoning defendants are to be understood as fixing the time-limit in which these acts must be legally performed, the object and intention of which is obviously to allow the defendants ample time in which to make their defense and to prevent surprise, but by no process of reasoning are we able to apply those provisions in the sense in which we are asked to apply them in the exception under review. We hold that a plaintiff is entitled to bring his action immediately after the cause of action accrues if he elects so to do. It furnishes no ground for dismissal if he elects not to wait until the expiration of a term before bringing his suit. And his course would be free from all implication of injustice towards the defendant, if, as in the case at bar, he seeks redress at the earliest opportunity opened to him under the rules of pleadings. Cases sometimes arise when in order to secure the appearance of a defendant and to protect the interest of the plaintiff it becomes necessary that he should act speedily and without delay. To hold that he is debarred from exercising his right of action during the intervening period between the duration of one term and the commencement of the next ensuing term would operate as a suspension of the office and operation of the courts and of his right to the free and full enjoyment of the benefits of the judicial power established to safeguard and protect and enforce those rights. This we hold is not contemplated by the statutes of the country relating to the commencement of actions, and we refuse to uphold the contention as sound.

We come now to the third point in the bill of exceptions involving the court's ruling on the plea of limitation pleaded in the answer.

This court has uniformly held that the plea of limitation when properly pleaded and substantially proved will bar an action by operation of the statute of limitations. Statutes of limitation have been incorporated into the laws of all civilized countries whose system of jurisprudence is recognized by our laws. The wisdom and policy of this species of the law have received the approbation of writers of high legal repute, and the efficacy of its application to conditions which sometimes arise in society, has received the sanction of the highest courts of English speaking countries. Statutes of limitation are founded upon natural justice and upon sound reason and common sense. They are to be found among the earliest of our laws and have in no small measure furnished the ground for the just adjudication of disputes to property which have arisen in this country without whose aid the courts might have stumbled. When however the plea of limitation is pleaded in bar of an action of ejectment—such as the action at bar—the essential elements which constitute the plea must be established by evidence amounting to conclusive proof or the plea will fail. Now what are those elements of the plea which defendant must prove? (1) He must prove that he, or he and those under whom he claimed title, had open and undisturbed possession of the property in dispute for twenty years consecutively. (2) That he held adverse to the title of the plaintiff and to those in privity with him when necessary. (3) He must establish substantially that neither plaintiff, nor those under whom he claims, was under any legal disability to bring suit during any part of the period since the cause of action accrued and the statute began to run. (*Page and Page v. Harland,* I Lib. L. R. 463.)

Plaintiff in the pleadings contested the legal efficacy of the plea in bar in this case on the grounds: (a) That the ancestor under whom plaintiff claims title to the property in litigation by the rule of descent was incapacitated from *insanity* to bring suit during a part of the time since the cause of action accrued which, when eliminated, leaves the cause within the statute; (b) That plaintiff herself was incapacitated from *infancy* during a part of the time; and (c) that she was further incapable from being under coverture during part of the period.

Looking into the evidence for the plaintiff we find that one witness, namely: Levi A. Beck the co-plaintiff in this suit was upon the stand to testify to the insanity of James S. Smith, the ancestor of plaintiff under whom she claims title to the property in litigation, from 1891 to 1895, or a period of about four years. His evidence while not that quality of evidence which the law regards as expert was nevertheless competent. With respect to the efficacy of this evidence we would remark that the plea of insanity *may* be established by evidence of this grade. As to whether this class of evidence should be received as proof conclusive there has been great diversity of opinion both in the English and American courts. In America it has been determined upon grave consideration that where a witness has had opportunities of knowing and observing the conversation, conduct and manners of a person whose sanity is in question he may depose not only to particular facts, but to his *opinion* or *belief* as to the sanity of the party formed from such actual observation. (*Clary v. Clary,* 2 Iredell 78.)

The evidence of witness Beck comes within this rule and was therefore competent and in the absence of rebutting evidence was sufficient in our opinion to establish the plea of *insanity.*

As to the second ground in the contention of plaintiff against the plea of limitation, namely: *"infancy"*—the records show that the evidence adduced substantiated this plea conclusively. We need not carry our research further than our own statutes to find the legal foundation for this plea.

Says the statute: "No action of ejectment can be commenced more than twenty years from the time the cause of action has accrued." But, "If either of the parties be absent from the Republic during any part of the time, or be *under age,* or insane during any part of the time, such part of the time *shall not be reckoned,"* etc. (Lib. Stat., Old Blue Book, ch. I, p. 32, sec. 18.)

The third ground, namely: "coverture," is not among the statutory defenses to the plea of limitation as just cited above and therefore we refuse to consider it. It is a rule of general acceptation that a court will not travel outside of the purview of the statutes of the country to ascertain what is the law controlling the case when those statutes speak on any question before it. The pleas of *insanity* and *infancy* are both good pleas to the plea of limitation and when they so affect the issue as to leave the cause still within the statute

after allowing for the legal disability which they produce, the statute of limitation will not apply in bar in such cases. This case, however, is not very materially affected by these pleas, since, as we have already observed, the burden of proof shifted upon the defendant under his plea of limitation. He was bound to show the essential ingredients which constitute the plea before it would become imperative upon the plaintiff to prove any statutory exception. Looking into the evidence for the defendant we have failed to discover evidence to support their plea conclusively. The paper title in the form of two lease deeds from defendant's land-lady do not cover twenty years' title or possession prior to this suit. The first of said leases was executed in A. D. 1903, and the second in A. D. 1912; these two instruments while valid in themselves, left open a period of four years to complete the period of time requisite to bar the action. There is no satisfactory proof of any description to cover this period and therefore the plea failed and the lower judge did not err in so ruling.

The remaining four exceptions involving the rulings of the court below on the admission of the title deed of plaintiff as written evidence; the judge's charge to the jury to the effect of the evidence in support of the plea of limitation; and the verdict and the final judgment predicated thereupon, we propose to consider under one head. Let us consider first the validity of the title deed offered by plaintiff in support of her claim to the property in dispute, the admissibility of which as evidence was objected to by the defendant on the ground that it had not passed through the requirements of the statute with respect to probation and registration within the time prescribed. Examining the instrument we find that it purports to have been executed in 1891; probated in 1893 (two years later), and registered in 1917; twenty-six years after the original transaction. The Statute of 1865, which seems to have been enacted to prevent fraud by secret conveyances of lands and to open the door to any legal objections to any such transfers, expressly limits the time to *four months* within which all conveyances and transfers of real property shall be probated and registered. The statute is mandatory and not merely directory; so that all such instruments to be of any validity, or legal efficacy, must not only comform to its provisions but comformity must be made within the time limit prescribed by the said provisions. The paper title of plaintiff although purporting to have been probated and registered shows upon its face that neither of

these acts was done within the statutory time. Upon the legal maxim that: "whatever is not legally done is considered in law as not done at all;" the act becomes a nullity and of no legal effect. In *Reeves v. Hyder* (I Lib. L. R. 271) this court held: "That the probation of a deed makes it legal evidence before courts of law." We reaffirm this rule and hold that it was error in the trial judge to have admitted the said deed of plaintiff as evidence in support of her alleged title to the property in litigation.

We come now to consider the verdict and the final judgment predicated thereupon. It is a well established and inflexible doctrine of law that in actions of ejectment the plaintiff must recover upon the strength of his own title and not upon the weakness of the title of his adversary. This doctrine of law has been upheld by numerous decisions of this court from time to time. It was contended by the learned counsel for appellees in his able argument, that this rule had been modified, and the case of *Minor v. Pearson* (Lib. Ann. Series, No. 3, p. 26) was cited in support of this contention. The case cited is however not analogous to the one at bar and was not successfully cited. There the defendant was before the court without any shadow of title or right of possession and was in the eye of the law a mere *intruder*. The plaintiff on the other hand though not in actual possession showed title and the right of entry. This title was higher than the naked possession of defendant, unless he had shown that his naked entry had ripened into a valid title by the doctrine of limitation and of seisin and disseisin. (*Page and Page v. Harland, supra.)*

The modification to the stringency of the rule that the plaintiff must rely on the strength of his own legal title in ejectment was in the case *Doe v. Dyeball* illustrated by Lord Tenterden, who held, that proof of prior possession however short will be *prima facie* evidence of title *against* a *wrongdoer*. This case as we have already observed does not fall within this rule of exception. The plaintiff was bound to show either title in herself or in those under whom she claimed, higher than that of the defendant's and his privies. The attempt to establish by oral testimony priority of possession by the party under whom plaintiff claimed collapsed, so that the only evidence of plaintiff's title or prior possession to the property in question was the purported deed from J. E. Johnstone representing J. E. Hall dated October, 1891, which instrument as we have already observed was devoid of the statutory requirements to estab-

lish its validity and incompetent evidence to establish the title of plaintiff in and to said property. We cite again the inflexible rule in ejectment (i.e.) "*that a plaintiff must recover upon the strength of his own title.*" There being no legal evidence tendered by the plaintiff in support of her claim to the said lot No. 7 in the lower ward of Buchanan we hold that her right and title therein and thereto has not been established.

The judgment of the lower court should therefore be reversed; costs disallowed; and it is hereby so ordered.

C. B. Dunbar and *Arthur Barclay,* for appellant.

L. A. Grimes, for appellees.

S. E. SNETTER, Appellant, *v.* H. E. SNETTER, Appellee.

ARGUED NOVEMBER 10, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. To obtain a change of venue in a civil suit the applicant must apply therefor ten days before the first day's meeting of the court for the term at which the cause was docketed, and the application must be supported by an oath taken before the judge.
2. A motion for continuance based upon the absence of a material witness should, if supported by an affidavit of the moving party, be granted for at least one term unless the court reaches the conclusion that said motion is made only to baffle the suit or defeat justice or the party in opposition thereto will admit the facts the absent witness is expected to prove.

Mr. Chief Justice Dossen delivered the opinion of the court.

Divorce—Appeal from Judgment. This is a suit of divorce brought by the plaintiff, now appellee, against his wife, the defendant below, now appellant, for adultery. The case was heard and determined at the August term, A. D. 1919 of the Circuit Court for the first judicial circuit, presided over by His Honor Corinthus E. Gibson, circuit judge. The trial resulted in a verdict and judgment for the appellee, plaintiff below, to which judgment exceptions were taken by appellant, defendant below, and the case brought to this court upon a bill of exceptions for review.

The case is brought up before us upon the following exceptions as laid in appellant's bill of exceptions:

"Because on the 11th day of August, A. D. 1919, the defendant filed a motion for change of venue in said case to the second judicial