

Fallo. Nov 7th 1864

Esq. J. P. Gilman Esq

Dear Sir.

Your of 5th inst came duly to hand. The case of Spear & Merrill vs. the said deft. was an action on a stock brokerage the deft. and deft. both citizens of N. York in 1853 when it accrued. In 1856 the deft. removed to Boston and some two years ago removed to Maine. The action was commenced by attaching deft's property here when he appeared gave bond and dissolved the attachment, ^{and plead the statute of limitation} was in proof that the deft. was in the habit of coming to this city every year since 1853. ^{and remained for weeks or more each time} to the plea of the deft. Joff. replied that the account was between two merchants and merchants who were non residents and that the debt was brought within three years after the deft. came into this State upon which deft. took issue, I held upon ~~the~~ ^{the} grounds on which 22d page 443 - 444 Seign 236. 1 Jurist 772 5th Peters 151. 1 New Hampshire 236. 10 Gil & Johnson 442 and especially on the case of ^{in Madison} in which the old law is removed by Judge Story as to the 1st plea, as to the second ground principally upon my construction of act of 1815 ch 23 & 1765 - & act of 1818 ch 24 & upon Kyamge & Balfour 3 G & G 1858 to show that a non resident was put upon the same footing as a resident as to the law of limitation & that an open unexcused presence of deft. in this State sufficient to give Joff. an opportunity of serving writs was sufficient to set statute in motion the Joff. was for deft. Hope the above