FANNY B. COLE, Appellant, v. **ELIZA A. WILLIAMS**, Appellee.

MOTION TO DISMISS BILL IN EQUITY.

Argued October 27, 31, 1949. Decided December 16, 1949.

1. A bill of exceptions is not required to be in any form. Therefore, one which lacks the usual formal beginning, styling of appellant as appellant and of appellee as appellee, is not invalid.

2. Where a bill of exceptions and appeal bond had been filed within sixty days and the notice of appeal had been served after sixty days but before attack by motion, a motion to dismiss the appeal will be denied.

On motion in this Court to dismiss a bill in equity to quiet title on procedural grounds, *motion denied.*

M. S. Cooper for appellant. *William A. Johns* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

On opening the records in this case we discovered that appellee had filed a motion to dismiss the appeal for the following reasons :

Appellee contended that there was no bill of exceptions before this Court because the appellant in preparing her bill of exceptions had neglected to style herself appellant and the opposite party appellee.

Secondly, appellee contended that under the statute all appeals must or should be perfected within sixty days, and although the bill of exceptions and appeal bond had been prepared and filed within the sixty days, the neglect of the clerk of court to also issue and serve the notice of appeal within the said sixty days should be ground for the dismissal of the appeal.

Aside from the fact that the tendency of modern practice is to avoid, if possible, the dismissal of cases on mere technicalities, this Court has in a previous case held that statutes proving for a bill of exceptions are remedial in their nature and will be liberally construed; and where the instrument sent up in the record purports to be a bill of exceptions, and is authenticated as such, it will be so considered although

technically defective.

In addition to that, our recent statute on appeals does not include the ground of the first count of the motion as a cause for dismissal of an appeal. L. 1938, ch. III, § 1.

A bill of exceptions is not required to be in any particular form, and is not to be considered invalid because it lacks the usual formal beginning. Modern practice is inclined to disregard mere formal defects and irregularities that do not cloud the record. In the case C*ess Pelham v. Witherspoon,* 8 L.L.R. 296 (1944), this Court took the position that :

"To all intents and purposes it is obvious that the intention of the Legislature in passing that act was to discourage the dismissal of appeals on technical legal grounds and to give to appellants an opportunity to have their cases heard by this Court on their merits in order that substantial justice be done to all concerned, for in many instances prior to the passage of said act important and far-reaching cases had been dismissed on mere technicalities and appellants had suffered seriously and irreparably because of the fact that from this Court there was no other appeal. Hence it is that the Legislature in said act not only set out definitely the causes for which an appeal should be dismissed, but also went further and gave this Court full authority under certain circumstances to correct or amend errors in order that substantial justice be done." *Id.* at 305.

Consequently count one of the motion cannot be sustained by us.

As to the second count of the motion, in the case *Buchanan v. Arrivets,* 9 L.L.R. Is, decided by this Court May 4, 1945, this Court stated, with reference to notices of appeal :

"[T]hat where a party in superintending the preparation of the records on appeal, or even after the records are forwarded to this Court, discovers that a notice of appeal is missing and has not been served and returned, upon application properly and timely 'made to the Justice presiding in chambers before an attack by motion, the said Justice would hardly hesitate to give the necessary appropriate order for the issuance, service, and return of the said notice of appeal, inadvertantly or negligently omitted by the clerk of the lower court." *Id.* at 15.

It is obvious, therefore, where as in this case the notice of appeal has been issued, served, and returned, although without the sixty days contended by appellee, we

cannot consistently sustain count 2 of the motion.

The motion as a whole is consequently denied and the case is to remain on our trial docket to be heard on its merits at our next regular session, costs to abide termination of the case; and it is hereby so ordered.

Motion denied.