JOSEPH C. DENNIS and **WILLIE A. DENNIS**, Appellants, v. **CATHERINE HOLDER** by her Husband, **S. A. HOLDER**, **ROBERT D. UREY**, **FRANCES UREY** by her Husband, **WILLIAM H. KENNEDY**, **RACHAEL UREY-JOHNSON** by her Husband, **GRAY G. JOHNSON**, **EMMA UREY**, **MARY UREY**, **AREMITA WALKER** by her Husband, **GEORGE A. WALKER**, for their Minor Children, **JAMES D. UREY** and **AREMITA UREY**, **NANCY A. WORDSWORTH** by her Husband, **WILLIAM L. WORDSWORTH**, **WILLIAM A. FREEMAN**, **JOHN R. FREEMAN**, **DANIEL E. FREEMAN**, **JULIA PHELPS** by her Husband, **MONROE PHELPS**, and **BENJAMIN G. FREEMAN**, Heirs and Legatees of the Late **DANIEL W. UREY**, Appellees.

MOTION TO DISMISS APPEAL.

Argued April 5, 1949. Decided June 8, 1950.

1. The intention of the Legislature in passing the act of 1938 with reference to the dismissal of appeals was to discourage the dismissal of appeals on technical legal grounds.

2. The object of an appeal bond with sureties is to secure costs to the appellee and to assure the court of compliance with its judgment.

3. Where an appeal bond from the circuit court to the Supreme Court omits the signature of one surety, and the other surety is financially able to back the bond, and the bond is otherwise faultless, said bond is not fatally defective.

On motion to dismiss an appeal on the ground that the appeal bond is defective, *motion denied.*

T. G. Collins for appellants. *B. G. Freeman* for appellees.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

Appellees filed a motion to dismiss the appeal in this case on the following grounds :

"1. Because the appeal bond filed in this case is seriously defective and bad, in that under the appeal Act of 1894 and Revised Statutes Vol. 1, page 495 and section 426 it is a mandatory requirement that all appeal bonds shall have not less than two sureties, who shall be householders or freeholders within the Republic to the effect that

appellants will indemnify the appellee from all cost from all injury arising from the appeal, and will comply with the judgment of the court to which the appeal is taken, or any court to which the cause may be removed, which in this case has not been done, as will more fully appear from inspection of the certified copy of said appeal bond, filed with the records in this case which is a serious and material defect. Said bond not being framed in keeping with the provisions of the Statute law, for which incurable legal defect in said appeal bond this appeal should be dismissed and the appellees so pray.

"And this the appellees are ready to prove.

"2. And further because, there is nothing on the copy of the appeal bond filed in this case to show that the said bond was stamped in accordance with the requirement of the Stamp Act, for which further defect this appeal should be dismissed and the appellees so pray, in keeping with the decisions and opinions of this Honourable Supreme Court in the case Jacob D. Freeman vs. the Republic of Liberia 2 L.L.R. page 189.

"And this the appellees are ready to prove.

" Appellants resisted said motion:

"1. Because said appellants object to Count 1, of said Motion for vagueness and uncertainty in the statement of the specified ground in said Count of Motion, in that, it is not plainly set forth whether it is intended to attack an alleged irregularity by the omission of the name of another surety to the Appeal Bond or whether it is intended to attack the indemnity clause of said bond, conjointly both in same Count at the same time. Appellants maintain that the averments of said Count of Motion are so indistinct and uncertain that the particular ground is not disclosed as to apprise them of the real ground of said Motion, and therefore pray that said Count be overruled for vagueness and uncertainty.

"2. And also because as to said Count of Motion the appellants further submit, that the last Statute touching appeal bonds makes the filing of an Approved Appeal Bond one of the prerequisite steps to appellate jurisdiction which cannot be waived, but the execution of said bond by one surety when more than one is required is not a defect which goes to the jurisdiction, but a mere irregularity which may be waived without prejudice so as to promote substantial justice. Wherefore appellants pray that said Count of Motion be not sustained since the irregularity complained of is not

jurisdictional but merely formal and may be waived.

"3. And also because as to Count 2 of said Motion the Appellants say, that the Appeal Bond in question was duly stamped before presenting same for approval, as will more fully appear by the annexed Certificate of the Clerk of the trial Court marked Exhibit 'A,' and that the omission complained of occurred in the preparation of the records of the former Clerk who had inadvertently omitted to indicate the affixed 25 cents revenue stamp to the original bond. Wherefore appellants pray that said Count of Motion be not sustained as the omission is wholly an act of the Clerk of the lower court, and same should not prejudice their cause."

Considering the counts of the motion in reverse order, upon inspection of the records we find that a certificate from the clerk of the court below stating that the original appeal bond as filed in his office bears the required twentyfive cent revenue stamp, and that the omission to indicate it on the copy forwarded to this Court was the error of the clerk, his predecessor. Count two of the motion is therefore overruled.

As to count 1, the attack thereupon made by appellants in their resistance is justified, for on inspection count does appear to us to be uncertain and vague about the defects complained of. It is so framed as to give the impression that the appeal bond lacks not only the sureties but is also deficient in the clause "householders or free-holders within the Republic," and that the indemnity clause is omitted. But upon inspection of the questioned appeal bond we find that all the clauses complained of are there; the names of two sureties are set out in the body of the bond, but only one signed.

We certainly do not appreciate and must discourage such a loose manner of pleading violative of the fundamental rule of giving notice to the opposite party of what the moving party complains. This alone in our opinion is sufficient to overturn count z of the motion.

It is true that in *Deady v. Republic,* 8 L.L.R. 256 (1944), in discussing the motion we mentioned that in appeals from the circuit court to the Supreme Court the statute provides for two or more sureties, but that reference was only incidentally made and was not a holding of the Court. The only questions to be decided in that case were whether in an appeal from a justice of the peace court to the circuit court the appeal bond was required to have two sureties thereon, and whether the said bond should also show on its face that the sureties were householders or freeholders. But since in

this case the issue has been raised, although imperfectly because of uncertainty and ambiguity, we shall now decide whether or not an appeal bond from the circuit court to the Supreme Court must now necessarily have two or more sureties.

It is true that in the Revised Statutes, it is provided that "every appellant shall give a bond in an amount to be fixed by the court with two or more sureties, who shall be householders or freeholders within the Republic." Rev. Stat. § 426. But since the passage of said act, the Legislature has seen fit to pass two other acts with reference to and controlling appeals and their dismissal.

The act of 1938 limits the dismissal of appeals to four causes:

"1. Failure to file approved Bill of Exceptions.

"2. Failure to file an approved Appeal Bond or where said bond is fatally defective.

"3. Failure to pay cost of lower Court.

"4. Non-appearance of appellant.' " L. 1938, ch. III, § 1.

In the year 1940 the Legislature passed an act amending the law of bail in criminal, civil and appeal causes and made it possible legally for bail to:

"[B]e given [either] by recognizance entered into by the principal and his sureties, who may be possessed of the qualifications required by existing statutes; or by tender of the amount required as bail in cash, checks, stocks, or other negotiable securities capable of being readily converted into money, or by offer of unencumbered real property held in fee by the bailor.

"Any bond given as provided for in this Act shall be considered a valid and legal bond, in any cause criminal, civil or appeal. . . ." L. 1939-40, ch. XVIII, §§ 1, 3.

In the cases of *Johns v. Pelham* and *Pelham v. Witherspoon,* 8 L.L.R., 296 (1944) decided together, the former involving ejectment and the latter objection to the pro-bate of a deed, it was held after citing the act of 1938:

"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. . . ." *Id.* at 305.

This view since that time has been consistently upheld and mentioned in several cases, e.g., *Firestone Plantations Co. v. Greaves,* 9 L.L.R. 147 (1946), involving a motion to dismiss in an action of damages for injury to personal property; *Cole v. Williams, 10* L.L.R. 191 (1949), involving a motion to dismiss a bill in equity to quiet title.

In the case *Buchanan v. Arrivets,* 9 L.L.R. 15 (1945), involving breach of contract, in interpreting the act of 1938 this Court declared :

"In our opinion the act of 1938 cited by appellant does not give us authority to correct an error such as a neglect to issue, serve, and return a notice of appeal by an order appropriate to give us jurisdiction over appellee after appellee has attacked the jurisdiction of the court by motion to dismiss the appeal. The causes so clearly stated in the act for which an appeal might be dismissed refer to cases in which we already have jurisdiction, not to cases in which jurisdiction is wanting. . . ." *Id.* at 22.

Since the question at bar is one in which we already have jurisdiction and boils down to whether or not, under present modern views and under the acts of the Legislature referred to *supra,* the omission of one signature of a surety in an appeal bond which in all other respects is without fault should be considered a fatal defect, sufficient to warrant our dismissal of the appeal of appellants, we will now consider it from that angle:

Cyclopedia of Law and Procedure states that: "Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one ; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended. . . ." 36 *Id. 1110* (1910).

It is to be noted that the object of an appeal bond with sureties is to secure to the appellee his costs and to assure the court of compliance with its judgment. Nowhere in the motion filed by appellee does he attack the financial sufficiency of the surety to meet the requirements of the bond of one hundred dollars and for that reason demand more than one surety. He must evidently be satisfied with the sufficiency of the financial status of the surety. That being so, the defect cannot and will not be considered fatal by us so as to warrant our dismissal of the appeal. The motion is therefore denied and the case is hereby ordered heard on its merits at our October

term, 1950; and it is hereby so ordered.
Motion denied.

MR. JUSTICE SHANNON, dissenting.

According to the opinion just read by our distinguished Mr. Justice Barclay, it is seen that the conclusions of the majority have been based primarily upon the fact that the one person who is surety on the appeal bond in question is sufficient in law to pass said bond since he is obviously possessed of realty over and above one hundred dollars, the penalty sum of said bond. Ordinarily such an assumption would be all right, but I am confronted with the question of how far said assumption can stand under the controlling law.

To allow the hearing of the appeal is a cherished desire of mine for, I am persuaded to believe, it would put at rest a long contested case; but let us see what is before us. It is an appeal from one of our circuit courts wherein the appeal bond carries only one surety, a point which has been duly attacked upon the grounds of its insufficiency.

During the April term, 1944, of this Court, an appeal was heard in a case emanating from the Circuit Court for the Fourth Judicial Circuit. *Deady v. Republic,* L.L.R. 256. That case involved a charge of infraction of the peace and had its genesis in the Municipal Court of Harper whereat said Deady was convicted ; and thereafter was appealed before the circuit court. At the call of the case the county attorney offered a motion to dismiss the appeal, count one of which reads as follows :

" 'Because the appeal bond as filed in this said appeal is fatally defective and bad in that it carries only the one surety and not two or more sureties as required by the law in such cases made and provided.' "

The appellate circuit judge sustained this count and dismissed the appeal; but Deady, again dissatisfied, excepted and brought an appeal to this Court. In our opinion reversing the judgment of said appellate circuit judge, this Court clearly pointed out the difference between the requirements for appellants preparing their appeal bonds when appealing from the courts of the justice of the peace and when appealing from the circuit courts or other courts of record.

MR. JUSTICE BARCLAY, speaking for the Court, declared :

"The statute controlling appeal bonds from the Court of the Justice of the Peace reads as follows :

" 'Every appellant must furnish a bond with good and sufficient surety to be approved by the Justice in an amount sufficient to indemnify the appellee for any loss he may sustain and conditioned that he will indemnify the appellee from all injury [arising] from the appeal, and will comply with the judgment of the court to which the appeal is taken, or any [other] to which the cause may be removed, or his appeal shall be dismissed.' See Justice of the Peace Code ; 1 Rev. Stat. § 671.

"However, the statute controlling appeal bonds from the circuit courts or from courts of record reads differently. We quote from the Revised Statutes :

" 'Every appellant shall give a bond in an amount to be fixed by the court with two or more sureties, who shall be householders or freeholders within the Republic, to the effect that appellant will indemnify the appellee from all costs and from all injury arising from the appeal, and will comply with the judgment of the court to which the appeal is taken, or any other to which the cause may be removed. Appeal bonds are to be approved by the judge of the court from which the appeal is taken within sixty days after final decision or judgment. Upon the arrival of the bond, the clerk of said court shall forthwith issue a notice to the appellee informing him that the appeal is taken and to what term of the court, and directing said appellee to appear and defend the same. The appeal shall thereupon be complete. If such bond is not given the appeal shall be dismissed.' *Id.* § 426.

"It is obvious that the two statutes are not the same and should not be used interchangeably. Consequently, we are not in accord with and cannot sustain the ruling of the lower court judge on count one of the motion since it is not supported by the law controlling appeals from courts of the justice of peace, *supra,* which statute definitely states that appellant must furnish a bond with good and sufficient surety, not with two or more sureties as contended by the county attorney." *Id.* at 258, 259.

In face of this strongly worded opinion of the Court forcefully distinguishing between the requirements of the law on appeal bonds for courts of justice of the peace and for courts of record, I have not deemed it proper to join with my colleagues in favorably passing upon the sufficiency of the appeal bond with one surety in this case which involves an appeal from a circuit court. To do so would be contravening the principle set forth by this Court in its opinion in *Deady v. Republic, supra.*

It is my considered opinion that an attempt to pronounce the position taken by this Court in the *Deady* case, *supra,* just cited, as obiter dictum, is nothing short of begging the question or an unwillingness to squarely and fairly face the issue.

It is also my opinion that there is no room left for the exercise of discretion in the construction and interpretation of the pertinent statute, for the following quotation from *Ruling Case Law,* which was also cited by Mr. Justice Barclay in *Deady v. Republic,* 8 L.L.R. 256, 259, declares that:

"Where the statute requires a bond with 'sureties' a bond with only one surety is insufficient. Where, however, the statute requires on appeals in a criminal case that the accused give a bond 'with good and sufficient security to be approved by the police judge,' it has been held that a bond signed by the accused alone without sureties and approved by the judge, though it fails to meet the requirements of the law, is not utterly void, but if acted upon is effective to bind the signer and confer jurisdiction upon the appellate court. The statutes generally require the appeal bond to be accompanied by the affidavit of the sureties showing their property qualification. Upon the question of the effect of a failure to make a proper qualification affidavit, the authorities are conflicting, owing, primarily to the difference in the wording of the statutes. Under some statutes the failure is held to render the bond a nullity and to entitle the appellee to a dismissal of the appeal on motion. Under other statutes it is held that such failure does not render the appeal bond a nullity, and the appellee is not entitled to a dismissal of the appeal in the absence of any showing that the sureties are not financially competent. There is a distinction between the competency of a surety under the law and his financial qualification. The former is fixed by statute, and leaves nothing in reference thereto to the discretion of the court or officer approving- the bond, while the latter is subject to the discretion and judgment of the court or officers to whom it is presented, and he may approve or reject such bond as he finds it sufficient or otherwise. . . 2 R.C.L. 115 (1914).

The motion to dismiss is not founded upon the lack of financial qualification of the one surety which would be "subject to the discretion and judgment of the court or officer to whom it is presented." Said motion attacks the legal competency of an appeal bond with one surety only, on an appeal from a circuit court judgment, when our statutes require such bond to have "two or more sureties" thereon. 1 Rev. Stat. § 426. This omission makes said approved appeal bond materially defective; and since so fixed, "leaves nothing in reference thereto to the discretion of the court or officer approving the bond." *Ruling Case Law, supra.*

It is a principle of law that there must be compliance with the provisions of statutes in the preparation and submission of bonds on appeal, and a failure to so comply entitles the appellee to a dismissal of the appeal on motion. *Ibid.,* 3 C.J. 1106 (1915).

There are other statutes in operation in Liberia whereby appearance bonds as well as appeal bonds are permitted to be executed, sometimes by cash, cash securities, checks, or liens on realty; but in these cases the methods of procedure are provided. Where, however, as in this case, appellant elected to choose the ordinary procedure to executing an appeal bond, then the statutory requirements of a valid appeal bond should have been met.

Because of the above legal reasons, I have refrained from attaching my signature to the judgment denying the motion.