

SANGA GRAY ET AL., Appellants, v. GEWRON KOLLOH ET AL.,
Appellees.

MOTION TO DISMISS APPEAL.

Argued March 14-15, 1950. Decided June 8, 1950.

The act of the Legislature approved November 21, 1938, provides the causes upon which an appeal might be dismissed by the appellate court. Therefore the Court will deny a motion to dismiss an appeal on the ground that the bill of exceptions fails to state the legal points relied on, since said failure is not a cause for dismissal of the appeal under said statute.

On motion to dismiss appeal in ejectment action on jurisdictional grounds, *motion denied.*

Nete Sie Brownell for appellants. *Momolu S. Cooper* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

At the call of this case for hearing at this bar, appellees gave notice of the filing of a motion to dismiss appellants' appeal. We quote the motion hereunder :

"1. Because the appellees say that the paper called 'Bill of Exceptions' filed by said appellants is fatally defective for failure to definitely set out the points in law upon which they have invoked the . . . jurisdiction of this Honourable Court, 'as upon that alone the Supreme Court can adjudge if the law has been rightfully applied or not.'

"Appellees submit that the averment : 'Because appellants except to the entire proceeding and Your Honour's several Rulings, Denial of their Motion for New Trial and Final Judgment in the above entitled of [*sic*] action'

does not give appellees notice of the points of law on which appellants base their appeal and upon which this court in its endeavour to settle the rights of the parties must pass judgment. All which appellees are ready to prove.

"2. And also because appellees say that the so-called Bill of Exceptions is incurably bad and defective in that it brings up no specific ground of error supposed to have been committed by the trial judge, upon which they base their appeal, nor does it say

whether the "entire proceedings," the several Rulings of the court below and the "Denial of their Motion for New Trial and Final Judgment" were all illegal or that the Judge violated any established rule of law by rendering the Final Judgment it did render in this case. Wherefore appellees pray the dismissal of this case with all costs against said appellants. All which appellees are ready to prove.

"For reliance see : Bill of Exceptions filed : 3 Cyc. page 29 g; 3 C.J. p. 1347 sec. 1495; p. 1357 sec. 1504; 1359 Note 52 ; 1 L.L.R. pp. 2-3 ; Yates vs. McGill Bro.; Ibid 44 Syls. 1 & 2 Anderson vs. McLain.

"3. And also because appellees say that the Bill of Exceptions is further fatally defective and bad in that it does not contain any exception taken to the verdict of the Petit Jury who passed upon the issues of fact raised in this case. Appellees respectfully submit that appellants although excepting to said verdict, but having failed to couch same in their Bill of Exceptions now before this court must be considered as having waived said point; consequently there being no legal exception taken to the verdict of the Jury, which constitutes the foundation of the appeal, the appeal thus taken is without legal foundation and should therefore be dismissed and appellees so pray. All which appellees are ready to prove.

"For reliance see: Case Buchanan Urey vs. R.L. Nov. Term A.D. 1935; 2 L.L.R. page 569 Syl. 2; Ibid. Case Clarke et al vs. Rep. p.502.

"Wherefore in view of the foregoing, appellees pray the dismissal of this appeal with cost against the appellants. All which appellees as in duty bound will ever pray. All which the said appellees are ready to prove.

"Respectfully submitted,

Gewron Kolloh et al, appellees, By & thru their counsel :

MOMOLU COOPER,

Counsellor-at-Law.

"Dated at Broad Street,

Monrovia this 22nd day of March, A.D. 1949."

We deem it necessary for the sake of clarity also to quote the bill of exceptions :

"Sangay Gray, Scheafah Gray, Scheafah Morris, Borkai and Oscar J. K. Gray, appellants in the above entitled cause, being dissatisfied with the several Rulings,

Denial of their Motion for New Trial and Final Judgment of Your Honour, respectfully make and tender this as their Bill of Exceptions : "Because appellants except to the entire proceedings and Your Honour's several Rulings, Denial of their Motion for New Trial and Final Judgment in the above-entitled cause of Action.

"Wherefore appellants pray an appeal upon this Bill of Exceptions to the Honourable Supreme Court of Liberia at its March Term, A.D. 1947 for a review of the entire record in this case.

"Respectfully submitted,

Sangay Gray, Scheafah Gray, Scheafah Morris, Borkai and Oscar J. K. Gray,
appellants :

"[Sgd.] JOS. W. GARBER,

Attorney-at-law."

Resisting this motion of appellees, appellants submitted that while they conceded the legal soundness of the points of law raised in appellees' motion to dismiss their appeal, they respectfully and emphatically contended that said points of law are now not available to appellees because since the pronouncement of the opinions and decisions of this Court cited in said motion and relied upon by appellees, the Legislature of Liberia has by legislative enactment settled the practice and procedure of this Court with regard to appeal and the causes for which appeals may be dismissed; and appellants cited in support of their contention the act of the Legislature approved November 21, 1938.

Turning to this act, we find the following provision with respect to appeals before this Court:

" That the appellate court might dismiss an appeal upon motion properly taken for any of the following reasons only :

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 [this has been amended].
4. Non-appearance of Appellant.'

"Any law or part of laws conflicting with the provisions of this Act be and the same are hereby repealed.

"Approved 21st November, 1938." L. 1938, ch. III.

According to the foregoing pronouncement duly made by the Legislature, the ground set forth in appellees' motion is not one of the causes named by the said act as a ground for the dismissal of an appeal.

Considering the motion as well as the bill of exceptions very carefully, we are compelled to declare that in our opinion the said bill of exceptions is to all intents and purposes loosely, unskillfully, and unscientifically prepared. And it is here necessary to state that while it is not our duty to question the wisdom of the Legislature respecting any given legislation, but only to pass upon its constitutionality, or in other words declare it unconstitutional when the question of its conflict with the constitution is raised and it so appears, yet we think it of public interest and benefit to mention in this opinion that from this Court's experience since the passage of the act of 1938 hereinabove quoted, practitioners have adopted a careless and nonchalant attitude toward the preparation and superintending of appeals to this Court. While the law makers by the passage of the said statute sought to reduce the number of causes for which appeals may be dismissed and thus make it more convenient for parties to have their cases brought before this Court for review on the merits, the avenue opened by them in this liberal effort to assist parties litigant has been, and is still being, extended by inept practitioners who, relying upon the provisions of said statute, deem it unnecessary to prepare their appeal record with the usual precision.

Prior to the passage of the act in question we would not hesitate to decide that the issue raised by appellees with respect to the bill of exceptions is legal and well founded ; but in view of the provisions of said enactment, we are left with no alternative except to reluctantly deny the motion, and to order the case heard upon its merits at our October term, 1950; and it is hereby so ordered.

Motion denied.