Case No. I. **WILLIAM A. JOHNS**, Heir of the Late HON. J. J. W. JOHNS, Appellant, v. **T. E. CESS PELHAM** and **WILLIAM N. WITHERSPOON**, Appellees.

Case No. II. **T. E. CESS PELHAM**, Appellant, v. **WILLIAM N. WITHERSPOON** and **RICHARD P. GREENE, SR.**, Curator of Intestate Estates, Sinoe County, Appellees.

MOTIONS TO DISMISS APPEALS FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Case No. I argued April 18, 19, 1944. Case No. II argued April 18, 19, 1944.
Case No. I decided May 4, 1944. Case No. II decided May 4, 1944.

1. A bill of exceptions was unknown to the common law and is only of statutory origin. It is in the nature of a complaint against the trial judge before the appellate court.

2. Statutes providing for a bill of exceptions are remedial in their nature and should be liberally construed.

On motions to dismiss appeals on the ground that the venue in the bills of exceptions had been laid in the Supreme Court instead of in the appropriate circuit court, *motions denied.*

William A. Johns for himself in Case No. I. *Nete Sie Brownell* for appellant in Case No. II. *H. Lafayette Harmon* and *A. B. Ricks* for appellees in Case No. I. *H. Lafayette Harmon* and *A. B. Ricks* for appellees in Case No. II.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

Appellees having filed a motion to dismiss the appeal in each of the above-named cases on the same grounds, namely, that the venue in the bill of exceptions had been laid in the Supreme Court of Liberia and not in the Circuit Court for the Third Judicial Circuit, Sinoe County, and that said bill of exceptions had been addressed to the Justices of this Court and not to the judge of the trial court, it has become necessary for us to first dispose of the motions aforesaid.

The caption and address of the bill of exceptions in the first case reads:

[For Caption and Address of Bill of Exceptions, please see pdf file]

"Appellant's Bills of Exceptions

"The above entitled cause was brought up for trial before the Circuit Court for the third judicial circuit, Sinoe County, sitting in its Law Division, on the 17th, 18th, 19th, 20th and 23rd days of August A.D. 1943, and on the 31st day of August A.D. 1943, His Honour Jerry J. Witherspoon, rendered final judgment in the said cause to which final judgment and other exceptions taken by the above named appellant during the trial of the cause, the said appellant excepted and brings the within bill of exceptions before this Honourable Court for review as follows, to wit. . . ."

The caption and address of the bill of exceptions in the second case reads:

[For Caption and Address of Bill of Exceptions, please see pdf file]

"Appellant's Bill of Exceptions

"The above entitled cause was brought up for trial before the Circuit Court for the third judicial circuit, Sinoe County, sitting in its Probate Division, on the 5th and 6th days of August 1943, when His Honour Jerry J. Witherspoon, Judge presiding, gave a ruling in the said cause on the 9th day of August A. D. 1943 to which ruling and other exceptions taken by the above named appellant during the trial of the cause the said appellant excepted and brings the within bill of exceptions before this Honourable Court for review as follows, to wit. . . ."

As the bodies of the said bills of exceptions were not attacked in the said motions we do not see the necessity of embodying them in this opinion. Both bills were properly approved by the trial judge, His Honor Jerry J. Witherspoon.

Appellee in each instance strongly contended that in his opinion the alleged error complained of was sufficient to warrant this court of *dernier ressort* to dismiss the appeal and affirm the judgment of the court below.

Both appellants made practically the same resistance that according to the statute on appeals passed and approved November 21, 1938, no appeal may be dismissed for a defect in a bill of exceptions except where the bill of exceptions is not approved by the trial judge. L. 1938, ch. III, § 1.

Appellant Johns, however, further contended that his venue in the bill of exceptions in the Supreme Court of Liberia was correct in accordance with the forms in the

Revised Statutes, since the Old Blue Book did not contain any form for bills of exceptions. Appellant Pelham through his counsel in his resistance also attacked the motion on the ground that it was defective in that it is not properly entitled as to the title of the cause now on appeal before this Court because there is no case pending in this Court with the names of the parties and cause of action set out therein.

Upon inspection of the said motion referred to we find that the attack is justified for it reads as follows:

"T. E. CESS PELHAM, appellant VS. RICHARD P. GREENE, Sr., and WILLIAM N. WITHERSPOON, appellees" OBJECTION TO THE PROBATION OF A DEED

It can be observed that Richard P. Greene, Sr., is sued in his official capacity as Curator of Intestate Estates, Sinoe County, whereas Richard P. Greene, Sr., in his private capacity moved this Court to dismiss the appeal. Thus the title of the motion is defective. The papers filed in every action should all be properly entitled and the names of the parties should appear in their true character. In this case Richard P. Greene, Sr., is sued in his official capacity, but he places himself in an ambiguous position by filing a motion to dismiss in his private capacity. In our opinion that defect alone is sufficient to defeat the motion with respect to that case.

This appears to be the first time a bill of exceptions has been attacked as defective upon the ground of venue in this Court, and it consequently makes it necessary for us to take a little more pains than usual to go into the question in order that as much light as possible be thrown thereupon.

A bill of exceptions is defined in *Encyclopedia of Pleading and Practice* as:

"[A] formal statement in writing of exceptions taken by a party on the trial to a ruling, decision, charge, or opinion of the trial judge, setting out the proceedings on the trial, the acts of the trial judge alleged to be erroneous, the objections and exceptions taken thereto, together with the grounds therefor, and authenticated by the trial judge according to law." 3 *Id. Bills of Exceptions 378 (1895).*

A bill of exceptions was unknown to the common law and is only of statutory origin. That being so, it should substantially conform to the requirements of the statute. It must be so framed and signed that it will demonstrate that it was intended as a bill of exceptions. A bill of exceptions is in the nature of a complaint against the trial judge

before the appellate court and, if venue is laid there, it should not be considered erroneous to the extent of warranting the appellate court to dismiss the appeal.

In the case of *Adorkor v. Adorkor, 5* L.L.R. 172, decided by this Court in April, 1936, Mr. Chief Justice Grimes in a dissenting opinion took pains to explain the difference between a bill of exceptions and an appeal bond. Said he with reference to the bill of exceptions :

"There is a very material difference in the use and purpose of a bill of exceptions on the one hand, and an appeal bond on the other. With regard to the former, when a case is appealed, the appeal is, in effect, a complaint, charging the trial judge with having committed sundry errors, each one of which is set out in a different count in the bill of exceptions. He will, of course, have had notice during the trial that the party so excepting intended appealing from each such ruling of his to the appellate court, and having embodied said complaint in the form of a bill of exceptions it is but just and fair to him that said document should be submitted to him, and to him alone, in order that he might be apprised in advance of the grounds of complaint, and be enabled thereby to make any observations thereon, as in practice is often done, by the notations which a judge makes on the bill of exceptions in the record. There is no reason to suppose that any other trial judge would have given the same rulings as his colleague, nor, not knowing the reason in the mind of said colleague who actually tried the case why he had reached such a conclusion that he would be able to protect his colleague by appropriate notations as his colleague would be able to do." *Id.* at 177-78.

The *Encyclopedia of Pleading and Practice* provides further enlightenment on this subject:

"A bill of exceptions is substantially a pleading of the exceptant before the appellate court; he is, therefore, responsible for all deficiencies therein ; and where the bill is unintelligible, confused, or conflicting, it will be interpreted against the appellant and in support of the judgment. . . 3 *Id. Bills of Exceptions 509--10 (1895).*

It appears to us that it would be rather anomalous to have a complaint addressed to the person against whom it is made, although it is quite correct, just, and fair, as set out by our learned Chief Justice, above quoted, that the document, the bill of exceptions, should first be submitted to him, the trial judge. The purpose of this submission is merely to apprise said judge of the grounds of complaint in advance in order that he might be enabled to make any observations or notations thereon as to the correctness and truthfulness of the several counts appearing therein of what

actually happened during the trial, and confirm by approving same. This is necessary since in an appeal the trial judge does not appear before the appellate court but is dependent solely upon the appellee to defend his position taken in the several rulings, charge, and judgment.

Ordinarily in the filing of a complaint in the lower courts said complaint is venued in that court. Our statute under complaints provides that:

"The complaint must be written or printed, and shall contain the following, namely:

1. The name of the court in which the action is brought, the names of the parties to the action, plaintiff and defendant, and the subject matter of the action." 1 Rev. Stat. § 286.

Why then should a bill of exceptions necessarily, as contended by appellee and supported by our distinguished and learned colleague who has decided to file a dissenting opinion, be venued in the trial court since it is clearly a pleading of the appellant before the appellate court and is in the nature of a complaint charging the trial judge with having committed sundry errors? The statute requires the bill of exceptions to be attached to the record and it is considered a part thereof for the purpose of having all the papers in connection with the appeal forwarded at one and the same time by the clerk of the trial court. The same rule applies in this jurisdiction under our law to the notice of appeal. This document is a paper prepared by the clerk of the court from which the appeal hails, not by the clerk of the Supreme Court; it is served and returned by the sheriff who is the ministerial officer of the trial court, not of this Court; and after service and return it is attached to the record as a part thereof to be forwarded therewith. Nevertheless, said notice of appeal is considered by this Court to all intents and purposes in the nature of a summons of appellee, the service upon and return of which places appellee under the jurisdiction of this Court, not of the lower court; and a neglect or failure to so serve and return has resulted invariably in the dismissal of the appeal upon motion properly made by appellee. If in the cases at bar the position is to be considered anomalous and paradoxical, why is it not also so considered in the case of the notice of appeal?

Our statute on appeals does not define a bill of exceptions, but reads as follows :

"It shall be the duty of the party appealing from any decision or judgment of any court of record or judge thereof, which does not appear upon the face of the ordinary proceedings in the case, to cause such decision or judgment, with the

evidence and prayer or motion upon which it is founded, to be reduced to writing and to have the same signed by the judge from whose decision or judgment the appeal is taken; and it shall be the duty of such judge to sign the same. This instrument shall be called a bill of exceptions, and shall be annexed to the clerk's record of the proceedings in the case, and shall be considered as a part of it. . . ." 1 Rev. Stat. § 425.

Nowhere therein does it appear as a requisite to the validity of the bill of exceptions that it should necessarily be venued and addressed to any particular court, and that if not so venued the error would result in the dismissal of the appeal. We quote again from the *Encyclopedia of Pleading and Practice:*

"[S]tatutes providing 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." 3 *Id. Bills of Exceptions* 508-99 (1895).

In *Ruling Case Law* we find the rule laid down as follows :

"Bills of exception are not required to be in any particular form, and are not invalid because they lack the usual formal beginning, and the courts are inclined to disregard mere formal defects and irregularities that do not cloud the record or violate a statutory requirement. . . ." 2 *Id. Appeal and Error* § 115, at 142 (1914).

Our recent statute on appeals passed and approved in the year 1938 definitely provides :

" 'That no act nor omission of a Judge nor any officer of Court shall affect the validity of an appeal, but such act, mistake or negligence shall be remedied by some appropriate order of the appellate court so as to promote substantial justice.

" '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.

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

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.

In *Cyclopedia of Law and Procedure* with reference to the construction of statutes it is definitely stated 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. Statutes 1110—1111* (1910).

In the act of 1938 above quoted which controls appeals to this Court, it is obvious that the Legislature did not intend to make exceptions, for when it inserted the word "only" it clearly meant that the causes for dismissal set out therein were those which would authorize and warrant the Court legally to dismiss an appeal. It might be contended and was so submitted that the Legislature in framing the act could not foresee every eventuality and consequently did not include other probable good causes. We have no hesitancy in agreeing with that contention, but those causes must be such that to do otherwise would bring about injustice, oppression, or an absurd consequence. The reason of the law should in such cases prevail over the letter. For example, the neglect to serve a notice of appeal on the appellee and the failure to return same by the sheriff has been consistently by this Court upheld as a good cause for the dismissal of an appeal. The Court takes this position because such notice of appeal is considered in the nature of a summons to the appellee, and the service upon him and its return by the sheriff places said appellee within the jurisdiction of

this Court. Otherwise an injustice would result to said appellee who might not appear, not having formal knowledge of the notice of appeal, and this Court without the notice of appeal, its service, and return included in the records sent up would not be advised as to whether or not the appellee had been summoned to appear and defend himself and the position or several rulings and judgment of the judge in the court below from which the appeal emanates. Consequently, the failure or neglect to have served and returned a notice of appeal has been by this Court upheld as a jurisdictional ground for dismissal of an appeal.

"The record must show that notice of appeal was served as the statute required, and that a proper filing was made, or the appeal will be dismissed for lack of jurisdiction.

"Since service in the statutory manner is jurisdictional, a failure to comply with a material requirement of the statute defeats its operation. The appellate court acquires no jurisdiction for any purpose, and cannot therefore supply the omission or rectify the defect in the notice." 2 Encyc. of Plead. & Prac. *Appeals 230-31 (1895).*

The rule laid down in *Ruling Case Law is* as follows :

"As a general rule, where the legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and it is not the province of a court to introduce an exception by construction. And it is an invariable rule that an exception cannot be created by construction where none is necessary to effectuate the legislative intention. The power to create exceptions by construction can never be exercised where the words of the statute are free from ambiguity and its purpose plain. It is only where the necessity is imperious, and where absurd or manifestly unjust consequences would otherwise certainly result, that the courts may recognize exceptions. The. courts have no dispensing power over statutes. Where statutes contain no exceptions, and it cannot be said with certainty that exceptions were contemplated by the legislature, the courts can recognize none. . . . To illustrate, courts cannot engraft on a statute of limitations an exception which the statute does not contain. But the general rule against the introduction of exceptions by construction is subject to qualifications to obviate a construction that would be unjust, oppressive and unreasonable. It will always be presumed that the legislature intended exceptions to its language which would avoid injustice, oppression or an absurd consequence. The reason of the law, in such cases, should prevail over the letter. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the

circumstances surrounding its enactment or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular case. Hence, where the whole context and the circumstances surrounding the adoption of an act show a legislative intention to make an exception to the general terms of the act, the exception will be recognized by the courts. Although a statute providing a penalty for interfering with the transmission of the mails does not contain any exception, yet an officer may lawfully arrest a mail carrier upon a warrant charging him with the crime of murder. An act punishing as piracy a robbery committed 'by any person or persons' on the high seas was held not to include the subjects of a foreign power who in a foreign ship committed robbery on the high seas. The operation of the statute of limitations was suspended during the existence of the civil war, on the ground of public policy, although no exception was made on that account in the statute." 25 *Id. Statutes* ∫ 224, at 972-73 (1919)

On examining the two bills of exceptions complained of as so defective as to warrant this Court to dismiss the appeals, we find that the bill in each case has been prepared and, in accordance with statutory law, has been presented to the trial judge within the time prescribed and has been by him approved and signed. The only ground set out in the recent statute of appeals with reference to a bill of exceptions is that if said bill does now show on its face the approval of the trial judge the appeal should be dismissed. Since both of the bills of exceptions are approved by the trial judge we are of the opinion that there is no tangible legal reason why the grounds set out in appellees' motions to dismiss should be considered and upheld as an exception to the statute since indeed by refusing to so do neither injustice or oppression would occur to appellees nor would the denial of the motions bring about an absurd consequence. It follows, therefore, that the motions are denied and the cases will be heard on their merits ; and it is hereby so ordered.
Motions denied.

MR. CHIEF JUSTICE GRIMES, dissenting.

I find it impossible to agree with the views of my colleagues of this Bench as expressed in the majority opinion which they have just read, wherein they denied the motion to dimiss in the two above-entitled causes ; and I find it my bounden duty to place upon record my reasons for disagreeing with them.

A bill of exceptions may be defined, in language sufficiently simple for the lay mind to grasp, as a statement in writing setting forth in particularity the exceptions which

have been taken over objections to sundry interlocutory and final rulings given by the trial judge during the progress of a trial. Said bill of exceptions, when so prepared, must be presented to the trial judge, requesting his signature thereto as evidence to the appellate court that said points had been raised before him and that he had expressed the opinions therein indicated in the said case, which points are being challenged as correct by the losing party. The judge's approval thereof joins issue, whether his interpretation of the law was correct or that of the party seeking a review of the cause.

In the two cases now under consideration the venue of the bill of exceptions is not laid in the Circuit Court for the Third Judicial Circuit which was the trial court, but rather it is laid in the Supreme Court of the Republic of Liberia which is the Court of review. Moreover, it is not addressed to His Honor Judge Witherspoon who was the trial judge, but rather to the Chief Justice and the four Associate Justices who are presently seated upon this Bench.

It is true that the Legislature of Liberia, at its session of 1935-36, prescribed four reasons, and four reasons only, upon which an appeal might be dismissed. L. 1935-36, ch. VII, § 1. However, I maintain, as I have always done, that all statutes must be construed within the spirit rather than within the letter of the law for, according to the old maxim, *V erba intentioni, non e contra, debent inservire,* that is, "words ought to be more subservient to the intent and not the intent to the words." Black, Law Dictionary 1729 (4th ed. 1950 . Another maxim states the same principle: *Qui haeret in litera haeret in cortice,* which means that whosoever adheres merely to the letter of the law is as one who sticks only to the bark of a tree.

Here then arises the position which I regard as anomalous, that is, laying the venue in the Supreme Court and addressing the bill of exceptions, complaining of errors alleged to have been committed in the trial court, to the Justices of this Court. What makes it more paradoxical is that His Honor Judge Witherspoon approved said bill of exceptions which is tantamount to having a judge of a court of inferior jurisdiction endorse or approve a bill of exceptions alleging that the appellate court and not he has committed the error.

Can we take jurisdiction of such a paper? I think not. To my mind it matters little that Judge Witherspoon was the trial judge and approved said bill of exceptions. The point is that the paper was not intended for or addressed to said judge or to the court over which he presides. Therefore, he had no right whatever to open that document, much less to attach his approval thereto. One can see from this that I personally do

not regard the error as merely technical, but rather as fundamental. Hence I contend and maintain that we should not have accepted that paper as a basis for reviewing the cause appealed to us.

The majority of my colleagues are of a different opinion; hence this dissent.