

LUCINDA L. THOMAS and **ETHEL F. MOORE**, Executrices of the Estate of the Late **JOSEPH T. DAYRELL**, Appellants, v. **ADELAIDE FLORENCE DAYRELL-MASON**, Widow of the Late **JOSEPH T. DAYRELL**, and **WILLIAM N. ROSS**, appointed Administrator *pendente lite* of the Estate of the Late **JOSEPH T. DAYRELL**, Appellees.

PETITION FOR AN ORDER TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY, TO RESUME JURISDICTION AND ENFORCE JUDGMENT.

Argued November 25, 1953. Decided January 22, 1954.

Where an appeal has not been perfected within the required statutory time an appellate court will grant a petition to order a lower court to resume jurisdiction and enforce its judgment.

Lucinda L. Thomas and Ethel F. Moore instituted an injunction action against Adelaide Florence Dayrell-Mason and William N. Ross in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. The action was unsuccessful. Plaintiffs, now appellants, appealed to this Court. The appeal was not completed within the required statutory time. Defendants, now appellees, petitioned this Court for an order to the court below to resume jurisdiction and enforce its judgment. *Petition granted.*

D. Bartholomew Cooper for appellants. *William A. Johns* for appellees.

MR. JUSTICE SHANNON delivered the opinion of the Court.

An action of injunction was instituted before the court below by Lucinda L. Thomas and her sister, as executrices of the will of the late Joseph T. Dayrell of Monrovia, against Adelaide F. Dayrell-Mason, widow of Joseph T. Dayrell, and against William N. Ross, appointed administrator *pendente lite* of said estate. According to the submission before this Court, the action was heard and determined at the June, 1950, term of said court against Lucinda L. Thomas and her sister. From the decree an appeal was prayed to this Court. The submission discloses that said appeal has not been perfected, nor have the records been forwarded hither to enable us to hear and determine same. To support this a certificate from the clerk of this Court, dated February 25, 1953, was appended, which certificate reads as follows:

"This is to certify that, up to the issuance of this certificate, the above entitled cause

has not been forwarded to this office for docketing and filing on appeal before the Supreme Court of Liberia by the clerk of the Sixth Judicial Circuit, Montserrado County."

Adelaide F. Dayrell-Mason and William N. Ross, the successful defendants in the injunction suit, are asking this Court for an order to the court below to resume jurisdiction and enforce its judgment or decree. They also raise the issue of the inconvenience caused by the delay in prosecuting this appeal which contributed to the deterioration of a building.

Lucinda L. Thomas and her sister, in resistance to the submission, do not deny that they failed to complete the appeal and forward the records to this Court. Instead they attack the titles of the parties. In our opinion, this is not sufficient to topple the submission.

Under our statutes the progressive steps in taking an appeal in a civil cause from a lower court of record to the Supreme Court, after entering exceptions to the judgment or decree, and giving notice of an appeal, are as follows :

1. A bill of exceptions showing the grounds of the appeal must be submitted, approved and filed within ten days after judgment.
2. An appeal bond must be approved and filed within sixty days after judgment.
3. A notice of the completion of appeal must be issued by the clerk of the court from which the appeal is taken, and must be served on the appellee, together with the transcription and forwarding of the records in the appellate court, within sixty and ninety days respectively after final judgment.

As a result of the growth in volume of the clerical work of the several clerks of courts, the rule for the transcription and transmission of records to the appellate court within ninety days has not of late been meticulously observed. *Jackson v. Jackson*, 9 L.L.R. 47 (1945). But the other statutory requirements, especially with reference to the time for the filing of exceptions and approved appeal bonds, and the issuance of notice of the completion of appeal, cannot be ignored. In the absence, therefore, of any denial on the part of Lucinda L. Thomas and her sister of the factual correctness of the submission against them, constituting an admission of their failure to take advantage of the statute in appealing to this Court, we have no alternative but to grant the request contained in said submission and direct the clerk of this Court to send an

order commanding the court below to resume jurisdiction over the cause and enforce its decree, with costs of the proceedings against the said Lucinda L. Thomas and her sister, Ethel Dayrell-Moore ; and it is hereby so ordered.

Petition granted.