Case No. I. **SAMUEL S. WATTS, SR.**, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

Case No. II. **RANDOLPH BREEKS**, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

MOTIONS TO DISMISS APPEALS.

Argued October 10-11, 1950. Decided February 2, 1951.

1. In the appeal of criminal cases it is not necessary to issue and serve on the appellee a notice of the completion of the appeal.

2. The statute relevant to the clause of indemnification in appeal bonds applies to civil cases ; in criminal cases the omission of said clause does not vitiate the bond.

3. The trend of current judicial administration is to discountenance wholesale dismissal of appeals on grounds not showing material defects.

4. In criminal appeal cases it is not necessary that the penal sum in a bond be one and one-half times the amount of the judgment of the lower court.

On motions to dismiss appeals on jurisdictional grounds, *motions denied.*

Momolu S. Cooper for appellant in case No. I. *A. B. Ricks* for appellant in case No. II. *The Solicitor General* assisted by J. David Beysolow, County Attorney, for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

When each of these two cases was called for hearing, the Honorable Solicitor General of Liberia, for appellee, filed a motion to dismiss the appeal in each of said cases, count one of each motion embodying the following:

"Because appellee says that no Notice of appeal has been issued and served on her or her legal representatives and returned by the Ministerial Officer of the Court below so as to have given this Honourable Court legal jurisdiction over the person of the appellee in this action. Appellee therefore submits and prays that this court not having acquired legal jurisdiction by the return of the Notice of appeal over her, said appeal should be dismissed and the judgment of the lower court confirmed, and affirmed. And this appellee is ready to prove."

Appellee strenuously relied upon a judgment without opinion given in the case *Republic v. Jones,* involving the crime of obtaining money under false pretense, decided during the recent October 1949 term of this Court. It was necessary to have recourse to said judgment, and in doing so it was apparent from the said judgment that the contention would be tenable; but upon careful review of said judgment by our distinguished colleagues who heard and determined said case, Their Honors Associate Justices Barclay, Reeves, and Davis, it was discovered by them that there was an evident error on the part of the clerk, who in typing out said judgment recorded that count one of the motion, giving the same ground to dismiss as that given in count one in each motion now under consideration, was sustained when actually it was count two that was sustained therein. This Court delivered an opinion during this term of Court in which it noted and corrected the error. *Republic v. Jones,* 10 L.L.R. 379.

This Court has often held that a notice of appeal is necessary to the completion of an appeal from a court of record and to confer jurisdiction on the appellate Court, since it is in the nature of a summons, relying upon the 1894 statute on appeals. L. 1893-94, 10 (2d). In 1894 and up to 1938 there were no statutes on criminal procedure and the manner of taking appeals so that although the said 1894 statute obviously was intended to embrace appeals in civil cases only, it was also followed in the prosecution of appeals in criminal cases.

However, in 1938 the Legislature passed an act entitled "An Act Providing for Appeals in Criminal Cases," wherein only one notice of appeal is required to be issued by the party appealing, which said notice is not the one contemplated by the 1894 Act nor the one urged by the appellee in this case. We quote the relevant portion of the act relating to the method of taking appeals :

"An appeal must be taken in the following manner :

(a) By the service of a notice in writing on the Clerk of the Court in which judgment was entered and with whom the judgment record is filed, stating that the prisoner appeals from judgment. Such notice must be filed within forty-eight (48) hours after the judgment of conviction or the order is entered.

(c) If the appeal be taken by the prisoner a similar notice must be served upon the Attorney General. . . ." L. 1938, ch. XXIV, § 7 (a) (c).

It is not the contention of the Attorney General or his representatives that no such notice as provided for in the statute above was served but rather that the notice of the completion of appeal provided for by the statute of 1894 was not issued and served on them. On the other hand, it is apparent from the record that the notice required by the 1938 statute on criminal appeals was issued and served in each of the cases. Since there is no provision for the issuance and service of the notice of completion of appeal in said act, and since said act provides that "the only mode of reviewing a judgment or order in a criminal action or proceeding of a criminal nature shall be criminal appeal as provided herein," there is no alternative but to overrule count one in each of the motions. L. 1938, ch. XXIV, § T. Mr. Justice Barclay is not in harmony with this. Said Justice still insists that service of the notice of the completion of appeal and its return by the ministerial officer of the trial court is absolutely necessary in order to give the appellate Court jurisdiction over the appellee, whether the case is of a civil or criminal nature, and that this has been ever and anon stressed by this Court heretofore.

With further reference to the above, the motion in the case *Watts v. Republic* carries three other counts respectfully submitting that the appeal should be dismissed because (1) An approved bill of exceptions was not filed within ten days as the law requires; (2) The appeal bond failed to contain a clause conditioning the indemnification on appellee on payment of all costs and for all injury arising from the appeal and on compliance by appellant with the judgment of the court to which the appeal might be taken or any other to which the cause might be removed ; and (3) The penal sum of said bond is not one and one-half the amount of the judgment of the lower court.

As to the first point which is the lack of approval of the bill of exceptions within ten days after final judgment, we have had recourse to the records of the lower court certified to us and we find that the judgment in the case was entered on March 13, 1950 and the bill of exceptions duly approved by the trial Judge on March 22, which by computation is not beyond ten days from the rendition of final judgment. (See final judgment and bill of exceptions.) Count two of the motion in the *Watt* case is overruled.

The next point is that the appeal bond fails to carry an indemnification clause as the law requires in order to condition compliance with the judgment of the court to which the appeal is taken or any other court to which the cause may be removed. We have already said that, because of the absence up to 1938 of any statute regulating criminal procedure and criminal appeals in courts of record in our country, there had

been a tendency to confuse criminal procedure with civil procedure. This Court, however, had, as early as its January term, 1893, held as follows :

"The court would here remark that the bond of the appellant being a bond to appear in this court on the day, month and year therein stated, to prosecute his cause, is sufficient, and that the statute referred to respecting bonds of indemnification applies only in civil actions and not criminal cases." *Ross v. Republic, 1* L.L.R. 249, 250.

It is also observed that even though the appeal bond in the *Watt* case does not in exact statutory words condition compliance with the judgment of the court to which the appeal is taken or of any other to which the case may be removed, it is nevertheless framed in the following words on this score :

"This recognizance showeth that the said principal-appellant will prosecute the appeal to the Honourable Supreme Court of Liberia and if thereat found guilty of said charge, and the judgment of the lower court confirmed and affirmed, he shall surrender himself unto the custody of the Sheriff of Maryland County, Republic of Liberia, to undergo the sentence of the law; and will remain in court until discharged by due course of law."

It is the trend of present day judicial administration, as evidenced by recent legislative enactments and various decisions of this Court, to discountenance wholesale dismissal of appeals, especially on grounds not showing material defects. Because of this, count three of the said *Watts'* motion is also overruled.

We come now to the fourth and last count in said motion, which alleges the defectiveness of the said appeal bond on the ground that the penal sum of said bond is not one and one-half of the amount of the judgment of the lower court. This Court holds that it is not in agreement with the contention of appellee that this is necessary in criminal appeal cases wherein there is no indemnification required, as already stated in this opinion, since the purpose of the fifty percent portion of the principal amount of judgment is to cover indemnification. In fine, this requirement would apply only in civil cases. Count four is overruled.

Because of what has already been stated herein, the motions in both cases are denied and the cases ordered heard upon their merits.

Motions denied.