

A. J. FARPHINY et al., Appellants, v. **S. E. McCAREY**, Appellee.

ARGUED JANUARY, 1911. DECIDED JANUARY 26, 1911.

Toliver, C. J., Richardson and Wood, JJ.

When the costs are not paid within the statutory period, the appeal will be dismissed.

Mr. Chief Justice Toliver delivered the opinion of the court:

Damages—Motion to Dismiss Appeal. This is an appeal from the Court of Quarter Sessions and Common Pleas for Montserrado County, holden in the City of Monrovia, at its March term, A. D. 1909. The appellants in the cause not being satisfied with the several rulings and judgment of the lower court brings the cause to this court for review. Upon the call of the parties in the case, the appellee's counsel informed the court that he had a motion to offer. The court permitted the same and heard patiently the arguments of the learned counsel on both sides.

The appellee's motion to dismiss the appeal was for the following reason: "Because the appeal was not completed within the time prescribed by *law*."

The amendatory Judiciary Act of 1894 in reference to the mode as to how appeals are to be taken to this court, says in express terms that can by no means be obviated, first, that ten days from the rendition of the final judgment, the appellant shall prepare and tender his bill of exceptions for the judge's signature ; an appeal bond is to be approved by the judge of the court from which the appeal is taken within sixty days after rendition of final judgment, as well as the payment of all costs; after this is done the clerk of the court issues a notice to the appellee informing him or them that the appeal is taken. Within ninety days after the appeal has been taken, the clerk of the lower court is required to transmit all of the records in the case to the appellate court under a penalty.

It does not follow that the time allowed for the payment of costs and approval

of bond should be in any way blended with that of the clerk of the lower court transmitting the records to the appellate court, as was commented upon by the counsel. This court considers the several requisites of the statute separate and distinct: thus should the appellant secure the signature of the judge to his bill of exceptions within the time prescribed by law and fail to pay costs and have his bond approved within said time, he is guilty of laches.

This court discovers from the records in this case that the judgment was rendered on the 19th of March, A. D. 1909, and that the bill of costs was paid on the 26th day of May, A. D. 1909, sixtyseven days from the rendition of judgment, that is to say, seven days in excess of the time prescribed by law. The old maxim of law, which says "that whatever is not done lawfully is not done at all," is to all intents and purpose, applicable in this case.

This court, therefore, sustains the motion of the appellee, and rules that said case is dismissed and the appellant ruled to pay all costs. The clerk of this court is commanded to notify the court below as to this ruling.

T. W. Haynes, for appellant. *L. A. Grimes*, for appellee.