

IKE HYDEN, Appellant, v. VICTOR L. YATES,
Appellee.

MOTION FOR LEAVE TO MAKE APPEAL BOND SUFFICIENT IN AN APPEAL
FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
NIMBA COUNTY.

Argued April 20, 1970. Date of decision not indicated.

1. When a statute governing appeal procedures permits correction before an appellate court of an insufficient appeal bond, an application for leave to amend will be granted if between the time of such application and its consideration by the Court no motion has been brought to dismiss the appeal for the insufficiency of the appeal bond.

An appeal bond did not have the required revenue stamp affixed. Upon discovery of the omission during pendency of the appeal, appellant moved for leave to make the appeal bond sufficient. Between such time and its submission before the Supreme Court, no motion was brought to dismiss the appeal. The *motion* was *granted*.

J. Dossen Richards for appellant. No appearance for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

This case has come before this Court from the Ninth Judicial Circuit Court, Nimba County, which had the matter for review in an appeal taken from the court of the Stipendiary Magistrate at Saniquellie, Nimba County.

The particular portion of the proceedings that now claim the attention of this Court relates to an application made by appellant's counsel to have his appeal bond made sufficient by being permitted to affix thereon the legally required 25-cent stamp, which omission in the transmis-

sion of the record from the court below was occasioned by mere inadvertence.

A study of the record in this case showed that from the time of the filing of the application on November 14, 1967, up to the time of the submission of the application at this bar, the bond had not been attacked in this Court by the appellee.

Our Civil Procedure Law governing the appeal procedures herein and at the time the application was filed, declares:

"Failure to file bond: insufficient bond. Failure to file an appeal bond within the specified time or filing of an insufficient bond shall be grounds for dismissal of appeal. But an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action. *Thereafter if the appellant discovers an insufficiency in his appeal bond, he may petition the appellate court for permission to make it sufficient.*" (Emphasis supplied.)

Civil Procedure Law, 1956 Code, 6:1014.

In view of the above-cited statutory provision allowing for the correction of an insufficient appeal bond even in this Court, prior to attack, the application is hereby granted, and the Clerk of this Court is hereby ordered to permit the appellant to affix the aforesaid stamp as requested. Costs to abide final determination of the case. And it is hereby so ordered.

Motion granted.