

**A. B. J. K. LEVIN, of Sweden, Appellant, v.
JUVICO SUPERMARKET, Appellee.**

**MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.**

Argued October 22, 1974. Decided November 15, 1974.

1. When the appeal bond and the property valuation statement both contain the assessed value of the property pledged, the failure to set forth property valuation in the affidavit of the sureties will not be considered such a defect as to warrant dismissal of the appeal.
2. Mere technicalities which do not affect the merits of the case are not favored by the Supreme Court as a basis for deciding cases on appeal.

The evaluation of property pledged by appellant was not set forth in the affidavit of sureties appended to the appeal bond, but it was contained in the bond and in the certificate of valuation, also appended to the bond. The appellee moved to dismiss the appeal on the basis of the aforesaid omission.

The Supreme Court stated that the basis for the motion to dismiss was predicated on a mere technicality, since the valuation could clearly be established by reference to the other documents. The motion to dismiss the appeal was *denied*.

E. H. Pelham for appellant. *S. B. Dunbar* and *H. Victor Stryker* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

This case involves a motion for the dismissal of an appeal. For the benefit of this opinion we deem it expedient to give a synopsis of the relevant facts and circumstances which led to the institution of the action now on appeal.

A perusal of the case reveals that on May 9, 1974, Juvico Supermarket, by and through its Manager, H. Victor Stryker, instituted an action for damages against A. B. J. K. Levin, of Sweden, by and through its representative, Nesstra, represented by its Manager, Carl Hermolin. The action was based on the facts set forth below.

On September 4, 1972, the plaintiff, who is the appellee, placed an order with Nesstra for the importation of one Levin LM 13 Integral four-deck screens cooling cabinet, the purpose of which was the refrigeration of foodstuffs. \$1,223.00 was the purchase price of the cooler, \$827.00 being paid for the cooler itself, \$230.00 being paid for freight charges, and \$166.00 being paid as duty on the cooler.

A dispute arose between the parties as to the electrical cycle the cooler was to be built for. The plaintiff contended that it had emphasized to Nesstra that since the local electrical system was equipped with 60-cycle power, the motor of the cooler should be made equipped for a 60-cycle electrical system. Nesstra, on the other hand, contended that no such information had been communicated to it by the plaintiff. In any event, the cooler sent to and installed at the Juvico Supermarket contained a motor equipped for a 50-cycle electrical system. The result was that in August, 1973, eight months after it was installed, the cooler broke down. Thereafter, several communications were exchanged between the plaintiff and the defendant, through its agent, Nesstra, with the result that the plaintiff was told to take the cooler to the Modern Refrigeration Shop, where repairs would be made to the cooler and parts supplied therefor. It turned out, however, that the Modern Refrigeration Shop had no spare parts available that fit the motor of the cooler. Hence, no repairs could be made.

Upon being informed that no spare parts were available, the plaintiff again communicated with the defen-

dant through its agent and subsequently complained to the Ministry of Commerce, Industry and Transportation. The Ministry of Commerce, Industry and Transportation then communicated with the defendant through Nesstra, the essence of which was to demand that repairs be done to the cooler or the plaintiff be reimbursed a sum equivalent to the value of the cooler, plus expenses. After several communications between the plaintiff, defendant, and the Ministry of Commerce, Industry and Transportation and after an investigation conducted by the Ministry, the plaintiff received reimbursement in the amount of \$1,193.00, in accordance with the ruling of the Ministry of Commerce, Industry and Transportation.

The plaintiff, however, feeling itself to have been damaged by the breakdown of the cooler, brought an action for damages. The complaint alleged that as a result of the breakdown of the cooler, the plaintiff was unable to satisfy the needs of its customers; that it could no longer provide supplies to its customers as it had done in the past; that as a result its customers were forced to abandon their patronage, the immediate effect of which was a reduction in the volume of business, a defamation of its reputation, good name, and fame hereinbefore untarnished and victimizing it financially. The action for damages was based on a breach of warranty by the defendant. According to the complaint, the plaintiff had been given a warranty by the defendant, guaranteeing that the cooler would be in good condition for a period of sixteen months, but within eight months the cooler broke down. The plaintiff, therefore, sought damages in the amount of \$54,000.00.

The defendant filed an answer denying that the plaintiff had any right of recovery against it. Subsequently a reply was filed, the issues of law were ruled upon and the case ordered to trial. The jury returned a verdict in favor of the plaintiff, awarding it damages in the amount of \$54,000.00. The defendant excepted to the verdict.

Thereafter, a motion for a new trial was filed, resisted and denied. It was upon the denial of the defendant's motion for a new trial and the rendition of final judgment that an appeal was taken to this Court.

Upon the appeal reaching this Court, the appellee filed a motion to dismiss it. In its motion, which contains two counts, the appellee argued that the appeal be dismissed for the reason that the steps prescribed by statute to perfect the appeal had not been followed; the defects being that the appeal bond had not been approved by the trial court judge and that the affidavit of the sureties did not certify the value of the property of the sureties. It is this motion which we shall deal with in this opinion.

As to point one enumerated above, we find it to be without any foundation, since an examination of the appeal bond reveals that it was in fact approved by the judge of the trial court as required by law. That count is, therefore, dismissed.

Count two presents a more complicated situation. In that count appellee argues that since the affidavit of the sureties fails to certify the amount or value of the property of the sureties, the affidavit is defective, warranting dismissal of the appeal.

The Civil Procedure Law which is relevant to this argument states that an appeal bond should be accompanied by an affidavit of sureties containing specified information.

“(a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security;

“(b) A description of the property, sufficiently identified to establish the lien of the bond;

“(c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and

“(d) A statement of the assessed value of each property offered.” Rev. Code 1:63.3.

It is the fourth point which is being argued herein. Point four in the affidavit of the sureties filed by the appellant states: "That the combined value of the said properties is \$———— dollars." It is the contention of the appellee that the failure of the appellant to insert the value of the property in the space provided renders the affidavit defective, warranting dismissal of the appeal.

We agree with the appellee that the affidavit was made defective by the appellant's failure to insert the value of the property as required. We feel, however, that the defect was cured by the bond and property valuation statement to which the affidavit was attached. The affidavit of sureties is an oath affirming and confirming that the statements and amounts contained in the appeal bond and statement of property valuation are true and correct. Therefore, since both the appeal bond and the statement of property valuation contained the assessed value of the property, the failure of the affidavit of sureties to set it forth is not such a defect as to warrant dismissal of the appeal.

We have repeatedly stated that mere technicalities which do not affect the merits of the case are not favored by this Court. *Deady v. Republic*, 8 LLR 256 (1944); *Kobina v. Abraham*, 15 LLR 502 (1964); *Mitchell v. Fawaz*, 15 LLR 541 (1964). We are not prepared to change this holding which we feel is a necessity in the administration of justice.

Further, this omission in stating the assessed value of the property in the affidavit of sureties would not impair the enforcement of the bond should it become necessary to be enforced. Considering the bond as a whole the appellant did subscribe an oath as to the combined value of the properties involved as reflected in the statement of property valuation attached to and forming a part of the bond.

The purpose of a bond is to indemnify the opposing party. In the instant case, the appeal bond and the state-

ment of property valuation carried an amount sufficient to indemnify the appellee. The affidavit was simply a sworn statement to the effect that all that was contained in the appeal bond and the statement of property valuation were true.

Had the appeal bond and the statement of property valuation failed to carry the assessed value of the properties we would have been persuaded to decide otherwise, because then the affidavit of sureties would be a sworn statement to properties whose assessed value was unknown and uncertain. In the instant case, however, whatever defect was contained in the affidavit of sureties as regards the omission of the assessed value of the properties, was cured by being carried in the appeal bond and the statement of property valuation, as aforesaid.

Therefore, in view of the foregoing, the motion to dismiss the appeal in this case is hereby denied, the appeal to be heard on its merits. Costs disallowed. It is so ordered.

Motion to dismiss appeal denied.