THE LIBERIAN MINING COMPANY, by its general manager, W. K. SHEIBE, Appellant, *v.* AHAMADU SWANNAH, Appellee.

APPLICATION TO RETURN JUDGMENT FOR EXECUTION, TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 6, 1967. Decided June 16, 1967.

1. Failure to pay statutory fees to clerk of a lower court for transmission of record on appeal to appellate court does not amount to abandonment of case by appellant, if appellant otherwise complies with the applicable appeal procedure.
2. An appeal can be dismissed for procedural omissions only under the provisions set forth in the Civil Procedure Law, 1956 Code 6:1020.

The record of the trial court was transmitted to the appellate court clerk's office more than one hundred and fifty days after judgment was rendered, for failure of appellant to pay the required fees to the court below. An application by appellee was made, in effect, to dismiss the appeal, asking the appellate court to order the lower court to enforce its judgment. *Application denied.*

Morgan, Grimes and Harmon, by *J. Dossen Richards* and *John Stewart* for appellant. *MacDonald M. Perry* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

One Ahamadu Swannah of Bomi Hills, Montserrado County, brought an action for damages to personal property against the Liberian Mining Company, by and through its general manager, W. K. Sheibe, of Bomi Hills, defendant, in the Circuit Court, Sixth Judicial Circuit, Montserrado County.

According to appellee's application, he alleges that judgment was rendered in the lower court in his favor on November 17, 1966, and although appellant had prosecuted to completion the appeal taken from the judgment of the lower court within the statutory time, the case had not timely reached this appellate court, which was tantamount to a failure on the part of the appellant to prosecute his appeal according to law, and for that reason this Court should order the lower court to resume jurisdiction over the case and proceed to enforce its judgment. Appellee admitted in his application that all of the jurisdictional steps antecedent to the completion of the appeal had been completed by the appellant, but because the records had not been filed in the office of the clerk of the appellate court within the one hundred and fifty days provided by law, an omission of the appellant resulted, caused by his neglect to pay the necessary fees for the preparation and transmission of the records to this appellate court.

The appellants in their opposition to this application have strongly challenged the legal merits thereof and offer a certificate from the office of the clerk of the trial court, in which he certified that all necessary fees for preparation and transmission of records in the case to this Court had been paid; moreover, they also aver that the delay in forwarding the record on appeal was not their responsibility since they had completed all of the jurisdictional steps within the sixty days prescribed by law, and any delay in the preparation of the records within the legally required ninety days thereafter, cannot be attributed to negligence on their part for which the appeal should be dismissed.

In truth, this Court has on many occasions ordered the lower court to resume jurisdiction and enforce its judgment in cases on appeal before this Court, but in all instances this has only been applicable according to law, when the appellant had failed to complete the legally

required jurisdictional steps in the prosecution of his appeal, even up to and including the issuance, service and return of the notice of the completion of the appeal, but not otherwise.

The Civil Procedure Law provides:

> "Costs and Fees.—Nonpayment of general costs in the trial court is not ground for dismissal of an appeal; payment of such costs shall be due only on termination of the case; provided, however, that this section shall not be construed to defer or postpone the time for payment of special jury fees due under the provisions of section 537 above.
>
> "The only fees payable on appeal shall be:
>
> "(a) Fees to the clerk of the trial court for preparation and transmission of copies of the record; and
>
> "(b) Fees to the clerk of the appellate court for docketing the case." 1956 Code 6:1021.

So then, we may conclude that the very law upon which appellee relies for the successful consideration of his application does not authorize it. In the interpretation of a statute this Court is not authorized under the law to draw inferences in contravention of its spirit and intent. The law makes it mandatory for fees to be paid to the clerk of the trial court for the preparation and transmission of the records on appeal, yet this provision of the statute cannot be construed to mean that nonpayment of such fees authorizes a dismissal of the appeal. This principle becomes more apparent when the case has not reached the docket of the appellate court, when the lower court would have lost jurisdiction predicated upon the completion of all of the necessary jurisdictional steps.

The grounds enumerated by our statutes as the only grounds upon which an appeal may be dismissed, are found in the Civil Procedure Law, 1956 Code 6:1020:

> "An appeal from a court of record may, upon motion properly taken, be dismissed for any of the following reasons:

"(a) Failure to file approved bill of exceptions within the time specified in Section 1012 above;

"(b) Failure to file an approved appeal bond or material defect in an appeal bond (insofar as such failure or defect is not remedied in accordance with the provisions of Section 1014 above);

"(c) Nonappearance of the appellant on appeal; or

"(d) Negligent failure to have notice served on the appellee.

"An appeal shall not be dismissed on any other ground except as otherwise expressly provided for by law."

This is the 1956 Code, the most recent, which has not been repealed nor amended since its enactment, and it alone, with our rule of court that is in conformity therewith, must be our guideline and criterion in such cases.

To us the procurement of a certificate from the clerk of the trial court verifying the fact that the records have been prepared but the necessary payment therefor not made, proves to no avail, because the Supreme Court will not wantonly refuse jurisdiction over a subject matter that is properly before it under the law.

When this case was called for hearing, appellee's counsel, in course of his argument, held strongly to the principle laid in the opinion of this Court handed down in *Dayrell* v. *Thomas, et al.*, 11 L.L.R. 98 (1952) in which this Court held that the failure to pay for transmission of records was tantamount to failure to perfect the appeal within the time limit.

This opinion referred to is not in harmony with our present statute, and, therefore, in our opinion, the statute must prevail. This opinion was rendered on March 7, 1952, quite four years before the 1956 Code was passed by the Legislature.

The Civil Procedure Law, 1956 Code 6:1015, provides:

> "It shall be the duty of the clerk of the court from which the appeal is taken to make up a record containing certified copies of all the writs, returns, pleadings, motions, applications, certificates, minutes, verdicts, decisions, rulings, orders, opinions, judgments, bills of exceptions and all other proceedings in the cause. He shall transmit this record with the appeal bond to the appellate court within one hundred fifty days after rendition of judgment. When the clerk of the appellate court receives this record, he shall forthwith docket it and forward a receipt to the clerk who sent him the record."

Our courts are authorized to interpret the law, especially its constitutional effect, but when the statutes are clear and unambiguous on any given point, they must predominate. Secondly, the opinion of this court which the learned counsel for the appellee tenaciously maintained to be the law in vogue, was delivered in 1952, and the statute which makes it a binding duty on the clerk of the trial court to transmit the record was passed in 1956, quite four years later. Hence, by operation of the law, for court procedure and practice, the statute must prevail.

A close examination of the records, that is to say, the application and exhibits and also appellant's opposing papers and exhibits, shows that the clerk of this Court certified on March 10, 1967, that the case on appeal, the subject of the application, was filed in his office, transmitted by the lower court. On March 13, 1967, the clerk of the trial court below certified that payment for the preparation and transmission of the records to this Court had not been made. On March 14, 1967, appellee filed his application, praying that the lower court be ordered to resume jurisdiction and enforce its judgment. Such a procedure, in our opinion, is unusual and contradictory because the case was already filed in the appellate court before the application was made, which means

the case was already pending before the Supreme Court and completely out of the reach of the trial court below. Therefore, the application was a nullity and void *ab initio.*

This in itself makes the opinion quoted by the learned counsel for appellee inapplicable to the case at bar for the reason that, in the *Dayrell* case, *supra,* the records were still lodged in the office of the clerk of the trial court when the petition was filed, whereas, in the present case, the records were already filed in the office of the clerk of the appellate court four days prior to filing of the application. Besides, even the fees for the preparation and transmission of the records had been paid and receipt therefor obtained before the case was assigned and called for hearing, and this receipt forms a part of the records before us.

Now, after consideration of all the contentions in the application and opposing papers, as well as the arguments advanced at the hearing, we are of the opinion that although it is incumbent upon the appellant to pay the necessary fees for the preparation and transmission of the records in an appeal to this appellate court, yet a failure to speedily comply with the statute in that regard is neither a ground for dismissal of an appeal nor a ground to authorize a mandate from this Court to the trial court below ordering it to resume jurisdiction and enforce its judgment from which the appeal was taken.

The application is, therefore, denied with costs against the appellee. And it is so ordered.

Denied.