

CHARLES D. B. NURSE, Appellant, v.
REPUBLIC OF LIBERIA, Appellee.

APPLICATION FOR REMAND OF CASE ON APPEAL FROM THE CIRCUIT
COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 22, 1970. Decided January 21, 1971.

1. Where disability of any sort prevents a trial judge from signing a bill of exceptions, it is incumbent upon the appellant to obtain approval of the bill of exceptions from the trial judge's successor in office within the ten days allowed by statute from the date of rendition of the final judgment.

The appellant was found guilty of the crime of embezzlement, after trial by jury. He excepted to the verdict, announced his intention to appeal and timely presented his bill of exceptions to the trial judge for signature. However, before the judge could sign the bill, he was removed from judicial office for cause, and it was not until well beyond the ten days allowed by statute that the successor to the trial judge signed the bill. During the pendency of the appeal, appellant made a motion for remand, to which appellee, in effect, asserted by its submission to the Court. The appellant's motion was dismissed for his failure to appear at the call of the calendar, but the Court took under consideration the companion submission, which was construed as an application for remand. *Application denied.*

Samuel B. Cole for appellant. *The Solicitor General* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

This case is now before us for review predicated upon a submission filed by the Republic of Liberia for remand

of the cause for a new trial. The case itself commenced in the November Term, 1967, of the First Judicial Circuit Court, when appellant was indicted on the charge of embezzlement.

The trial of the defendant, now the appellant, was held and he was found guilty as charged during the February Term, 1966, of the aforesaid court. He thereupon excepted to the verdict of the jury and to the court's final judgment predicated upon that verdict. However, prior to the trial judge's approving the bill of exceptions he was removed from office by a joint address of the national Legislature. Thereafter, the bill was presented on May 19, 1966, to Judge D. W. B. Morris for approval. This approval, by the aforesaid judge, was made with the notation thereon,

"Since I did not try this case, but have to approve this bill by operation of the law, I hereby approve same insofar as it is supported by the records of the trial. (Sgd.) D. W. B. MORRIS, Assigned Judge for trial judge, 19th May, 1966.

Apparently the other steps for completing the appeal were taken and the case thereupon placed on our docket.

At the call of this case, however, the Court noted that two documents had been filed, one a motion to remand filed by appellant, and a submission filed by the Republic of Liberia. The motion to remand was dismissed because of the failure of appellant to appear for a hearing of said motion, although it had been duly assigned and bulletined. The submission of the appellee was thereupon called and its merits gone into, and it is this document that we are now called upon to review.

The appellee requests that this Court remand the cause for a new trial and set forth its reasons.

"1. Because appellant was indicted on the charge of embezzlement in the November Term, 1964, of the First Judicial Circuit Court, Montserrado County, sitting in its Law Division, and was tried and found

guilty and final judgment was rendered against him on May 11, 1966, presided over by Hon. Lewis K. Free, assigned circuit judge, to which verdict and judgment he excepted and announced an appeal to this Court.

"2. And also because after appellant had announced his appeal and had taken steps to perfect his appeal, including the tendering of his bill of exceptions within the statutory time of ten days after rendition of final judgment, Judge Free was relieved of his duties as judge and held in custody on a charge of sedition and, therefore, could not approve the bill of exceptions, which was later approved by Hon. D. W. B. Morris, assigned circuit judge, on May 19, 1966.

"3. And also because appellant's appeal, through no fault of his, has not been perfected according to law, in that his bill of exceptions was not approved by the trial judge, although filed in time, and, therefore, had to be approved by a judge who had not presided over the trial, as required by law."

The Court was puzzled by this rare submission, but felt if the application was well founded in law it would be granted. We thereupon made an exhaustive search of the statutes, with a view to finding legal support for the proposition put forth by the appellee. Unfortunately, we have been unable to come across any statute or decision of this Court in support of this proposition. According to statute a bill of exceptions is a written instrument stating the judgment, decision, order, ruling, or other matter excepted to and the basis of the exceptions and containing a motion or prayer for relief. The appellant must tender a bill of exceptions signed by him to the trial judge within ten days after rendition of judgment. The judge must sign the bill of exceptions (and the appellant shall be entitled to a writ from the appellate court compelling the trial judge to sign such bill if he refuses), but he may note his reservations thereon. After the judge has signed

the bill of exceptions it shall be filed with the clerk of the trial court. Civil Procedure Law, 1956 Code, 6:1012.

It can be seen from the statutory provision that it is incumbent upon a trial judge to sign the bill of exceptions. This function is ministerial and not discretionary, except that in approving the bill of exceptions the trial judge may note thereon his reservations.

In the circumstances, we must hold that where physical disability or a legal impediment precludes a trial judge from signing a bill of exceptions as provided by law, the responsibility for so doing devolves upon his successor in office to properly sign the bill of exceptions if it is deemed to be in conformity with the law; therefore, the application must be denied and the case is to be argued during the ensuing Term of Court.

Application denied.