

VIETOR & HUBER, Appellants, v. **F. N. VINES**, Appellee.

ARGUED DECEMBER 10, 1913. DECIDED JANUARY 9, 1914.

Dossen, C. J., and Johnson, J.

Diminution of records is a legal ground for postponing the hearing of a case, before an appellate court.

Mr. Justice Johnson delivered the opinion of the court :

Debt—Ruling on Motion of Diminution of Record. Before the case was called for hearing, counsel for appellants offered a motion for continuance, supported by affidavit, on account of diminution of records, alleging in said motion, that there is a material diminution of the records of the case sent up from the court below in this, that although the bill of costs has been paid by appellants, and receipted by the sheriff, yet the clerk of said court has neglected to make the endorsement of the sheriff on the copy of the bill of costs sent up with the records in the case.

Appellee's counsel objected to the court granting the motion, on the ground: (1) that there is no evidence to show that the costs have been paid, and (2) that if the costs were paid, appellants are guilty of laches in failing to have a duly certified bill with the endorsement thereon of the sheriff's receipt, and is therefore barred from obtaining the remedy sought, and cited in support of his objections the following cases heard and determined by this court, viz.: *Johnson et al. v. Roberts* (1 Lib. L. R. 8) ; *McCauley v. Laland* (1 Lib. L. R. 254) ; and *Jackson, Brierly and Briggs v. Horace* (1 Lib. L. R. 99).

This court while confirming the ruling in the above cited cases, that the party appealing should superintend the appeal, and see that all legal requisites are met, will here observe that the decisions quoted refer to cases called for hearing and dismissed on account of some material defect in the records, appellant having neglected to offer a motion to continue the case in order to have the records corrected; the cases are therefore not analogous.

By the statute laws of Liberia, as well as by the common law, parties are permitted to amend or withdraw their cases, at any time before the case is called for hearing, provided no unnecessary delay is caused thereby.

In the case *Attia v. Rigby* (1 Lib. L. R. 534) the court ruled that "diminution of records being a lawful ground for postponing the hearing of a cause before an appellate court, and a reason which this court has uniformly held for continuing suits brought before it, this court entertains the motion."

We are therefore of the opinion that the motion should be granted and the case continued.

The clerk of this court is hereby ordered to issue a mandate to the judge of the Circuit Court, of the second judicial circuit, Grand Bassa County, commanding him to transmit to the clerk of this court forthwith, a properly authenticated receipted bill of costs, if payment of costs has been made by appellants in the court below.

Chas. B. Dunbar, for appellants.

P. J..L. Brumskine, for appellee.