

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA
AT
OCTOBER TERM, 1947.

IGAL AMMONS, Appellant, *v.* REPUBLIC OF
LIBERIA, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT OF FIRST
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 10, 1947. Decided December 12, 1947.

Where there is no approved appeal bond filed, the appeal will be dismissed.

On motion to dismiss on the ground that no appeal bond
was filed, *motion granted*.

A. B. Ricks for appellant. *D. Bartholomew Cooper*,
Solicitor General, for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the
Court.

Appellant, Igal Ammons, having prayed an appeal
from the final judgment handed down against him in the
Circuit Court of the First Judicial Circuit, Montserrado
County, has endeavored to bring his case before us for
review. Unfortunately, however, he neglected to per-
form certain prerequisites necessary to place this appel-
late Court in a position to hear and determine the issues
raised by him in his bill of exceptions.

Upon the call of the case, since the Honorable Solicitor General of the Republic of Liberia, representing appellee, had filed a motion to dismiss the appeal because appellant had neglected to file an appeal bond, the said motion was taken up and read. Appellant contended that the motion should be denied because:

- (1) Appellee erroneously had two motions before this Court praying for the dismissal of his appeal, which said motions are separate and distinct although they bear on the same subject matter. One is entitled, "Assault and Battery with Intent to do Grievous bodily harm," and the other, "Assault and Battery with intent to kill." Appellant said he was at a loss to know which of the said motions appellee intended him to resist, since he was furnished with copies of both.
- (2) There is no cause before this honorable Court, to which he is a party, entitled "Assault and Battery with intent to do Grievous bodily harm."
- (3) That he did issue and file an appeal bond in this cause, his mother and brother being sureties as before. Therefore he applied to the Bureau of Revenues to get the assessed value of their property.
- (4) That having prepared and filed his appeal bond, it was the duty of the clerk of the court below to have prepared and sent up to this Court a copy of said appeal bond with the other records in the case. To this he attached an affidavit signed by one Edwin Smythe as deponent that Smythe was present when appellant approached the said clerk of court and asked him why he had not sent up his appeal bond with the records, and that the clerk replied that he would make a search and try to locate it.

Appellant's counsel contended that said affidavit was sufficient to prove that his client had filed an appeal bond, and that we should accept it. In answer to a question

from the Court as to why he did not obtain a certificate from the trial judge that he had approved an appeal bond, he replied that he did not think it was necessary. Although that would not have proved his filing the said bond, yet it would at least have shown that there was a bond in existence approved by the trial judge.

As against the affidavit of Mr. Smythe, appellee's counsel had filed with his motion a certificate under seal of court from the clerk stating, "This is to certify that according to the records of this office, no appeal bond was filed in the above entitled case." It is obvious that preference should be given to the certificate of the clerk of court.

Upon a thorough inspection of the records it was discovered that like *Liberty v. Republic*, 9 L.L.R. 437, decided today, there was no notice of appeal showing completion of appeal, which notice is to be issued by the clerk of the court only after filing of an appeal bond.

With reference to counts one and two of the resistance, count two is an answer to count one; for in count one, appellant contends that he did not know which of the two motions appellee intended him to resist, whereas in count two he stated that he knew that there was no case against him before the court for "Assault and Battery with Intent to do Grievous bodily harm." Therefore it is clear that appellant understood which of the two motions he should resist.

Appellant's resistance therefore fails absolutely, for it was his duty to surround his case on appeal with all the safeguards of the law and to superintend the preparation of the records to be sent up on appeal.

Under the circumstances above stated, this case falls in the same category as *Liberty v. Republic*, *supra*, and must consequently suffer the same fate. The appeal is dismissed with instructions to the court below to resume jurisdiction and execute its judgment; and it is hereby so ordered.

Motion granted.