

JOHNNY CARR, Appellant, v. REPUBLIC OF
LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
MARYLAND COUNTY.

Argued October 29, 30, 1947. Decided December 12, 1947.

1. A court can never be the agent or the instrument of any government nor can it properly align itself on the side of the prosecution in any case.
2. Where an appeal bond is defective in its essential parts, the appeal should be dismissed.
3. Where the attorney for the defendant is informed falsely by the magistrate that the fine imposed on defendant is a lesser amount than it actually is and said magistrate approves defendant's appeal bond rehearsing the lesser amount but notes that the fine imposed was the greater amount, it is error for the circuit judge to dismiss the appeal on the ground that the appeal bond was defective.

Appellant was convicted of assault and battery by the Stipendiary Magistrate of Maryland County and fined thirty-six dollars. On information that the fine was twenty-six dollars, which information was supplied by said magistrate, the appeal bond was prepared accordingly, and said magistrate approved it, noting above his signature that a thirty-six dollar fine had been imposed. On appeal to the circuit court, the judge sustained the county attorney's motion to dismiss on the ground that the appeal bond was defective. On appeal to the Supreme Court, *judgment reversed and remanded.*

O. Natty B. Davis for appellant. *The Solicitor General* for appellee.

MR. JUSTICE REEVES delivered the opinion of the Court.

Johnny Carr, the appellant in this case, was arrested and thereafter tried for the crime of common assault and

battery by the Stipendiary Magistrate of Maryland County of the Republic of Liberia on July 30, 1946. He was adjudged guilty of said crime and fined thirty-six dollars. He excepted and prayed an appeal to the Circuit Court of the Fourth Judicial Circuit, Maryland County.

Not being under bond, he was jailed until he could arrange and file his appeal bond. The first appeal bond submitted, says the stipendiary magistrate, was prepared and submitted by Attorney Cooper; but inasmuch as the county attorney of said county objected to one of the sureties said bond was rejected.

Appellant having approached Counsellor O. Natty B. Davis by message, said counsellor, not knowing the amount of the fine imposed, approached the stipendiary magistrate who informed him that said fine was twenty-six dollars, whereupon he prepared the appeal bond accordingly and dispatched it with a covering letter to the magistrate for his approval. Without any refusal, objection, rejection, or comment the magistrate approved the bond in the following manner:

"Bond approved-10 o'clock a.m.-fine imposed \$36.00.

[Sgd.] JAMES T. CUMMINGS,

James T. Cummings,

*Stipendiary Magistrate, Harper City, Md., Co.
R.L."*

Stipendiary Magistrate Cummings denied the allegation of appellant's counsel that he informed said counsellor that the fine imposed was twenty-six dollars, and stated that said bond was handed him by Counsellor Davis without any covering letter, which he signed in the presence of witnesses whose names he mentioned and handed back. Appellant's counsel denied said statement, but, peculiarly, neither of the contending parties produced witnesses to corroborate his statement. These cross-allegations came out in their statements on October 14, 1946, when the Judge of the Circuit Court for the

Fourth Judicial Circuit, Maryland County, heard the motion filed by the county attorney for said county praying the dismissal of said appeal for the reason that said appeal bond as filed was defective. The judge of the lower court sustained the motion and dismissed the appeal.

Where an appeal bond is defective in its essential parts, the appeal should be dismissed; but where issues arise with respect to an appeal bond, as in this case, the law requires that the doubt operate in favor of the appellant, especially where appellant entertained the opinion that he had not had a fair and impartial trial by the stipendiary magistrate.

The appellant's appeal bond in the records was approved, as we have said *supra*, by the stipendiary magistrate who claims he did not inform appellant's counsel that the fine imposed was twenty-six dollars. Reason dictates that if that were true, then why did he approve of said bond carrying a penalty of twenty-six dollars, and thereafter note near his signature, "fine imposed \$36.00"? Reason is the soul of the law, and that being so said magistrate should have rejected said appeal bond, stating his reasons therefor. The law does in no respect support the actions of the magistrate in this particular, for they are tainted with deception and evince prejudice. No court or judge is permitted to practice such on a party to whom he is required to dispense justice impartially. From such action it can be clearly observed, and that clear as crystal, that said magistrate acted deceptively and prejudicially to appellant's interest. Said magistrate, by approving said appeal bond of appellant for twenty-six dollars, sanctioned, ratified, and confirmed officially said bond. The notation before his signature that the "fine imposed [was] \$36.00" was for the sole purpose of having said appeal dismissed. The law disfavors and does not hesitate to frown upon such corrupt and partial acts of a

In the case *Yancy v. Republic*, 4 L.L.R. 268 (1935), which involved obtaining money under false pretenses, Mr. Justice Russell, speaking for the Court, said:

“A court can never be the agent, or the instrument, of any government; nor can it properly align itself on the side of the prosecution in any case. The proper duty of the court is to defend the rights of the oppressed against the oppressor, the rights of the weak against the strong, be the strong president, emperor, king, prince, potentate, or magnate; and hence, whenever there is a matter in litigation in which it appears that one side is weak and the other strong, the court must lean, if at all, on the side of the weak until it shall have satisfied itself that every privilege given by the law to the humblest litigant at its bar shall have been allowed him; and if, thereafter, it appears that judgment should be given against him the court will be able so to decide without any qualms of conscience. . . .” *Id.* at 276.

In view of what we have stated above, we do not find ourselves in accord with the judge of the lower court who dismissed appellant's said appeal under the circumstances which the records in this case present, and it is therefore our opinion that the ruling of the lower court dismissing appellant's appeal be, and the same is, hereby reversed, and the case remanded with instructions that said judge resume jurisdiction and hear and determine said appeal as the law directs; and it is hereby so ordered.

Reversed.