JOSEPH F. DENNIS, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

MOTION TO DISMISS APPEAL.

Argued April 30, May 1, 1941. Decided May 3, 1941.

1. Where a statute requires that a notice of appeal be filed within forty-eight hours of the entry of judgment and said entry falls on a Friday, notice is timely filed on the following Monday. The law of computation provides that when the last day for a party in a cause to perform an act falls on Sunday, he shall do so on the next succeeding day.
2. Sunday is included in the computation only when the time exceeds seven days.
3. The statute requiring approval by the trial judge of the appeal bond is mandatory.
4. Although the appeal bond had been presented within statutory time and the trial judge had written to the clerk of the court stating that he had approved the bond, where said bond had not in fact been approved, the appeal is fatally defective.

On motion to dismiss appeal from conviction of embezzlement, *motion granted.*

H. Lafayette Harmon and *C. T. O. King* for appellant. *The Attorney General* and *The County Attorney* for Montserrado County for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

When this cause was reached on the trial calendar of the present term of Court and was called for hearing, the clerk informed this Court that a motion to dismiss the appeal had been filed by appellee, which motion, by law, rule, and procedure, must be first disposed of before the merits of the appeal can be considered.

The motion was consequently called for and read, and found to present the following assignments as cause for appellee so moving:

(1) "Because Appellee says that in keeping with the Act passed and approved December 16, 1938, providing for appeals in criminal causes, the defendant in the court below having failed to serve notice in writing within forty-eight (48) hours, after final judgment on the clerk of court and the Attorney General, respectively, of his intention to appeal, this Honourable Court cannot take legal jurisdiction over the cause and for that reason the Appellee prays the dismissal of the appeal and the affirmation of the judgment of the Court below. This the Appellee is ready to prove."

(2) "And also because Appellee says that this Appeal should be dismissed for want of jurisdiction, in that the appeal Bond has not been approved by the trial Court in keeping with law."

Appellant, resisting the motion, submitted that the motion should not be granted because:

(1) As to the question of notice which under the Criminal Appeal Statute should be given within forty-eight hours after final judgment, said notice was given within the proper time, as final judgment was entered on Friday the twenty-second day of September, 1939, and appellant's time expired on Sunday the twenty-fourth day of September, 1939. Sunday being *dies non,* appellant was correct in law to have filed his notice on Monday the twenty-fifth day of September, 1939, as he did;

(2) The Criminal Appeal Statute had been passed by the Legislature at its session which had adjourned only about seven months previous to the trial of the cause and the act had been scarcely printed when final judgment was handed down, and it was from the late Counsellor Wolo that appellant obtained a copy thereof, who alone beside the prosecuting attorney in court was in possession of

the said act at the time; and this copy of the statute thereby enabled appellant to have gained knowledge of the provisions of the act, and to have thereby filed his notice; and

(3) The failure of the judge to approve appellant's appeal bond was the act of the court and should not prejudice appellant's interest as appellant had presented his bond within the time prescribed by law and was of the impression that same had been approved.

Having listened with rapt attention to the able arguments made by counsel for both parties and the references of law quoted and having made our own independent research of the law books and statutes, we have been able to arrive at a unanimous decision as to our opinion on the first of the two issues presented by the motion and the resistance.

The first count of the motion raises the question of the notice of appeal which the law requires to be filed with the clerk of Court with a copy to be served on the Attorney General. This provision of the statute is mandatory, and is made a ground for the dismissal of an appeal if not substantially complied with.

> "An appeal must be taken in the following manner:
>
> "(a) By the service of a notice in writing on the Clerk of the Court in which judgment was entered and with whom the judgment record is filed, stating that the prisoner appeals from judgment. Such notice must be filed within forty-eight (48) hours after the judgment of conviction or the order is entered.
>
> "(b) Within ten days after the filing of the appeal notice provided for in the preceding paragraph the appellant shall file for the approval of the trial judge a bill of exceptions setting forth in an orderly manner, succinctly and clearly any

grounds of exception or objection to the procedure, judgment, ruling or orders, to which the trial judge's attention was called during the trial which the appellant might consider relevant to his claim for review.

"(c) If the appeal be taken by the prisoner a similar notice must be served upon the Attorney General. If the judgment be of death the Attorney General must give notice thereof to the official in whose custody the defendant may be as a stay of execution of a sentence of death.

"(d) If the appeal be taken by the State a similar notice must be served on the defendant or on the Counsel who appeared for him at the trial." L. 1938, ch. XXIV, § 7.

But there are circumstances attending this appeal in respect of the notice served that require special consideration within the law.

The trial judge entered final judgment on Friday the twenty-second day of September, 1939. The hour of that day in which same was entered is not noted on the judgment nor elsewhere in the records. Forty-eight hours from any hour of Friday would expire at some hour on Sunday; and Sunday, as appellant's counsel submitted, is *dies non.* The appellant's notice of appeal fell due for filing on Sunday the twenty-fourth day of September, 1939. This day being *dies non,* it was not possible for him to have done so on that day. The law of computation, therefore, expressly provides that when the last day for a party in a cause to perform an act falls on Sunday, he shall do so on the next succeeding day.

"Sunday is a *dies non,* and a power that may be exercised up to and including a given day of the month may generally, when that day happens to be Sunday, be exercised on the succeeding day. . . ." 3 Bouvier, Law Dictionary *Time* 3278 (Rawle's 3d rev. 1914).

Aside from the provision of the law just enunciated and

recited, it is also a settled rule of the law of the computation of time that where the time to be computed is more than seven days Sundays are to be included in the computation, but where it is less than seven days Sundays are to be excluded. *Ibid.*

It would seem clear, then, that since the statute required appellant to have filed his notice of appeal within forty-eight hours after final judgment, and since forty-eight hours is less than seven days, the intervening Sunday should be excluded in computing the time. This, then, would make the said notice due for filing on Monday, the day on which it was filed.

We find nowhere in the record a notation of the hour at which the said notice was filed and, as previously pointed out in a former part of this opinion, no mention of the hour at which final judgment was entered. How, then, can we say whether the said notice was filed within or without forty-eight hours after final judgment, it having been filed according to the record and by implication of law on the day when the forty-eight hours after final judgment expired, without any notice as to the hour made by the clerk. And it is to be observed, moreover, that in case of any doubt as to the hour, such doubt should operate in favor of defendant. We are, therefore, of opinion that the first count of appellee's motion is not well taken and should be overruled.

We deem it necessary in the interest of public justice and as a guide in matters of this kind, before passing over to the next count of the motion, to make some comment on the contention set up by appellant's counsel that the Criminal Appeal Act had not been sufficiently circulated at the time his cause was tried so as to have operated against him even if he had not filed said notice, for, in the former appeal statutes by which appeals in both criminal and civil causes were taken, no such notice was required.

There seems to us to be some merit in this contention

for it would appear that some rule, either in the acts themselves or in some special acts of the Legislature passed for the purpose, should specifically fix the time and conditions after the passage of an act by the Legislature when it will become operative as law. The rights and benefits of litigants and the public in general would be thereby safeguarded and the courts certainly directed in respect thereof. By the provisions of the said Criminal Appeal Act, it becomes necessary in every criminal cause for the judge to note or cause to be noted on his judgment the hour of the day when it is handed down and for the clerk to note the hour when the notice of appeal is filed.

This is in harmony with that part of the universally accepted definition of law as "a rule prescribed." Blackstone in the first book of his commentaries quoted in Stephen, *New Commentaries on the Laws of England* says of this rule:

> "It is likewise 'a rule *prescribed*.' Because a bare resolution confined in the breast of the legislator, without manifesting itself by some external sign, can never be properly a law; it is requisite that this resolution be notified to the people who are to obey it. But the manner in which this notification is to be made, is matter of very great indifference. It may be notified by universal tradition and long practice, which supposes a previous publication, and is the case of the common law of England. It may be notified *viva voce*, by officers appointed to proclaim the law which has been made. It may, lastly, be notified by writing, printing, or the like; which is the general course taken with all our acts of parliament. Yet, whatever way is made use of, it is incumbent on the promulgators to do it in the most public and perspicuous manner; not like Caligula, who (according to Dio Cassius) wrote his laws in a very small character, and hung them upon high pillars, the more effectually to ensnare the people. There is a still more un-

reasonable method than this, which is called the making of laws *ex post facto*; when, after an action (indifferent in itself) is committed, the legislator then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it. Here it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had therefore no cause to abstain from it; and all punishment for not abstaining must of consequence be in such a case cruel and unjust. All laws should be therefore made to commence *in futuro,* and be notified before their commencement; which is implied in the term '*prescribed.*' But when this rule is in the usual manner notified, or prescribed, it is then the subject's business to be thoroughly acquainted therewith; for if ignorance of what he might know were admitted as a legitimate excuse, the laws would be of no effect, but might always be eluded with impunity." 1 *Id.* 24–25 (12th ed. 1895).

And it is worthy of note that our sainted fathers, catching the spirit of that provision, reenacted in 1856 a statute not yet repealed which declared that "Acts of the Legislature, whether private or public, may be given in evidence from books printed by authority." Stat. of Lib. (Old Blue Book) ch. XI, § 7, 2 Hub. 1551. We construe this to mean *only* from "books printed by authority."

The reasons for this rule seem to this Court to be to prevent any person from being taken by surprise by the passage of any new law or alteration of the old, and to prevent the courts or the public from being imposed upon by little sheets, such as handbills, which can easily be forged, substituted, or in some other way made to express views somewhat different, even in some small particular, from what the Legislature actually passed.

The second count of the motion is the next question

demanding our disposition. Appellee claims that the appeal should be dismissed because the appeal bond is not approved. Looking through the records certified to us, we find this to be correct. But the appellant's counsel submitted the contention that he should not suffer for the acts of the courts as he had prepared his bond and presented it to his honor the trial judge within statutory time, and that the judge had written a letter to the clerk of the trial court stating that he had approved the said bond, and that thereby he was misled.

In his argument here said counsel for appellant submitted further that under the said Criminal Appeal Statute an appeal bond is not required to be approved. When questioned by the Bench as to whether or not an unapproved appeal bond under a statute requiring it to be approved was enforceable, counsel replied affirmatively and was upheld, he said, by the following:

> "Frequently it is discovered after an appeal or writ of error has been taken that the appeal bond, error bond or supersedeas bond is defective. While, under those circumstances, a motion may be made to dismiss the appeal or writ of error, or to vacate the supersedeas, yet to grant the motion would often be to deprive the appellant or plaintiff in error, who may have been acting in good faith, of the right of review. Accordingly, the statutes in many jurisdictions expressly authorize the appellate court to permit the appellant or plaintiff in error to amend the bond or file a new one, and many courts have assumed this right as inherent in their appellate powers, though the practice has not always been uniform. The power of the appellate court in this respect is a discretionary one and will not always be exercised in favor of the appellant. Thus, where the object of the appeal itself is to enable the appellant to avail himself of a mere technicality, it has been held that the court should not relieve him from the consequences of a technical

defect in the bond." 2 R.C.L. *Appeal and Error* § 92, at 116–17 (1914).

The text and the context of the above citation of law enunciate the legal principle that the statutes in many jurisdictions of the United States of America expressly authorize the appellate court to allow appellant to amend his bond or file a new one in the furtherance of justice, and that some appellate courts have assumed the right as inherent in their appellate power.

While our statutes admit into our legal jurisprudence such parts of the common law of the United States of America and of England which are not repugnant to or inconsistent with the statute laws of Liberia, our statutes of appeal do not expressly authorize the appellate court to order or allow amendment of appeal bonds or the filing of new ones, and this appellate court has never assumed the right to permit amendment of an appeal bond or the filing of a new bond as inherent in its appellate power.

To the contrary, our appeal statute expressly makes the nonapproval of an appeal bond a lack of one of the jurisdictional steps one must take in perfecting an appeal and a ground for the dismissal of an appeal, and from time immemorial this Court has dismissed appeals where a bond has been absent or unapproved.

In verification of this, we quote from the acts of the Legislature passed at its session in 1938:

> "That the appellate court might dismiss an appeal upon motion properly taken for any of the following reasons only:
>
> "1. Failure to file an approved Bill of Exceptions.
>
> "2. Failure to file an approved Appeal Bond or where said bond is fatally defective.
>
> "3. Failure to pay cost of lower Court.
>
> "4. Non-appearance of Appellant." L. 1938, ch. III, § 1.

This act, not being inconsistent with or irreconcilable with the Criminal Appeal Statute passed at the same session, in our opinion applies to civil as well as to criminal causes.

Furthermore, in the Criminal Appeal Statute itself every appellant is required to enter into a recognizance with the appellee in a sum to be named by the trial judge or by a bail commissioner. There is nothing in the record which shows that the trial judge or a bail commissioner named a sum to be placed in the bond, or that the appellant even as much as applied for any sum to be named by the judge or by a bail commissioner.

> "For every purpose of an appeal a conviction shall be deemed a final judgment. The execution of such final judgment may, as hereinafter provided, be suspended or stayed by the Court in which trial was had, except the indictment be for murder, attempt to murder, treason, sedition, conspiracy, riot or threats against a public official, in which cases, upon a judgment of conviction the defendant shall be immediately imprisoned. When a notice of appeal operates as a stay of execution as herein provided, the appellant shall furnish a recognizance conditioned that he will prosecute his appeal and in a case of a judgment against him will submit himself to the custody of the Court. This recognizance shall be effective pending the judgment of the Supreme Court. The amount of the recognizance shall be stated by the Court in which original judgment is given or by a bail commissioner." L. 1938, ch. XXIV, § 4.

And the same act further provides that an appeal in a criminal case may be dismissed for any substantial irregularity in taking the appeal.

> "If an appeal be irregular in any substantial particular, but not otherwise, the Supreme Court may on any day in term on motion of the appellee, provided

he has given five days notice to the appellant of the motion, order the appeal dismissed. The Court may also upon like motion dismiss the appeal:

"(a) If the appeal be not taken in accord with the provision of Section 7 of this Act.

"(b) If the certification of the record be not made within the time specified in Section 9, unless for good cause the Supreme Court may enlarge the time to make the return in the specific case.

"(c) If the appellant delays or neglects to bring on the appeal for argument as promptly after the return of the record has been made as the circumstances of the case may reasonably admit." L. 1938, ch. XXIV, § 11.

This Court has repeatedly and consistently held for the past fifty to eighty years that the appeal bond is an essential part of an appeal, and has dismissed causes upon motions properly presented where the appeal bond has been absent from the record or defective in some important respect.

Eighty years ago, in the case *Johnson* v. *Roberts*, this Court held the following:

"The court cannot entertain any case that is legally deficient in its records. A true copy of the bond is indispensably necessary to be forwarded, the original to be retained on the files below, as the security of the court on behalf of him against whom the appeal is taken. All cases sent forward on appeal must be taken out within sixty days, having the signature of the judge to the exceptions, as well as all other preliminaries contemplated by the law relating to appeals. These preliminaries are indispensably necessary to a legal appeal.

"The clerk whose duty it is to forward the records of the court under seal cannot do so unless the parties suing file bond, according to law, and the party appealing ought here themselves superintend the lawful

prerequisites. It is for the safety of the parties that said requisition be met, and it must therefore be a gross injustice to the appellee to compel him to answer to any appeal taken out contrary to law.

"The law will not admit of invasions upon itself, and for the court to entertain any appeal which may be deficient in its most important and indispensable features, and which are most calculated to lead to a just decision in the case, would not be in keeping with the record and inviolable rights of the nation.

"Therefore the court decides that said case be dismissed, with all costs in this court." *Id.* 1 L.L.R. 8 (1861).

Again, in 1901 in the case *McBurrough* v. *Republic*, this Court held the following:

"The Republic of Liberia, appellee in the above entitled case, in which W. J. McBurrough is appellant, 'respectfully motions this honorable court to dismiss this case and rule the appellant to pay all costs, because the said appellant has violated the statute law of this Republic in that he has filed no appeal bond; that is to say, the document filed in this case as a bond is not the bond which the law requires, because it is not signed by the appellant himself or by any attorney or person acting for him, as will more fully appear to this honorable court by inspection of said document filed in the record of this case, as well as by inspection of the original paper filed in the clerk's office in the court below; all of which the appellee is ready to prove.'

"After arguments and the inspection of said instrument purporting to be an appeal bond, by the court, the court sustains the motion for dismissal of said appeal, the same being well founded in law. Therefore the case is dismissed and the court below is hereby authorized to resume jurisdiction in said case." 1 L.L.R. 385 (1901).

Later, in the year 1934 in the case *Morris* v. *Republic* this Court held as follows:

"Count four reads thus:

" 'Appellee submits that legal defects in an appeal bond vitiates the appeal; the nonapproval of an appeal bond by the court of first instance, and insufficiency of parties are legal defects that cannot be cured on appeal. The statutory provision with respect to appeals is imperative and should be followed strictly. Appellee submits that the bond in this action is totally defective.'

"Appellant in resisting said count strongly contended that during the trial below when an appeal bond was presented to the trial judge for his approval said judge refused to do so and ruled: 'The court refuses to approve of the appeal bond on the grounds, that it is the opinion of the court that in all criminal cases, an appeal bond is unnecessary because the indemnifying clause which is one of the essential requisites in all appeal bonds under our statute cannot be complied with when the Republic is a party.' The records transmitted to this Court from the court below not containing said ruling, appellant made application for diminution of records which was granted by the court. That appellant was legally powerless to force the trial judge to perform an act which in his opinion was unnecessary is conceded, yet there being other remedies to which appellant could have resorted, to secure the benefits, which he needed to surround his appeal with such safeguards as the law in such case made and provided, neglecting and failing to avail himself of said right vouchsafed to all who desire to appeal and placed under similar circumstances amounts to waiver of said rights and tends as a bar to the benefits he intends to enjoy under the law from this court. Judge Bouvier defines waiver to be a relinquishment or refusal to accept a right. 'In prac-

tice, it is required of every one to take advantage of his rights at a proper time; and neglecting to do so will be considered as a waiver.'

. . . . .

"It is therefore the opinion of this Court that appellee's motion to dismiss appellant's appeal is sound and well supported by law and should be sustained, the appeal dismissed, and the trial court directed to resume jurisdiction, and it is so ordered." *Id.,* 4 L.L.R. 125, 128–30, 1 New Ann. Ser. at 130–31.

The appellant declared that he was misled by the letter written by the judge to the clerk of the circuit court saying that the judge was returning the appellant's bill of exceptions and appeal bond approved; and, further, that same being the act of the court, he should not be prejudiced thereby. We cannot accept the maxim just quoted as legally applicable to this case for it was the duty of appellant, in his own interest and for the safety of his cause, to have inspected his bond in the clerk's office and to have assured himself with all certainty that it had been approved.

The carelessness of appellant is further evidenced by the fact that the new Criminal Appeal Statute permits a bail commissioner to approve bonds, so that, if appellant had been vigilant, he could have had his bond approved by a bail commissioner.

Appellant's counsel contended further that it was not necessary for the appeal bond to have been approved, yet he filed before the Justice presiding in chambers a petition, one year and eight months after judgment had been entered against him, praying for a mandamus, which was denied by the Justice presiding in chambers. The relevant portion of his opinion is quoted herein:

"It is a settled rule of the law of mandamus that the writ will not issue in a cause where the applicant has been guilty of laches by not applying for the writ to

redress an injury after . . . even one year. In the case at bar the case was disposed of at the August Term of Court A.D. 1939, and appellant has failed to seek redress until April 1941, one year and eight months thereafter.

"High's *Extraordinary Legal Remedies* holds as follows on page 259, section 269:

" 'Laches of the party aggrieved in seeking to avail himself of the remedy by mandamus may operate as a bar to relief. Thus, when a party had permitted a period of five years to elapse after the final determination of a cause before seeking relief by mandamus, it was deemed inexpedient to interpose. And it has been held that even a year's acquiescence in the proceedings complained of was sufficient to prevent relief by mandamus.' "

Considering the law, we find ourselves in agreement with the opinion just quoted and hereby sustain it.

It is the opinion of the majority of this Court that the appeal should be dismissed and the trial court ordered to resume jurisdiction and enforce its decision; and it is so ordered.

Motion granted.

MR. CHIEF JUSTICE GRIMES dissenting.

In the opinion just read, I find myself once again unable wholly to keep step with the majority of my esteemed colleagues who have concurred therein. With their views on the first count of the motion submitted and argued by appellee I am in full agreement, but when it comes to the conclusion they have reached on the second count our views totally diverge. Nor should anyone who has been following the proceedings and opinions of this Court for the past seven years be very much surprised, since those who find themselves today in the majority are adhering to what the majority of this Court said seven years ago in the case *Morris* v. *Republic,* 4 L.L.R. 125 (1934), in which I dissented. For the reasons which I

shall now proceed to give, I desire to reiterate and confirm in an even stronger manner the grounds for my dissent in *Morris* v. *Republic.*

And first, I would suggest that any person desiring to be fully *au courant* with our divergent views should turn to *Morris* v. *Republic* and read what is therein expressed as a background to what hereinafter follows.

In that case D. W. Baroma Morris, having been convicted of the crime of seduction, prepared and submitted for the approval of the trial judge the bond required by every appellant desiring to take an appeal. The trial judge received the bond and informed appellant that he would allow it to be put into the record, but would not approve the bond because he did not think that an appeal bond was necessary. The majority of the Court held, and I still adhere to the belief that they correctly held, that a duly approved bond was a necessary step in taking an appeal. But we differed because, in my opinion then and now, a party who has prepared and tendered his appeal bond to the trial judge and been misled by the opinion of the trial judge should be allowed to benefit from the maxim, *actus curiae neminem gravabit.*

In this case appellant, having been convicted, prepared and presented to the trial judge, through the office of the clerk of court, a bill of exceptions and an appeal bond for his approval. From the record it would appear that the judge mistakenly thought that he had approved both of these documents, and he sent them to the clerk of the court with a covering letter in which he stated:

"MONROVIA, LIBERIA
October 17, 1939.

"CARNEY JOHNSON, ESQUIRE,
CLERK, CIRCUIT COURT, R. L.,
MONROVIA.

"Sir:-

"I send you herewith enclosed Bill of Exceptions and Appeal Bond of the defendant in the case Re-

public vs. Dennis: Embezzlement, approved for the 30th of September A.D. 1939.

"You will note that the bill of exceptions contains matter that never went on in the case, and I cannot imagine why it was included in the bill unless the defendant thought that without reading the document I would approve of it, and this untrue matter would help his defence in the Supreme Court. I wrote Counsellor Coleman a letter pointing out to him these objections, but from his reply it appears that the defendant himself is responsible and that he the lawyer has not even a copy of the bill, and he suggests that I approve of the bill of exceptions except those counts which are untrue. I have done this, and it is my wish that in preparing the bill of exceptions for the Supreme Court, you attach a copy of this letter, a copy of that which I wrote Counsellor Coleman, and his reply, all which are herein enclosed. This is about the only way I can harmonize the matter as the defendant is out of town, I understand, prospecting and I do not know when . . . he will return, and I am about to return to my own Circuit.

"I am, Sir

"Yours faithfully,

(Signed) EDWARD SUMMERVILLE

Circuit Judge Etc."

So confident was appellant that this rehearsal was correct, and so convinced of its correctness was His Honor Justice Tubman, then as now presiding in our chambers, that in an opinion given as such Justice on November 17, 1939, he largely predicated his reasons for dismissing an application for a writ of prohibition, praying that the judgment be not enforced but an appeal allowed, upon the judge's letter that he had approved both the bill of exceptions and the appeal bond.

But, alas, it eventually turned out that only the bill of exceptions and not the bond had been approved; and no

one seems to have been more surprised by such an extraordinary mistake than the trial judge himself, who on March 17 wrote a letter to the appellant, a part of which reads as follows:

"Coming to the question of your bond, it appears from the certified copy of the letter from the Clerk's Office, Monrovia, that you did submit both your Bill of Exceptions and Appeal Bond to me. I cannot understand how I approved of one of these documents and did not approve of the other. I do not remember having before made such a mistake. Ordinarily, even when a Judge thinks an appeal bond is defective, he does not withhold his approval thereto, for defects in a bond are usually the subject of attack in the appellate court. If therefore I wrote the covering letter at the time I sent your Bill of Exceptions and Appeal Bond to the Clerk, it would seem, aside from any other fact or circumstance which I cannot presently recall, that the absence of my approval to your appeal bond was purely an unintentional oversight on my part which I would have speedily remedied had my attention been called to same before the records were transmitted to the Supreme Court. I am indeed sorry that you too in superintending your appeal did not observe this mistake so that you could have had me correct it before the records left the Clerk's Office. I trust this letter will serve the purpose for which it is intended.

"I beg to remain,

"Yours faithfully,

(Signed) EDWARD SUMMERVILLE

Judge."

Anticipating from the line of argument counsel for appellee was pursuing that, although it was clear to him that appellant was in a rather precarious position due to the carelessness or negligence of the trial judge, he would nevertheless insist upon the dismissal of the appeal, I

undertook to propound questions to him, the essence of which, with the answers he gave, is now reproduced as follows:

"Q. The statute provides that 'every act which is prejudicial to the interest of another is an injury, unless it be warranted by some law.' If the appellant be prejudiced by the negligence of the trial judge, as the letters from him on record disclose, can he sue the judge for any injury he may have sustained?"

His answer was that there were really too many letters filed by the judge in this case, and he wound up with a sort of hesitant half doubtful "yes."

"Q. What then would become of the statute on page 24, section 48 of the legal forms and principles [Old Blue Book] which reads, 'No judicial act, done by a judge or other judicial officer, within his jurisdiction or authority, or any omission to do such act, can ever be deemed an injury,' etc., and upon what then would he predicate his suit?"

He tried to be evasive, answering, *inter alia,* that if a judge contracted a debt he could be sued therefor.

"Q. Is the contraction of a debt a judicial act done within his jurisdiction or authority?"

Again he was evasive, answering something we could not understand.

"Q. Will you connect the provision of the statute just cited with the maxim *actus curiae neminem gravabit?"*

His answer was a long procession of words containing ideas so nebulous that I have not yet been able to crystallize them into anything tangible.

"Q. Are the opinions you have been endeavoring to voice your own or those of your immediate chief, the Attorney General?"

His answer was prefaced by a most profound bow and a bewitching smile.

"A. Will Your Honors be so good as to excuse me from answering such an embarrassing question?"

But men's rights, liberties, and lives cannot be toyed with in that manner, especially when it is made clear that the trial judge is responsible.

It is the duty of a prosecuting attorney faithfully and energetically to prosecute all offenders, but surely not to prosecute and oppress even the most recidivistic of offenders, especially when such an offender shall have done all that was required of him and falls short because of the carelessness or neglect of a judge.

Proceeding with the argument, Mr. Dukuly contended that if the trial judge were negligent the appellant was guilty of contributory negligence in not having gone behind the judge to find out if he had in fact approved the bond as he had informed appellant he had done. Inasmuch as every judge is to be considered a man of respectability and honor, it would in my mind or opinion tend to lower the honor and dignity of the judge to put upon parties the responsibility of digging behind him in order to discover if representations he actually or impliedly made were correct or not. Moreover, if we could feel ourselves warranted in implying, as we were asked to do, that the judge and the appellant were *in pari delicto,* then may I ask, in view of the fifty-third section of title one of the Statutes of Liberia (Old Blue Book), 2 Hub. 1523–24, whose condition should be preferred?

It appears to me that in the maxim *actus curiae neminem gravabit,* which maxim means "the act of the court shall prejudice no man," the word "gravabit" has a meaning greater in extent and deeper in intent than the word "prejudice" fully connotes. For, according to White's abbreviation of Riddle's Latin dictionary, not only does "gravo," the root, mean "to burden, oppress, load" but also to "incommode, inconvenience," which definition *Harpers' Latin Dictionary* (Lewis' and Short's rev. ed. 1907) fully upholds. Hence the maxim *actus*

curiae neminem gravabit should mean that the act of the court shall not inconvenience or incommode anyone.

With such a record as we have before us I cannot conscientiously attach my signature to a judgment dismissing this appeal, although as a general rule I fully agree that in the absence of a properly approved bond the appeal should be dismissed, and although, as aforesaid, I fully concur in the opinion my brethren of this Bench have reached on count one of the motion brought before us.