

ALFORD C. RUSS, Appellant, *v.* REPUBLIC OF
LIBERIA, Appellee.

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

Argued May 13, 1936. Decided May 15, 1936.

1. Every officer is presumed to have done his duty, and within the time prescribed by law.
2. Hence when a bond has been approved by an officer who neglected to state the date of its approval, it will be presumed to have been approved within the time prescribed by law.
3. A bail bond is an undertaking on the part of bail that their principal will appear when called to answer a charge; and it is only such a bond that a bail commissioner may approve.
4. Hence, an appeal bond approved by him, or by anyone other than the trial judge, has not been legally approved.

On motion to dismiss an appeal from conviction of embezzlement, *motion granted* and *case remanded* for execution of judgment.

Anthony Barclay and *P. Gbe Wolo* for appellant.
The Attorney General for appellee.

MR. JUSTICE DOSSEN delivered the opinion of the Court.

At the August term, 1935 of the Circuit Court for the First Judicial Circuit, Montserrado County, Alford C. Russ, appellant, defendant below, was indicted, arraigned, tried and convicted of the crime of embezzlement, but being dissatisfied with the several rulings, verdict and the final judgment rendered against him, appealed to this Court upon a bill of exceptions. On the 8th day of April, 1936, when the said case was first called for hearing in this Court, appellee, plaintiff below, entered and filed a motion for the dismissal of the appeal, for reasons therein assigned (*see supra* p. 145); but the

Court after hearing arguments *pro et con*, denied said motion and ordered the case to be heard upon its merits. But, when the said case was again reached on the trial docket, appellee submitted a second motion praying that said appeal be dismissed for want of legal jurisdiction, which reads as follows:

- “(1) The Republic of Liberia, appellee, respectfully motions this Honourable Court to dismiss the appeal in the above entitled cause, because no legal bond has been filed by appellant in accordance with the provisions of the Liberian Statute law governing appeals, in that, the bond filed is not approved by the judge of the trial court in said action, but is approved by one N. H. Gibson, Bail Commissioner, Montserrado County.
- “(2) Because said bond was not approved and filed within sixty days according to the provisions of the Statute governing appeals in that the purported approval of said bond bears no date.”

Dealing with these points in inverse order we are of opinion that the second count of the motion is not well taken, because every officer is presumed to do his duty, and the mere fact that the officer neglected to state the date of his approval of the bond should not operate against the appellant, but it should be presumed to have been approved within the legal time. More especially does it appear to be true from the time it was filed in the office of the clerk of court.

But with respect to the first point, this Court is forced to reiterate the regret expressed in the case *Adorkor v. Adorkor*, decided at our present session, the relevant portion of which reads that:

“the Court does not favor deciding causes before it upon motions to dismiss, but would rather go into the merits of the case, and decide same according to the law and evidence. . . .” 5 L.L.R. 172, 173 (1936).
But, so long as litigants, or their legal representatives,

are careless and indifferent in preparing their causes for this Court, we are compelled to uphold and support the provisions of the law, and the interpretation of those principles as made from time to time.

Our statute provides for the appointment of a bail commissioner, whose duties are as follows:

“Every judge of a court shall have power to take bail, in all actions pending in his court, and every court shall have power to appoint, by standing rules, commissioners of bail . . .” Statutes of Liberia (Old Blue Book) 41, ch. III, § 8.

Such a bond is an undertaking on the part of the bail that their principal will appear, when called, to answer a charge made against him, and such bond especially when given in a criminal case a bail commissioner may approve.

But no commissioner of bail under our statute has the right to approve of an appeal bond; as such a right is vested only in the trial judge from which the appeal is taken.

The Honorable the Attorney General of Liberia in 1935 wrote an opinion for the government expounding the difference between certain kinds of bonds, and therein explained that a bail bond is in effect, a transfer of the custody of the prisoner from a prison to the dominion of his bail who are bound to produce him when demanded.

The purported appeal bond filed in this case was approved by one N. H. Gibson, a commissioner of bail, whose action in this respect was *ultra vires*, and who undoubtedly knowing better should have warned appellant, and having failed to do so renders said officer liable for committing a usurpation of another's office.

The motion to dismiss the appeal should therefore on the first count be sustained, the appeal dismissed, and the court below be given permission to resume jurisdiction and execute its judgment; and it is hereby so ordered.

Motion granted.