Case No. I.

D. VAN EE, Agent for OOST AFRIKAANSCHE COMPAGNIE, a Dutch Firm transacting mercantile Business in Monrovia, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

Case No. II.

GEORGE W. PATTEN, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Case No. I argued January 13, 1942. Case No. II argued January 19, 1942. Case No. I decided February, 1942. Case No. II decided February, 1942.

1. Where the appeal bond is not approved by the trial judge the appeal will be dismissed.
2. Rules of court are for the governance of the court and, like statutes, are to be construed not according to the mere letter but according to the intent and object with which they were made.
3. An affidavit becomes absolutely necessary where an allegation of fact is made which is not apparent on the record.

On motions to dismiss appeals for want of jurisdiction, *motions granted.*

H. Lafayette Harmon for appellant in case No. 1. *B. G. Freeman* for appellant in case No. 2. *The Attorney General* and *A. J. Padmore,* Revenue Solicitor, for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

The above-mentioned two cases have been brought here on appeal from the Circuit Court for the First Judicial Circuit, Montserrado County, the one by the

Oost Afrikaansche Compagnie, the other by George W. Patten, and, as the questions raised in the two motions made by appellee to dismiss the appeal are practically the same, we have decided to group them under one opinion. The former is a case which was instituted by the Republic of Liberia through the county attorney for Montserrado County in the Circuit Court for the First Judicial Circuit, Montserrado County, against appellants, the Oost Afrikaansche Compagnie, for a violation of the President's Proclamation; the latter is a case brought by the Republic of Liberia against George W. Patten upon an indictment for embezzlement.

At the call of each of the cases it was brought to the notice of the Court that appellee had filed a motion to dismiss the appeal on the ground that the appeal bond had not been approved by the trial judge.

In opposition to said motion counsel for appellant in the first case filed a resistance on three grounds: (1) That under the Revised Rules of the Supreme Court all motions filed should be verified by affidavit, and the motion filed in this case was not supported by affidavit; (2) That under the Revised Rules the party filing a motion should serve upon the opposite party notice of the same with a copy thereof at least twenty-four hours before the case is assigned for hearing, and that copy of said notice was not served upon him until January 12, 1942; and (3) That appellee's motion to dismiss is incomplete in that it makes no prayer for the affirmation of the judgment of the lower court in the event said appeal is dismissed. The second ground appellant waived during argument and the third we do not consider of any importance to pass upon.

Since counsel for appellant stressed so assiduously count one of his resistance which attacked the motion as not having been verified by an affidavit in accordance with Rule II of this Court, we have thought it necessary to examine the point raised so as to see whether or not

it is of sufficient cogency to defeat the motion to dismiss his appeal. Rev. Rules, S. Ct., Rule II, § 1, 2 L.L.R. 661.

It is to be observed in passing that this resistance is also not supported by affidavit, nor does it deny the truthfulness of the allegation contained in said motion as to the absence of an approved appeal bond.

The relevant statute on the subject reads:

> "That the appellate court might dismiss an appeal upon motion properly taken for any of the following reasons only:
>
> "1. Failure to file 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. II, § 1.

The point raised by the motion has been ruled upon by this Court in so many instances that we were not surprised to notice that appellant did not deny that the motion was of legal merit and strongly supported by law.

Although the non-verification of the motion was vehemently stressed by appellant's counsel in his argument, yet as an experienced and conscientious lawyer he had to agree that in this instance an affidavit was not necessary, although the Rule of Court as to motions made no exceptions. His contention was only as to the letter of the rule.

Rules are made by the Court for the governance of the Court and, like

> " '[S]tatutes[,] are to be construed not according to their mere letter, but according to the intent and object with which they were made. It occasionally happens therefore that the judges who expound them are obliged, in favour of the intention, to depart in some measure from the words. And this may be either by holding that a case apparently within the words, is not within the meaning; or that a case ap-

parently not within the words, is within the meaning. . . .'" *Yancy* v. *Republic,* 4 L.L.R. 204, 213, 2 New Ann. Ser. 34 (1934) quoting 1 Stephen, Commentaries 71.

Again, in *Yancy* v. *Republic* this Court quoted the following from *Ruling Case Law:*

"It often happens that the true intention of the lawmaking body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. Hence, the courts are not always confined to the literal meaning of a statute; the real purpose and intent of the legislature will prevail over the literal import of the words. When the intention of a statute is plainly discernible from its provisions that intention is as obligatory as the letter of the statute, and will even prevail over the strict letter. The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage. It is frequently the case that, in order to harmonize conflicting provisions and to effectuate the intention and purpose of the lawmaking power, courts must either restrict or enlarge the ordinary meaning of words. The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute, where an adherence to such strict letter would lead to injustice, to absurdity, or contradictory provisions. . . ." 25 R.C.L. *Statutes* § 222, at 967 (1919).

"In so far as a rule of court is an expression of the

legislative power of the court, it is an expression of a legislative power which, whenever the court is in session, it is competent again to exercise, by the repeal or modification of any of its rules, and thereby to a certain extent to withdraw any given case from their operation. The rules and practice of the court being established by the court may be made to yield to circumstances to promote the ends of justice. There is, however, a conflict of judicial authority respecting the power of a court, while it leaves its rules unrepealed and unmodified, to except a single case from them, or to refuse to apply them, as to it shall from time to time seem best. Thus the statement has been made by the very highest authority that rules of court are but the means to accomplish the ends of justice, and that it is always in the power of the court to suspend its own rule, and except a particular case from its operation, whenever the purposes of justice require it. So also it has been held that a court may disregard the fact that a litigant has failed to comply with such rules, whether previously suspended or not." 7 *Id. Courts* § 55, at 1027–28.

We are of the opinion that an affidavit becomes absolutely necessary where an allegation of fact is made which is not apparent on the record; but in this case the non-approval of the appeal bond is patently apparent to us. *Cf. Zogai and Gijey* v. *Gemayel Bros.,* 6 L.L.R. 238 (1938).

On inspection of the bond filed by appellant, appellant's neglect in his resistance to traverse the veracity of the allegation contained in said motion we consider an admission of the truthfulness of the motion. *A fortiori* our statute above quoted and cited makes the question of non-approval of an appeal bond jurisdictional, which in our opinion cannot be waived even by appellee in the absence of statutory authorization. Once the Court's attention has been thereto directed it becomes mandatory,

for the requirement of the statute is not solely for the benefit of the appellee but is based partly upon consideration of public policy to discourage frivolous and vexatious litigation. 2 R.C.L. *Appeal and Error* § 93, at 117 (1914).

It was also held by this Court that:

> "Generally a motion which is defective in this respect will not be sustained; in this case, however, the motion merely contains questions of law which were raised in the answer and refers to matters which appear upon the records of the court below. Hence the affidavit being unnecessary, under the circumstances, was a surplusage. The court below, therefore, did not err in refusing to sustain plaintiff's objection." *Kennedy* v. *Morris,* 2 L.L.R. 134, 135 (1913).
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> "*Public policy* means the public good. Anything that tends clearly to injure the public health, the public morals, the public confidence in the purity of the administration of the law, or to undermine that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel, is against *public policy.*" 23 Eng. & Am. Ency. of Law, 456 n. (2d ed. 1903).

In the case of *Lee* v. *Republic,* 1 L.L.R. 522 (1885), this Court in ruling on a similar motion said:

> "On the calling of this case, the appellee made a motion to dismiss it, because the appellant's bill of exceptions and bonds had not the signature of the judge of the lower court.
>
> "Upon a careful examination of the record of the court below, we find that this fatal defect exists. This court has expressed before, and now repeats, that the statute laws of Liberia make it necessary that the judge of the lower court sign the bill of exceptions and approve the bond, in all appeal cases granted by

him. (See ruling of this court in Lowrie *vs.* Crusoe Bros. & Co., Feb. 6, 1879.)

"For the want of so important a requisite this court will not take jurisdiction over this case; and it therefore rules that appellee's motion is sustained, and that this case be and the same is hereby dismissed. . . ." *Id.* at 522–23. *Accord Adorkor* v. *Adorkor,* 5 L.L.R. 172 (1936); *Caulker* v. *Republic,* 5 L.L.R. 145 (1936); *Russ* v. *Republic,* 5 L.L.R. 145 (1936); *Yancy* v. *Republic,* 5 L.L.R. 145 (1936).

And so we find that for about sixty years this Court has consistently held in numerous cases that where an appeal bond is not approved by the trial judge the appeal must be dismissed. We see no reason therefore why we should not adhere to the position enunciated in so many cases, and consequently we sustain the motions to dismiss the appeals and affirm the judgments of the court below; and it is so ordered.

Motions granted.