MUSA KAMARA, Appellant, *v.* GMAH WOLLOH, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Heard: May 6, 1981. Decided: July 30, 1981.

1. A counsel is required to set forth distinctly in the bill of exceptions the grounds upon which an exception is taken, together with a statement as to the basis thereof. It is improper to place upon the court the burden of searching records in order to discover the exceptions taken and the grounds therefor.
2. The object of an appeal bond with sureties is to secure costs to the appellee and to assure the court of compliance with its judgment.
3. Where an appeal bond omits the signature of one surety, and the other surety is financially able to back the bond, and the bond is otherwise faultless, the said bond is not fatally defective.
4. Notice of the completion of the appeal is only applicable in appeals hailing from courts of records, and not from courts of no record, such as the justices of the peace and magistrate courts.
5. Chapter 52 of the Civil Procedure Law is the provision applicable to appeals emanating from magisterial courts and courts of the justices of the peace.
6. It is error to dismiss an appeal from the justice of the peace and magistrate courts for lack of affidavit of sureties.
7. The primary object for the enactment of statutes is to cure certain existing evils, and this object should be borne in the mind of courts of justice in applying the statutes in a given case in order to achieve the desired goal intended by law makers.
8. Under the new Civil Procedure Law, which replaced the 1956 Civil Procedure Law, there is only one form of civil action. The distinction between actions at law and suits in equity, and the form of those actions and suits heretofore existing, are abolished. It is the substance of the complaint rather than the form that now controls.
9. A party should not suffer from the mistake or negligence of an officer of the court where the party has no duty to perform in connection with the records; but such mistake or negligence should be remedied by amendment or otherwise, so as to promote justice.

Appellee filed a complaint against appellee in the magistrate court of Greenville, Sinoe County, for personal effects and cash amounting to $120.00 lost on a commercial vehicle owned by appellant. The summons served on the appellee from the magisterial court denominated the complaint as summary proceedings. From a judgment in favor of appellee, appellant appealed to the Third Judicial Circuit. When the case was called

for hearing in the circuit court, appellant moved the court to vacate the judgment of the magisterial court on the grounds that it lacked jurisdiction over the subject matter. The court denied the motion and dismissed the appeal, from which ruling appellant appealed to the Supreme Court on a four count bill of exceptions.

In his bill of exceptions, appellant contended, among other things, that the judge committed reversible error when he ruled that a motion to vacate a judgment on the ground of jurisdiction, is not an appeal; that one surety to an appeal bond is insufficient to make a bond valid; and that appellant's appeal bond was defective, since it was not accompanied by an affidavit of sureties.

The Supreme Court sustained the contentions of the appellant and *remanded* the case to the circuit court to try the case *de novo.* In so doing, the Supreme Court held that one surety on an appeal bond is sufficient, if the surety is financially able to secure the bond and the bond is otherwise faultless. The Court also held that an appeal from the magisterial court cannot legally be dismissed because of the lack of an affidavit of sureties to the appeal bond, there being no statutory requirement to that effect.

Clarence O. Tuning appeared for appellant. *Jenkinson T. Nyenpan, Sr.* appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Musa Kamara, the appellant in this case, traveled from Tchien, Grand Gedeh County, to Greenville, Sinoe County, on a commercial vehicle #TP-1135 owned by Gmah Wolloh, the appellee herein. It would appear that the personal effects consisting of a large bundle and $120.00 cash of appellant were missing and could not be found on arrival at his destination. Consequently, appellant lodged a complaint against appellee with the magisterial court of Greenville, Sinoe County, to recover the property mentioned hereinabove.

Predicated upon the complaint of appellant, the clerk of the magisterial court issued a summons, which was served on appellee and accordingly he appeared. A trial was had and it resulted

into a judgment in favour of appellee. An appeal was taken from the final judgment to the Third Judicial Circuit Court, Sinoe County.

When the case was called for hearing in the Third Judicial Circuit Court, two motions were filed by the parties, one attacking the jurisdiction of the court of origin and the other the jurisdiction of the Third Judicial Circuit Court. The then assigned judge, presiding over the 1978 February Term of the Third Judicial Circuit, ruled on the two motions, sustaining the motion filed by appellee and overruling the motion filed by appellant. Accordingly, the appeal was dismissed. It is from the judgment of the circuit judge that this appeal was taken to this Court for further review and final judgment.

Here are the grounds for appellate review as set forth in the four count bill of exceptions, to wit:

"1. Because Your Honour ruled that, a motion to vacate a judgment of a lower court, on the ground of jurisdiction, is not an appeal, to which he excepted.

2. And also because one surety to an appeal bond is insufficient since the law requires two legally qualified sureties to make a paper bond valid, to which defendant excepted.

3. And also because, defendant/appellant's bond filed in the stipendiary magistrate's court, to perfect said appeal before the Third Judicial Circuit Court, Sinoe County, carried an appeal bond without an affidavit of sureties, and to which he excepted.

4. That the said subject matter appealed from was summary proceedings against Stipendiary Magistrate Jacob P. Monger, for exceeding his jurisdiction in awarding payment of debt in summary proceedings, to which plaintiff/appellee Gmah Wolloh was not a party, and to which defendant/ appellant excepted."

In *Sampson and Johnson v. Republic*, 11 LLR 135, 138 (1952), this Court decided that a counsel is required to set forth distinctly in the bill of exceptions the grounds upon which an exception is taken, together with a statement as basis thereof. It is improper to place upon the court the burden of searching the records in order to discover the exceptions taken and the grounds therefor. This principle of law is also found in *Foster v. Republic,* 2 LLR 403 (1922) and the Civil Procedure Law, Rev. Code 1: 51.7.

It is our sworn official duty to pass upon every salient issue, whether law or fact in a bill of exceptions. In this case, however, count one of the bill of exceptions is vague, and we therefore regret our inability to comprehend the same. Hence, we have refrained from passing upon count one of the bill of exceptions. See *Keller v. Republic,* 28 LLR 49 (1979).

There are many points of arguments raised in the motion to dismiss the appeal filed in the circuit court, but the court only sustained the admitted issue of lack of affidavit of sureties attached to the appeal bond. In our view, therefore, the learned circuit judge conceded that the one surety to the appeal bond with property valuation of $600.00, over and above the penal sum of $250.00 stated in the appeal bond, is quite sufficient.

The concession of the lower court on this issue of one surety appearing on the appeal bond, finds support in the holding of this Court, where this Court held that:

> "The object of an appeal bond with sureties is to secure costs to the appellee and to assure the Court of compliance with its judgment.
>
> "Where an appeal bond omits the signature of one surety, and the other surety is financially able to back the bond, and the bond is otherwise faultless, said bond is not fatally defective." *Dennis and Dennis v. Holder et al.,* 10 LLR 301 (1950).

Consequently count two of the bill of exceptions is not well taken and deserves no further comment.

Some of the contentions of appellee raised in the motion to dismiss the appeal in the circuit court were the lack of affidavit of sureties, and notice of the completion of the appeal served on appellee; but the circuit judge correctly opined that notice for the completion of the appeal is only applicable in appeals hailing from courts of record and not from courts not of record, such as the justices of the peace and magisterial courts. Therefore, the sole ground on which the trial judge dismissed the appeal is absence of affidavit of sureties annexed to the appeal bond.

The Civil Procedure Law, Rev. Code 1:52.3 is the provision which is applicable to appeals emanating from courts not of record, and the first section thereof reads as follows:

> "The revisions of section 51.3, 51.5, 51.10, 51.15, 51.17,

51.18, 51.19 and 51.20 shall apply to appeals from judgments of magistrates and justices of the peace, reference in those sections to the "trial court" shall, when the section is applied to appeals from the judgment of a magistrate or justice of the peace, be deemed to mean the court of the magistrate and justice of the peace. References in those sections to the clerk of the trial court shall, when the section is applied to appeals from judgments of magistrates or justice of the peace, be deemed to mean the magistrate or justice of the peace or his clerk, if he has one."

§52.3 of Chapter 52, *idem*, also reads:

"Within fifteen days after announcement of the taking of an appeal, the appellant shall secure the approval of the magistrate or justice of the peace who tried the case to an appeal bond and shall file it with the court. Notice of the filing shall be served upon the opposing counsel. The bond shall be in amount to be fixed by the court and shall be conditioned on compliance with the final judgment together with costs, interest, and damages for delay. Failure to furnish a bond as required by this section shall be ground for dismissal; provided, however, that an insufficient bond may be made sufficient at any time before the trial court loses jurisdiction of the action."

No reference is made to affidavit of sureties or property valuation in the two sections of the statute governing appeals from courts not of record, quoted *supra.*

We hold therefore that the circuit judge erred in applying section 51.8 and section 63.2 of the Civil Procedure Law, Rev. Code, and that the dismissal of the appeal by the judge for lack of affidavit of sureties to the appeal bond is not supported by the statute. Count three of the bill of exceptions is therefore sustained.

On the 20th of January, A. D. 1978, the circuit court, while deciding the complaint filed by appellant against the magistrate for allegedly exceeding his jurisdiction in awarding payment of the debt in a summary proceeding, said to the effect that, since an appeal was already taken from the judgment of the magistrate, summary proceedings would not lie to substitute the

appeal.

According to the records in this case, there is no exception noted to the ruling of the trial judge dismissing the summary proceedings. In the absence of the exceptions noted thereto, it is not reviewable on appeal. *Wolo v. Samobollah*, 21 LLR 22 (1972); Civil Procedure Law, Rev. Code 1: 51.7.

Appellant contended that the motion filed by him in the circuit court which questioned the jurisdiction of the magistrate over the form of action, "summary proceedings", appearing on the writ of summons, should have been heard, decided by the judge and the result therefrom would have finally terminated the case thereat and, obviously, there would have been no necessity to entertain the motion to dismiss the appeal.

According to the records before us, the judge did pass upon the two motions simultaneously in exercising her judicial discretion and there is no complaint in the bill of exceptions that she abused her judicial discretion.

It is necessary to mention here, according to the contentions of the parties, that statutes are enacted to cure certain existing evils. Therefore, the primary object for the enactment of any statute should be borne in the mind of courts of justice in applying the statute in a given case in order to achieve the desired goal intended by the maker.

We shall now consider the evils that existed, and the remedy provided coupled with the argument of appellant on the form of action, "summary proceedings", which appears on the summons that gave birth to this case in the court of first instance.

There are three compilations of statutes, namely, the Old Blue Book, the Revised Statute, (in two volumes,) and the 1956 Code. All of these statutes provided for distinctions between forms of action and divisions of courts. Consequently, this Court in giving effect to those statutes in numerous cases, including *Urey-Holder et al. v. Dennis et al.*, 15 LLR 264 (1963), held that there is no such action as "action for damages on injunction bond and wrongful injunction". Also in *Kobina et al. v. Abraham*, 15 LLR 502 (1964), this Court again held that "there is no form of action entitled failure to make complete payment with plaintiff after services rendered." Both of the afore mentioned cases were dismissed by this Court for lack of jurisdiction over the forms of

actions, without any reference to the substance of the cases.

Subsequently, in 1968, an act of the Legislature, known as the Civil Procedure Law, was passed and published, replacing the entire title six of the statute of 1956, and on page 24 section 1.3 thereof, it reads as follows:

"There is only one form of civil action. The distinction between actions at law and suits in equity, and the form of those actions and suits heretofore existing, are abolished."Civil Procedure Law, Rev. Code 1:1.3.

Therefore, there are no more forms of action in this jurisdiction as provided previously by the statute of 1956, *supra.*

The substance of the complaint couched in the writ of summons is sufficient to enable the court to decide the issue involved without any reference whatsoever to the form of action. Therefore, the words, "summary proceedings," are mere surplusage which do not vitiate. BLACK'S LAW DICTIONARY 1612 (4th ed.).

We agree that an aggrieved party before a justice of the peace or magistrate court may complain against him or constable to a circuit judge for exceeding jurisdiction or for arbitrary acts. But it is also illogical to conclude that the clerk of the magisterial court who issued the writ of summons in this case intended to make the magistrate a party and also venued the case before him to try himself as a party litigant.

According to the Civil Procedure Code, it is a statutory duty solely devolving on the magistrate, justice of the peace and/or clerk to issue and sign the appropriate writs according to the oral complaints of the litigants appearing before their respective courts for relief. Civil Procedure Law, Rev. Code 1: 3.31, 3.32 and 3.33. The parties have a right to expect that the court will perform its judicial or ministerial duties connected with the office, and that the ill performance or failure so to do should not prejudice their rights. *Morris v. Republic*, 4 LLR 125 (1934); and 15 AM. JUR. 2d., § 26, pp 532.

In 1914, about 66 years ago, this Court held that:

1. "It is reversible error to dismiss an action because in the writ of summons the letter 'h' was left out of the word 'eighteenth.'

2. A party should not suffer from the mistake or

> negligence of an officer of the court where the party has no duty to perform in connection with the record; but such mistake or negligence should be remedied by amendment, or otherwise, so as to promote justice." *Jantzen v. Freeman,* 2 LLR 167 (1914).

In our opinion, the facts and circumstances in the instant case and those in the case just cited above are identical and the holding in that case should be our guide in resolving the contentions of counsel for appellant in the case in point.

Further, in our opinion, to sustain the contention of appellant and dismiss this case, will certainly render the entire civil procedure law, specifically the sections herein cited above, meaningless and ineffective. Count four of the bill of exceptions is therefore overruled.

In keeping with the facts and the law cited *supra,* the case is therefore remanded to the circuit court and the Clerk of this Court is hereby ordered to send a mandate to the judge presiding thereat to resume jurisdiction in the case and try the case *de novo*. Costs to abide final determination. And it is so ordered.

Reversed and remanded.