(1) KORTEE BROWN, Appellant, *v.* A. C. GRANDEE and JAMES N. DOE, Appellees. and (2) ABED ABRAHAM, Appellant, *v.* MOSES COOPER, Appellee.

(1) MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.
(2) MOTION TO DISMISS APPEAL FROM THE DEBT COURT, MARYLAND COUNTY.

Argued April 10, 11, 1972. Decided May 18, 1972.

1. A motion is not a pleading and, therefore, rules governing withdrawals and amendments to pleadings generally do not apply to similarities in motion practice.
2. Failure to file an affidavit by the sureties or a certificate of valuation from the Revenue Services renders the appeal bond defective and subject to dismissal.
3. Statutes having the same general purpose are *in pari materia* and should be read together as though they constituted one law, for they are one in spirit and policy.

Two motions to dismiss two different cases were dealt with by the Court in the one opinion. In the first case the movent alleged failure to file an affidavit by the sureties to the appeal bond and a certificate of valuation from the Revenue Services, thus rendering the bond insufficient. In the second case the alleged defect in the appeal bond was only lacking the affidavit of sureties. *Both motions* were *granted* and the *appeals dismissed* without prejudice.

Case No. 1: *M. Fahnbulleh Jones* for appellant. *Edward N. Wollor* for appellees. Case No. 2: *J. Dossen Richards* for appellant. *Wellington K. Neufville* for appellee.

MR. JUSTICE HORACE delivered the opinion of the Court.

The appeals herein, the first from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, and the second from the Debt Court for Maryland County, were duly docketed for hearing by this Court in its present Term.

When the first case was called we observed in the records a motion to dismiss the appeal for insufficiency of bond, filed by appellees and duly resisted by appellant. Having this motion before us we proceeded to hear argument from both sides, to determine whether or not it would be necessary to go into the merits of the cause.

The motion filed by appellees alleged insufficiency of the appeal bond in that it lacked an affidavit by the sureties thereon and a certificate of valuation from the Revenue Services.

Appellant has contended that the motion should be denied since it was entitled "amended motion," one previously made having been withdrawn, and further argues that the movent must prove allegations of insufficiency and not rely on the record only.

The first count of appellant's resistance postulates the proposition that a motion being a pleading, and appellee having filed one motion and withdrawn it, the motion now under consideration should have been entitled an amended motion. Appellant in arguing this point before us relied on section 910 of the Civil Procedure Law, L. 1963–64, ch. III, which relates to amended pleadings, as does *Liberia Trading Corp.* v. *Abi-Jaoudi,* 14 LLR 43 (1960), which states that pleadings which violate the statute controlling withdrawals and amendments of pleadings are properly dismissed when raised in an adversary's pleadings and passed upon at a hearing.

As will be shown later, we do not agree with appellant that a motion is a pleading in the real sense of the legal

connotation of the term "pleading." In passing, we would like to say that *Liberia Trading Corp.* v. *Abi-Jaoudi, supra* is not analogous in our opinion, because in that case appellant had twice withdrawn and refiled, whereas the statutes provide for only one withdrawal of a pleading in order to amend. As both the 1956 Code of Laws and the new Civil Procedure Law, L. 1963–64, ch. III, are silent on the procedure for withdrawal in order to refile, this Court has consistently followed the rule laid down in *Harmon* v. *Woodin and Co.*, 2 LLR 334 (1919), that a plaintiff may once amend his complaint or withdraw it and file a new one before the case is ready for trial. It is our understanding that the rule here is that one may once withdraw a complaint to amend or to file a new one.

But the above principle deals with complaints and pleadings. The question to be resolved is whether a motion generally, and particularly a motion to dismiss of the nature now before us, is a pleading. Let us resort to the statute on the point.

> "Motion defined; when and how made. A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought. A written motion is made when a notice of the motion is served. Unless made during a hearing or trial, a motion shall be in writing and shall state with particularity the grounds therefor and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion." Civil Procedure Law, L. 1963–64, ch. III, § 1001.

BOUVIER'S LAW DICTIONARY also provides a definition.

> "An application to a court by one of the parties in a cause, or his counsel, in order to obtain some rule or order of court which he thinks becomes necessary in the progress of the cause, or to get relieved in a sum-

mary manner from some matter which would work injustice.

"It is said to be a written application for an order."

This Court has held in *Davis* v. *Crow,* 2 LLR 309 (1918), that a motion is an application to obtain some order, and may be made in writing or verbally, and is not a pleading to which a formal demurrer applies.

The Court's position was confirmed as recently as the October 1971 Term in an opinion delivered by Mr. Justice Wardsworth in *Bedell* v. *Bedell,* 20 LLR 484.

It is not difficult to see, therefore, that a motion is not a pleading as such. Our statute states specifically that a motion is an application for an order granting relief incidental to the main relief sought *in the action or proceeding in which the motion is brought* (emphasis ours).

The only case we have been able to find where a motion has been held to be a quasi-pleading is *Saleeby Brothers* v. *Haikal,* 14 LLR 298 (1961), which states that a *motion for a new trial* is deemed a pleading for the purposes of amendment. Our understanding is that this statement relates only to motions for a new trial, and does not apply to motions generally.

The next point for consideration in the first case is whether an appeal bond that is not accompanied by an affidavit of the sureties, and a revenue certificate indicating that the sureties are owners of the property assigned as a lien, and certifying the value of said property, is an insufficient or defective bond. Since so many opinions of this Court have held that when an appeal bond is not accompanied by an affidavit of the sureties it is in violation of the statute governing appeals and renders the appeal dismissible, we do not think it necessary to dilate on this point. Appellant's counsel argued that the statutes provide grounds upon which appeals may be dismissed, and appellees have not alleged any of these grounds. The statute relied upon by appellees is contained in the Civil Procedure Law, L. 1963–64, ch. III, § 6302 (2c),

(3), (4). In addition, section 5108 thereof provides that the appellant shall give an appeal bond in an amount to be fixed by the court with two or more legally qualified sureties thereon and that failure to file a sufficient appeal bond within the time specified shall be a ground for dismissal of the appeal. The statute very clearly states who are legally qualified sureties and the method of determining them. An inspection of the bond shows that no affidavit of sureties and no revenue certificate are attached to the appeal bond. It is crystal clear, therefore, that the appeal bond in this case has not met the requirements of the statute. In keeping with previous opinions of this Court, even as recently as the October 1971 Term, in *Sirleaf* v. *Reeves,* 20 LLR 433, this Court holds that an appeal must be dismissed when the appeal bond is insufficient.

Let us now proceed to consider the second case, that is, *Abraham* v. *Cooper.* This case originated in the Magistrate Court for Harper, Maryland County. It was appealed to the Debt Court for said County, and appellant appealed to this forum from the judgment therein. The record in the case reveals many interesting features, but before we could go into the merits of the case appellee filed a motion to dismiss the appeal, alleging the lack of an affidavit by the sureties. The motion was opposed, the appellant contending such affidavit is not mandatory.

The issues raised in this motion have been ably handled by our colleague, Mr. Justice Wardsworth, in an opinion handed down at this very term of Court in *Issa* v. *Varig Airlines,* 21 LLR 86. In spite of that opinion, the learned counsel for appellant argued that the statute relating to the affidavit of sureties to a bond not having a vindicatory provision makes it only directory and not mandatory; even invoking Article I, Section 14th, of the Constitution on the separation of powers, to show that the Court cannot by construction insert words or phrases in a statute, meaning thereby that the Legislature having made

the statute directory we cannot by construction make it mandatory. Counsel is right and we have no such intention.

We wonder, though, what the learned counsel meant when he asserted that there is no vindicatory clause to the statute. The statute on appeal bonds clearly and distinctly states that such bonds must have two or more qualified sureties, and the term "legally qualified sureties" is also clearly and distinctly defined. Failure to file a valid or sufficient appeal bond renders the appeal subject to dismissal. The statutes must be read together. Besides, the statute on legally qualified sureties states that the bond *"shall"* (emphasis ours) be accompanied by an affidavit of the sureties.

But let us go a little further. Although there is in our opinion no ambiguity in the law with respect to its language as to what constitutes a valid appeal bond, yet even if there was doubtful language in one of the statutes the principle of *in pari materia* must obtain because all the issues under consideration relate to the same subject matter.

> "Statutes which relate to the same person or things, or to the same class of persons or things, or which have a common purpose are *in pari materia.* On the other hand, statutes are not *in pari materia* which do not relate to the same subject and which have no common purpose and scope, and, although an act may incidentally refer to the same subject as another act, it is not *in pari materia* if its scope and aim are distinct and unconnected. Consistency of the statutes to be considered together is sometimes incorporated as an element of the rule of *pari materia,* and it has been held that only such statutes as are consistent with each other are *in pari materia;* but it has also been held that statutes are considered to be *in pari materia* when they relate to the same matter with an apparent or actual conflict in some or all of their provisions.

"Under the so-called *'pari materia'* rule of construction, it is well established that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or all statutes having the same general purpose, that is, statutes which are *in pari materia,* should be read in connection with it; and such related statutes may or should be construed together as though they constituted one law, that is, they must be construed as one system, and governed by one spirit and policy, and the legislative intention must be ascertained not alone from the literal meaning of the words of a statute, but from a view of the whole system of which it is but a part. This rule of construction applies although the statutes to be construed together were enacted at different times, and contain no reference to one another; and it is immaterial that the statutes are found in different chapters of the revised statutes and under different headings." 82 C.J.S., *Statutes,* § 366.

We must here observe that the Civil Procedure Law, L. 1963–64, ch. III, has been operative since December 1968. In 1969, and even 1970, overlooking certain portions of the law, though not excusable, could be overlooked or tolerated. For these mistakes to be made now by counsel appearing before this Court is causing us some concern, because it would appear that counsel is seeking to thrust the responsibility for their neglect to properly handle their clients' interests on the Court. We are, therefore, compelled to sound a warning that this attitude by counsel appearing before us will no longer be tolerated without some stringent measures being taken to curb the tendency.

In view of what has been stated herein it is our holding that: (a) the motion to dismiss in *Kortee Brown* v. *A. C. Grandee and James N. Doe* is hereby granted without prejudice, with costs against appellant; and (b) the motion to dismiss in *Abed Abraham* v. *Moses Cooper* is also

granted without prejudice, with costs against appellant.

The Clerk of this Court is hereby ordered to send a mandate to the respective courts below in these cases to resume jurisdiction and enforce their judgments in accordance with the foregoing.

Motions to dismiss both appeals granted.