MIM LIBERIA CORPORATION, by and thru its Managing Director, E. AEIG, and Chief Engineer, GHETELAT, Appellant, *v.* DAVID N. TOWEH, Appellee.

APPEAL FROM THE CIRCUIT FOR THE EIGHT JUDICIAL CIRCUIT, NIMBA COUNTY.

Heard: November 2, 1982. Decided: February 3, 1983.

1. Where the question of jurisdiction of the appellate court to hear a direct appeal is involved, it will be considered by the appellate court even though the question is not raised by the parties.
2. It is not sufficient for sureties on an appeal bond pledging real property as security to merely state in the affidavit of surety that they are owners of realty and that the net worth of each exceeds the amount of the bond; they must describe the properties so offered sufficiently to establish a lien on the bond.
3. It is one of the inherent rights of a court to take judicial notice of its own records especially in a case pending before it.
4. Failure to file a valid appeal bond is a ground for the dismissal of an appeal.
5. The Supreme Court cannot open the records to decide any issue touching the merits and demerits of a case when its jurisdiction is challenged, but it can examine the records to ascertain if the jurisdictional steps were taken so as to confer jurisdiction upon her over the parties and the cause.
6. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided. Rev. Code 1: 9.8(3)
7. To render a judgment binding, a court must have jurisdiction over the parties and the subject matter.
8. An appellate court has power to dismiss an appeal either on motion of a party or on its own motion when there are sufficient grounds to warrant such dismissal.
9. Where the question of jurisdiction of the appellate court to hear a direct appeal is involved, it will be considered by the appellate court even though the question is not raised by the parties.
10. Want of jurisdiction in the appellate court, if it is patent, or can be readily ascertained by an examination of the records, warrants the dismissal, on motion of the appellee.
11. One of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the court. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal; and jurisdictional requirements cannot be waived even by the appellee in the absence of statutory authorization. This being so, a court must of necessity, and if need be upon its own motion, always consider the question of its jurisdiction primary over any issue brought before it, since it is

bound to take notice of the limits of its authority.

12. The prerequisites for the perfection of an appeal to confer jurisdiction of the Supreme Court over the person and the subject matter according to our statute include (a) the announcement of an appeal in open court after the rendition of final judgment, (b) the filing of a bill of exceptions within ten days after final judgment is rendered, (c) the filing of an approved appeal bond within sixty days after final judgment, and (d) the filing and service of a notice of the completion of the appeal within sixty days. Failure to comply with any of the above mentioned prerequisites, or the performing of any of the prerequisites beyond the time allowed by statute, or the filing of a defective appeal bond, even though filed within statutory time, will render the appeal dismissible upon motion properly made. Civil Procedure Law, Rev. Code 1: 51.6, 51.7, 51.8, 51.9 and 51.16.
13. To render transparent justice, a court must first have jurisdiction over the parties and the subject matter. Therefore, when the jurisdiction of the court is contested, it must first decide upon its own jurisdiction before proceeding with the merits and demerits of the case.
14. A court has knowledge of the genuineness of its own records. Notice will uniformly be taken by a court of its own records and of all matters patent on the face of such records, including all prior proceedings in the same case, though not of matters which may merely be inferred from facts appearing on the face of the records.

On a motion to dismiss an appeal, appellee contended that the appeal bond was defective in that the properties offered by the sureties were not sufficiently described as required by the appeal statute. Appellant did not deny the allegations contained in the motion with respect to the bond, but contended, relying on *Magbine v. Soko*, 29 LLR 292 (1981) and *Washington v. Sackie*, 30 LLR 441 (1982), that the motion is void and violative of the principle of notice in that appellee did not attach a copy of the bond to the motion and, that, by reason of this defect, the Supreme Court cannot pass upon the motion as to do so would be tantamount to opening the records which it cannot do unless jurisdiction is conferred.

The Supreme Court overruled the contentions of appellant, stating that although it cannot open the records to decide issues touching on the merits and demerits of the case, it had the power to examine the records to ascertain if the jurisdictional steps were taken so as to confer jurisdiction upon it over the parties and the cause. The Court also opined that where its jurisdiction is questioned, it must decide upon its jurisdiction over the parties and the cause before proceeding to hear the case. In so holding, the Supreme Court overruled and recalled its opinions in *Magbine v. Soko,* 30 LLR 292 (1982); and *Washington v. Sackie*,

29 LLR 441 (1981), and sustained the portions of the opinion in *Talery v. Wesley,* 21 LLR 116 (1972) and *Kamara v. Khalill Niam Brothers,* 21 LLR 402 (1973) as they relate to the power of the Supreme Court to examine the records on appeal to determine jurisdictional issues, which were recalled by the opinion in the case *Magbine v. Soko.* Accordingly, the Supreme Court granted the motion.

Raymond A. Hoggard appeared for appellant. *Clarence Harmon* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Appellee instituted an action of damages against appellant, for damages done to personal property, in the Eighth Judicial Circuit Court for Nimba County, during the November 1979 Term. Pleadings progressed to the reply. Law issues were disposed of, and after regular trial, the jury returned a verdict in favor of plaintiff/appellee awarding him Six Thousand ($6,000,00) Dollars as general damages and Seven Thousand Five Hundred Sixty ($7,560.00) Dollars special damages for the value of the car, Peugeot 504 Sedan, 1977 model, which was bought from C.F.A.O. (Liberia) Limited for Eight Thousand Five Hundred Sixty ($8,560.00) Dollars in February 1977. Appellant excepted to the verdict and thereafter filed a motion for new trial which was argued, denied and final judgment rendered on July 2, 1981 affirming the said verdict. Appellant appealed from the final judgment and processed its appeal to this Court.

Upon the call of the case for hearing, the appellee informed us that he had filed a motion to dismiss the appeal. We quote counts one and three of the motion since count two is simply requesting this Court to penalize appellants' counsel for negligence:

"1. Because appellee says that the appeal bond is fatally defective in that the properties offered by both sureties are not sufficiently described in order to establish liens on the properties for a clear and unequivocal identification of the properties so offered, as the law requires. In

this regard, appellee asks this Court to take judicial notice of its records and with particularity, the revenue certificates of clearance.

2. Finally, because appellee says that the purpose for requiring a sufficiently described property as lien is to ensure an appellee the actual property for foreclosure of the bond should appellant lose, and/or fail to perform or to comply with court's judgment; and that the said appellee is in the position to recover in the final analyses against the property so offered. Appellee fears that without these guarantees being well accounted for, he is unsecured, especially so when the appellant is a logging company."

The appellant's counsel filed the below two-count resistance:

"1. Because appellant submits that the purported motion to dismiss in its entirety is void, naked and that it violates the principle of notice to appellants as to what movant intends to prove and should therefore be denied; in that the purported motion has vaguely and loosely alleged that the appeal bond is fatally defective in that "the property offered by both of the sureties is not sufficiently described in order to establish the property lien on the Bond for a clear and unequivocal identification of the properties so offered." Appellant submits that the fundamental principle of pleadings is that of giving notice, and since appellee has requested that the appeal be dismissed without referring to records in the case, the alleged defective appeal bond not sufficiently describing the properties should have been proferted with the motion filed and served thereby giving the Court and appellant sufficient notice of what description he intends to prove and for the Court to be satisfied without going into the records as requested, that the appeal bond does not indeed sufficiently describe the properties. Appellee's failure to have proferted said alleged defective appeal bond with his motion denies appellant of that required notice and this Honorable Court, the opportunity to inspect and pass upon said document. Therefore, the motion should be denied. For reliance: *Magbine v. Soko*,

30 LLR 441 (1982), decided March 1982 Term; and *Washington v. Sackie,* 29 LLR 292 (1981), decided March 1981 Term

2. And also because appellant denies all and singular the naked allegations of both law and facts contained in counts 1 and 3 of said motion which are not supported by any evidence."

Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided. Civil Procedure Law, Rev. Code 1: 9.8(3)

Appellant has not denied the allegations in the motion but argued that the allegations are naked in that the movant never proferted copies of the documents accompanying the motion and cited for reliance the cases of *Magbine v. Soko,* 29 LLR 292 (1981); and *Washington v. Sackie,* 30 LLR 441 (1982).

The issue before us, as argued by appellant, is whether this Court of last resort is competent to decide on its own jurisdiction, especially so when it is challenged by a party through a motion to dismiss the appeal without proferting the documents relied upon. To render a judgment binding a court must have jurisdiction over the parties and the subject matter. *Compagnie des Cables Sud-Americaine v. Johnson,* 11 LLR 264 (1952). An appellate court has power to dismiss an appeal either on motion of a party or on its own motion when there are sufficient grounds to warrant such dismissal. 4 C.J.S., *Appeal and Error,* § 2373.

Where the question of jurisdiction of the appellate court to hear a direct appeal is involved, it will be considered by the appellate court even though the question is not raised by the parties. 5 AM. JUR. 2d., *Appeal & Error,* § 656.

Counts one and two of the motion attacked the appeal bond as being defective in that properties offered as security are not sufficiently described in order to establish a lien on the bond as provided by statute and appellee fears that he may not recover should the judgment of the lower court be affirmed. Recourse to the affidavit of sureties, we observe that it does not sufficiently describe the properties offered so as to establish a lien on the bond in violation of the Civil Procedure Law, Rev.

Code, 1: 63.2 (3), which provides that "the bond shall be accompanied by an affidavit of the sureties containing the following:

1. A statement that one of them is the owner or that both combined are the owners of the real property offered as security;
2. A description of the property sufficiently identified to establish the lien on the bond;
3. A statement of the total amount of the liens, unpaid taxes and other encumbrances against each property offered; and
4. A statement of the assessed value of each property offered,"

It is not sufficient for sureties on an appeal bond pledging real properties as security to merely state in the affidavit of surety that they are owners of realty and that the net worth of each property exceeds the amount of the bond, but they must describe the properties so offered sufficiently to make their location and identification an easy task. *Gabbidon v. Toe*, 23 LLR 43 (1974); *West Africa Trading Corporation v. Alraine* 24 LLR 224 (1975); *Kerpai v. Kpene* 25 LLR 422 (1971); and *Doe v. Dent-Davis*, 27 LLR 306 (1978). Counts one and three of the motion to dismiss the appeal are sustained as against the resistance.

Our distinguished colleague agrees with us that the violation of the statute referred to is sufficient to dismiss the appeal but he contends that the appellee should have proferted the alleged defective bond complained of since he is requesting us to refuse jurisdiction.

Our colleague further maintains that we should not examine the records before us even though appellee has requested us to take judicial notice of the records transcribed and forwarded to us in this case. His contention is that we cannot open the records just to decide the issue of jurisdiction. On the contrary, we maintain that this Court must first be assured of its jurisdiction over the parties and the cause before proceeding to hear the case. We agree, however, that we cannot open the records to decide any issue touching the merits and demerits of the case until we shall have decided the jurisdictional issues; but, we can examine the records to ascertain if the jurisdictional steps are taken so as

to confer jurisdiction upon this Court over the parties and the cause. For the sake of argument, we ask, in case there arises a contention over an alleged defect in an appeal bond and its accompanying documents, that is, the appellant contends that it has met the requirements of the statute in full and the proferted documents attached to the motion were incorrect and misleading. Could not this Court of dernier resort take recourse to the records certified to it in order to mete out transparent justice? Would such an examination of the records before us be considered as opening the records as our colleague is now contending? Our reply is in the negative, because we have every right to take judicial notice of the records certified to us and to decide our own jurisdiction. The authorities on this issue hold that:

> "*Want of Jurisdiction.* Want of jurisdiction in the appellate court, if it is patent, or can be readily ascertained by an examination of the record, warrants the dismissal, on motion of the appeal or writ of error ...." 4 C. J. S., *Appeals and Error,* § 2390.

The authorities further maintain that:

> "While motions made before the record is printed should ordinarily be accompanied by a statement of facts on which they rest, or by printed copies of so much of the record as will enable the court to understand the case, a motion to dismiss an appeal to the Federal Supreme Court from a circuit court of appeals for want of jurisdiction, is not premature because the record has not been printed, where the Supreme Court is sufficiently advised as to the situation of the case from a printed transcript of the proceedings in the district court to dispose of the motion without doing injustice to the parties." 4 C.J.S., *Appeals and Error,* footnote 95 (g), p. 598.

The two main contentions raised by the appellants in the case *Lazarus Michel and Lazarus etc. v. Ezra P. Prentice, et al,* 234 U.S. 268-270, motion to dismiss Appeal, decided by the U. S. Supreme Court on June 8, 1914, were:

1. That no printed records having been submitted to appellants or to the court, the motion to dismiss or affirm should be denied or be postponed until the regular hearing

of the cause.

2. That the question of jurisdiction in said case could not be determined without opening the records and looking into the merits of the controversy; hence, they contended that the motion to dismiss should be denied, or referred to the hearing on the merits.

This led to the principle of law just cited above. We shall, however, quote the portion of the opinion of the U. S. Supreme Court delivered by Mr. Justice Day:

> " ....It is contended however that this motion is premature because the record in this case has not been printed. It is true that ordinarily such motions, made before the record is printed, must be accompanied by a statement of facts upon which they rest, or by printed copies of so much of the record as will enable the court to understand the case. Under the present practice, it is permissible to file the record printed in the court below, and we have a printed transcript of the proceedings in the district court. In this printed record matters which the briefs do not dispute are shown, and we think we are sufficiently advised as to the situation of the case to dispose of it now without doing in justice to the parties .....
>
> We reach the conclusion that the appeal must be dismissed." *Ibid.*, 268-270.

In the instant case, the transcribed records, which the appellee is requesting us to take judicial notice of, is before us and which as a matter of law, we are bound to take judicial notice of as a Court; for a court is bound to take judicial notice of its own records in deciding its jurisdiction. *Rasamny Bros. v. Brunet,* 21 LLR 27 (1972).

This Court has held that "one of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the court. Completion of the prerequisites for the perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal; and the jurisdictional requirements cannot be waived even by the appellee in the absence of statutory authorization. This being so, this Court must of necessity, and if need be upon its own motion, always consider the question of its jurisdiction primary over any

issue brought before it, since it is bound to take notice of the limits of its authority." *K. Rasamny Bros. v. Brunet,* 21 LLR 271, 277 (1972); *Marh v. Sinoe,* 27 LLR 320, 324-325 (1978). The prerequisites for the perfection of an appeal to confer jurisdiction of this Court over the person and the subject matter according to our statute include (a) the announcement of an appeal in open court after the rendition of final judgment, (b) the filing of a bill of exceptions within ten days after final judgment is rendered, (c) the filing of an approved appeal bond within sixty days after final judgment, and (d) the filing and service of a notice of the completion of the appeal within sixty days. Failure to comply with any of the above mentioned prerequisites, or the performing of any of the prerequisites beyond the time allowed by statute, or the filing of a defective appeal bond, even though filed within statutory time, will render the appeal dismissible upon motion properly made, Civil Procedure Law, Rev. Code 1: 51.6, 51.7, 51.8, 51.9 and 51.16.

We disagree with our colleague when he maintains that the court should only take judicial notice of Liberian and foreign laws, historical facts and cases decided by the Supreme Court of Liberia; for we hold that it is one of the inherent rights of a court to take judicial notice of its own records especially in a case pending before it and this case is no exception.

Our colleague has also relied on Section 10.4 of the Civil Procedure Law, which reads thus:

> "Furnishing papers to the court. The moving party shall furnish at the hearing all papers not previously filed and necessary to the consideration of the questions involved. Where such papers are in the possession of an adverse party, they shall be produced at the hearing by the latter on notice served with the motion papers. Only motion papers served in accordance with provisions of this section, shall be read in support of, or in opposition to the motion, unless the court for good cause shall otherwise direct. Civil Procedure Law, Rev. Code 1: 10.4(1) and (3)

The provisions of the statute just quoted do not preclude the court from taking judicial notice of its own records in the immediate case or proceeding before it, for the subheading plainly states "furnishing papers to the court. The statute

therefore relied upon by our colleague is not applicable to this case, since the document in question is already a part of the records submitted to this Court in the case from the lower court for our review.

Granted that the contention of our distinguished colleague that the appellant has traversed the allegations contained in the motion to dismiss the appeal by denying them and introducing new facts, how can this Court of last resort justly decide the issue of the appeal bond, without examining its own records to ascertain whether or not the bond is defective, since, according to our colleague, the appellant has denied the defectiveness of the appeal bond and said bond is part of the records before us? Is it not but fair and just that in order to mete out transparent justice to both parties, that we examine the appeal bond in the records certified to this Court in the case to find out if it meets the statutory requirements? It is our considered opinion and we hereby hold that to render transparent justice, this Court must first have jurisdiction over the parties and the subject matter. Therefore, when the jurisdiction of the Court is contested, it must first decide upon its own jurisdiction before proceeding with the merits and demerits of the case. Hence, we have the full right to examine the records to ascertain whether the appellant has taken all the jurisdictional steps provided by statute to confer jurisdiction upon this Court. Law writers are in agreement that:

> "It is well settled that a court will take judicial notice of its own records, in the immediate case or the one proceeding before it, and of all matters patent on the face of such records, including all prior proceedings in the same case, but not of matters which may merely be inferred from facts appearing from the face of the record. The addition of new parties does not affect the applicability of this provision.
>
> Thus, by judicial notice of its own records, a court may determine whether or not an appeal is pending, or whether a claim is barred by the statute of limitation. In direct contempt proceedings, the court will take judicial notice of the records of the court, and the acts of the respondent committed in court, and those reflected by pleadings filed by him. However, where under a statute, the basis of a

certain penalty is a former conviction of the same offense, the court will not take judicial notice of such conviction, but it must be alleged and proved." 29 AM. JUR. 2d, *Evidence,* § 57.

The authorities further maintain that:

"Judicial Records. A court has knowledge of the genuineness of its own records. Notice will uniformly be taken by a court of its own records in the case at bar, and of all matters patent on the face of such records, including all prior proceedings in the same case though not of matters which may merely be inferred from facts appearing on the face of the records. This is true of appellate courts as well as of courts of original jurisdiction, and it has even been held that the appellate court may judicially recognize the records made upon the trial in the lower court...:" 15 RCL, §44.

The contention of appellant in count one of its resistence is therefore overruled. We must also overrule the principle enunciated in the cases *Magbine v. Soko,* 29 LLR 292 (1981) and *Washington v. Sackie*, 30 LLR 441 (1982) and we hereby recall these cases as far as the aforementioned principle is concerned, and sustain the portions of the opinion in *Talery v. Wesley,* 21 LLR 116 (1972) *and Kamara v. Khalill Niam Brothers,* 21 LLR 402 (1973) as they relate to the examination of the records to determine jurisdictional issues which were recalled by the opinion in the case *Magbine v. Soko*, delivered during the March 1981 Term.

Failure to file a valid appeal bond in contemplation of the statute is a ground for the dismissal of an appeal. Civil Procedure Law, Rev. Code 1: 51.4 (c) and 51.16.

In view of the foregoing circumstances, the facts and laws cited, we have no other alternative but to grant the motion to dismiss the appeal and the same is hereby granted, and the appeal dismissed. And it is hereby so ordered.

Motion granted, appeal dismissed.

MR. JUSTICE YANGBE *dissents.*

Count 2 of the resistance to the motion to dismiss reads:

"And also because appellant denies all and singular the allegations of both law and facts contained in counts 1 and 2 of said motion not supported by any evidence".

This is a positive and categorical denial of the contentions raised in the two count motion to dismiss. Yet, according to the majority opinion, appellant has failed to deny the contentions in the motion with respect to the alleged defective appeal bond and the majority opinion is predicated upon Civil Procedure Law, Rev. Code 1: 9.8. But what my distinguished colleagues did not take into consideration is the resistance of appellant to the effect that appellee should have proferted copies of the appeal bond to give appellant notice.

Reverting further to the issue of alleged failure of appellant to deny the averment contained in the motion to dismiss, it is my opinion, that a denial of issue of facts or law need not expressly be stated, but it may be by implication, and here is the authority to support this view.

"Every allegation of facts in any pleading if not denied specifically or by necessary implication shall be taken as admitted." *Cavalla River Co. Ltd. v. Pepple*, 3 LLR 436 (1933) and *Horton v. Horton*, 14 LLR 57 (1960).

Again the majority view overlooked that:

"A special traverse with an inducement of new matter, is in substance an argumentative denial of the facts traversed, but in form a direct denial" 71 C.J.S., *Pleadings,* §144-146.

The new issues raised by appellant in the resistance is the neglect of the appellee to profert the documents which he relied upon in the motion to dismiss, which assertion is a traverse or denial by implication of the averment stated in the motion in keeping with the law that I have cited herein above, coupled with the expressed denial in count 2 of the resistance quoted *supra.* Therefore, the Civil Procedure Law, Rev. Code 1: 9.8, cited in the majority opinion is not applicable in my judgment.

The law governing pleadings as well as motions is that:

"The fundamental principles upon which all complaints, answers, or replies shall be construed, shall be that of giving notice to the other party of all new facts which is intended to be proven ...." *William v. Allen,* 1 LLR 259 (1894).

In *Keller v. Republic,* 28 LLR 49 (1979), this Court, addressing itself to procedure, held that a bill of exceptions should be framed in details and the party should not leave the burden on the Court to search the records for the purpose of discovering evidence to support the contentions raised in the bill of exceptions. There was no question of lack of jurisdiction over the appeal in that case, except the procedural reason stated hereinabove, yet this Court refused to search the record and pass upon the points of contentions. In this case, we are confronted with the question of lack of authority over the appeal which is buttressed by my opinion that we have no authority to open the records and look for evidence for a party to decide a contended issue of want of jurisdiction. It is elementary and universally accepted that the first duty of a court is to determine whether it has acquired jurisdiction in a given case and this question can be raised by either of the party or the court itself, since jurisdiction cannot be conferred by consent of the parties except by law. *Compagnie des Cables Sud-Americaine v. Johnson,* 11 LLR 264 (1952). What then is our authority for opening the records in this case without first determining whether we have jurisdiction to do so? My answer is in the negative.

In *Blacklidge v. Blacklidge,* 1 LLR 371 (1901), the defendant in that case in the court below questioned the jurisdiction of the court because he was summoned less then 15 days prior to the formal opening date of the term of court *in* which the case was venued. This Court in deciding the procedural issue of jurisdiction sounded this warning that:

> "It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to the securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves".

In the majority opinion, this cardinal rule of law and procedure has been completely ignored; consequently, the majority has decided to open the records and search for evidence for appellee to substantiate the allegations stated in the motion which attacked the authority of the Court over the appeal. I

agree that every court is competent to decide its own jurisdiction, but procedurally and logically, it should first be decided whether the court has acquired jurisdiction over the appeal before it can legally open the records at the appellate level. The point of contention here is whether we have authority to open the records in the absence of supporting documents relied upon in the motion, and not whether the records have been transcribed and forwarded to us. The statute cited *infra* demands that the supporting documents must be annexed to the motion and no paper that is omitted in the motion should be considered as evidence. There is no divergent view or the need and the effect of a profert in a proceeding in accordance with *Walker v. Morris,* 15 LLR 424 (1963), to the effect that an exhibit is part of the pleading to which it is annexed and that all documentary evidence must be attached as parts thereof. Under the doctrine of *stare decisis* which my colleagues elected to depart from, they violated a basic procedural rule by holding that we have power to open the records in the case in which our authority has been attacked.

In *Maurice et al. v. Diggs et. al.,* 2 LLR 3 (1908) we read that:

> "A judgment or decree of the court rendered where there is want of jurisdiction over parties and subject matter is void. Parties attempting to enforce a void judgment or decree may be held responsible as trespassers".

Therefore, to open a case file and search for evidence in support of the contention of a party litigant where the authority over the appeal has been assailed, in my opinion, is an infringement upon the rights of litigants. In the majority opinion, my learned colleagues have cited common law to support their view. However, we must remember that according to law and practice in this jurisdiction, common law can only be resorted to in the absence of statutory provisions on a given point and here is the relevant portion of the local statute on motion:

> "The moving party shall furnish at the hearing all papers not previously filed and necessary to the consideration of the questions involved. Where such papers are in possession of an adverse party, they shall be produced at the hearing by the latter on notice served with the motion

papers. Only papers served in accordance with the provisions of this section shall be read in support of, or in opposition to the motion, unless the court for good cause shall otherwise direct". Civil Procedure Law, Rev. Code 1: 10.4.

It is useless to mention that, on the appellate level, we are precluded from taking additional evidence. *Ibid* 1:51.5(2). Therefore, it is obvious that no paper should be produced in support of any averment in a motion at the hearing; hence, all documents relied upon by a party must be proferted. Instead of proferting the necessary documents relied upon by appellee, appellee has asked the Court to take judicial notice of its records and relied upon the principle in *Phelps v. Williams,* 3 LLR 54, 55 (1928). In that case, this Court was dealing with the doctrine of *res judicata* and there was no question of want of jurisdiction over the appeal. Therefore, the Court held that it was bound to take judicial notice of its records, whether or not its attention has been called thereto and there is no need to produce evidence in support thereof. Hence, in my opinion, certainly the Phelps-Williams case is not applicable to the issues raised in this case.

The records of which the Court is bound to take judicial notice are as follows: (a) private law of Liberia and foreign law, (b) notice of historical facts, (c) records in cases which have been decided by the Supreme Court of Liberia. Civil Pro-cedure Law, Rev. Code 1: 25.1 and 25.2; *Phelps v. Williams,* 3 LLR 54 (1928). The documents omitted in the motion do not fall under the sections of the statute hereinabove cited, therefore, we have no authority to open the case file while considering the case for want of jurisdiction over the appeal.

According to the majority opinion, another reason for granting the motion is that the reasons stated therein are legal grounds to dismiss the appeal.

The majority opinion overlooked the legal necessity of proferting documentary evidence in a pleading or motion, and what is the legal effect of failure so to do. Whether the grounds laid in the motion to dismiss are valid and sufficient for us to refuse jurisdiction is not my point of disagreement, nor is it relevant according to the attack in the resistance to the motion .

In the majority opinion, the cases *K. Rasamny Brothers v.*

Brunet, 21 LLR 271, 277 (1972) and *Marh v. Sinoe,* 27 LLR 320, 325 (1978) were cited and relied upon, but the resistance filed to the motions in these cases did not raise the procedural reasons of negligent failure of appellee to profert the documents which were considered defective. To be specific, in the first case cited in the majority opinion, a motion was made to dismiss the appeal bond for lack of revenue stamp on the appeal bond. The resistance was that the certificate of clerk of court which supports the motion was not stamped and that a similar motion was withdrawn after the case was called. The Supreme Court discounted these arguments, pointing out primarily, that the omission by appellant was patent on the face of the records before it, denying the Court the jurisdiction it would have acquired only through the perfecting of the appeal according to statute.

In the second case, *Marh v. Sinoe,* 27 LLR 320 (1978), the grounds for the dismissal of the appeal in the trial and appellate courts were identical: namely, the (1) failure to file a bill of exceptions (2) failure to file approved appeal bond within the time allowed by law; and (3) failure to have served a motion for completion of appeal.

In the resistance, appellant contended that he had mailed the appeal bond within statutory time to the trial judge, therefore, he was not negligent. He also contended that there was no revenue stamp affixed on the motion, hence, it was defective. These were the issues raised in the motion and the resistance in each of the cases cited *supra,* and these are the points of contentions the Supreme Court decided; whereas, in the case at bar, the appellee was attacked for negligent failure to proffer the appeal bond and the affidavit of sureties, which are alleged to be defective. Therefore, it is crystal clear that the facts and circumstances in the case in point and the two cases cited earlier are in no way the same. In order to correctly apply the doctrine of *stare decisis*, the facts and circumstances in the previous holding of the Court and those in the case in point must be analogous otherwise, the doctrine is inapplicable. I have carefully checked all the local and foreign cases cited in the majority opinion, and I have found no case in which a similar contention, that is now the controversial issue in this case, was ever raised in any of the

cases cited and the common law provision relied upon. The majority opinion is general and not specific.

My view is that the points of contentions in the motion to dismiss are mixed issues of law and facts predicated upon documentary evidence that are only referred to in the motion but not attached thereto in accordance with the practice and the law I have cited *supra* and we are not authorized to make research for either party in the administration of blind justice and in the atmosphere of cool judicial neutrality. In order to apply the laws, there must be facts supported by documentary evidence legally before the Court to be guided by. In this case, there is no evidence legally before us in the absence of any profert made of the appeal bond and the affidavit of sureties showing the defects complained against.

In view of the facts, circumstances and law I have cited above, I have withheld my signature from the judgment in this case. Hence, I dissent.