

S. B. HYDE MINGLE, Appellant, v. **J. W. A. RICHARDS**, Curator of Intestate Estates, Montserrado County, Appellee.

MOTION TO DISMISS APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued October 28, 1952. Decided May 29, 1953.

1. Where an appeal bond contains no monetary provision, the bond is defective, and a motion to dismiss the appeal will be granted.
2. Where the record shows that an appeal bond contains no monetary provision, but the Commissioner of Probate, who approved the bond, testifies that the original thereof contained a monetary provision, and the probate clerk testifies that the bond has been lost and the copy is correct, such clerk will be penalized for carelessness or fraud and the appeal will be dismissed on the ground that the bond is defective.

On motion to dismiss an appeal on the ground that the appeal bond is defective, *motion granted* and clerk of court below fined and ordered to pay judgment.

Momolu S. Cooper for appellant. *T. Gyibli Collins* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

According to the records certified to this Court from the Monthly and Probate Court of Montserrado County, the Curator of Intestate Estates reported to the court that the intestate estate of one Freebody Okine, a British subject employed by the Cavalla River Company, who had died here, was being interfered with by the appellant as well as by others not parties herein. An inquiry was instituted, and, after hearing witnesses, the Commissioner of Probate held that the appellant, S. B. Hyde Mingle, had, in fact, interfered with the aforesaid intestate estate. In so ruling the Commissioner declared :

"The Court therefore adjudges that S. B. Hyde Mingle is guilty of the alleged charge, and is responsible for paying all debts due by the decedent, and for the immediate refund of the amount of \$66.21 to the Curator of Intestate Estates now in his possession, and for the payment of the costs of these proceedings. And it is hereby so ordered."

Thereupon the appellant took exceptions, prayed an appeal to this Court, and filed

both his bill of exceptions and appeal bond.

At the call of the case before this Court, appellee gave notice of the filing of a motion to dismiss the appeal on the ground that the appeal bond filed by appellant and sent forward to this Court was seriously defective in that there was no monetary clause or consideration, that is to say, there was no sum of money named at all in the appeal bond. An inspection of the bond by this Court sustained the appellee's allegation. Nevertheless the bond showed on its face that it had been duly approved by the Commissioner of Probate.

In an effort, therefore, to clear up this apparently paradoxical situation, the Commissioner of Probate was cited and questioned by this Court. The Commissioner testified that, as far as his memory served him, he was certain that the original bond presented by the appellant, and duly approved, contained an amount stated in the monetary clause. Nevertheless he asked permission to check with the clerk of his court who, as custodian of records, might have made an error in the transcript. After this permission had been granted the Commissioner of Probate reported to this Court that the probate clerk Mr. A. T. G. Appleton, had stated that the original bond submitted and filed by appellant could not be found and was presumably lost. Desiring to afford clerk Appleton an opportunity to search for said bond, as well as to ascertain from him whether he realized the gravity of what he had done in sending to the Supreme Court, as part of the record, a copy of a bond which did not have any amount of money stated therein, but which he had certified as a true and correct copy of the original, we cited him to appear before this Court. To our astonishment he then stated that the original bond had been lost, but insisted that the copy made by him and sent up to this Court was identical with the original, and that he had copied the said bond word for word. This statement of the clerk might have been accepted if appellant had not taken the position that his original bond did have an amount of money stated therein, and that the copy sent forward was not a true and correct copy of the original; and if the Commissioner of Probate had not declared that the approved bond had an amount inserted therein. The best evidence as to the contents of the original bond was the bond itself, which, according to the clerk, had been lost, and, therefore, could not be produced. We can only deplore this situation. Such procedure on the part of an officer of a court is susceptible of interpretation either as gross carelessness or as manifest fraud, especially when the clerk is a lawyer and knows that, according to our statutes, the defectiveness of an appeal bond constitutes ground for dismissal of the appeal in which it is filed. L. 1938, ch. III, sec. 1 (2).

In view of the foregoing, we are left with no alternative but to grant appellee's motion to dismiss the appeal. We do so with the proviso that the amount adjudged by the Commissioner of Probate to be paid by appellant shall be paid by the probate clerk, Mr. A. T. G. Appleton, who shall satisfy the entire judgment rendered against appellant and, in addition, is to be penalized by a fine of fifty dollars to be paid within fifteen days from the rendition of this opinion. In the event of the failure of the said clerk of the Probate Court to comply with this order, the clerk of this Court is authorized to issue a commitment directed to the marshal commanding him to take and place the said clerk, A. T. G. Appleton, in custody until the said amount is paid. Costs of these proceedings are also to be paid by Mr. Appleton; and it is hereby so ordered.

Motion granted.