AARON J. SMITH, Appellant, v. **WILLIETTE E. PAGE**, Appellee.

MOTION TO DISMISS APPEAL.

Argued May 4, 1950. Decided June 8, 1950.

1. It is not necessary to include the name of and the term of the Supreme Court in an appeal bond.

2. An appeal bond which shows on its face that it was approved within the statutory period is valid even though it is undated.

3. The omission in an appeal bond of the descriptive capacities of the parties which had appeared in the suit at its institution will not render said bond invalid since the bond is still capable of being enforced despite said omission.

On motion to dismiss appeal to this Court, on the ground that the appeal bond is defective, *motion denied.*

R. A. Henries for appellant. *Nete Sie Brownell* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

When this case was reached on our docket and called for hearing, Counsellor Nete Sie Brownell, representing appellee, gave notice to this Court of the filing of a motion by him to dismiss the appeal, on the ground that the appeal bond filed by appellant contained incurable defects. Said counsel explained that, not knowing who represented appellant at the time he filed his motion, he did not serve a copy on appellant, but, having been apprised at court that Counsellor Richard Henries represented appellant, he had just handed the Counsellor a copy of said motion. The Court suspended the matter in order to permit the said Counsellor to enjoy the benefit of the twenty-four hour motion rule extant in this Court, thereby affording him an opportunity to file a resistance to said motion if he so desired. Rules of Sup. Ct., II, 2, 2 L.L.R. 662. Accordingly a resistance embodying four counts was filed by appellant's counsel, and in order to pass upon it, intelligently, we have decided to quote the motion hereunder :

"Williette E. Page, next surviving kin of the late Joanna M. Tisdell of Marshall, appellee in the above entitled cause, most respectfully moves this Honourable Court

to dismiss the appeal filed in this case and affirm the judgment of the court below for the following legal reasons, to wit :-

1. Because appellee says that the appeal bond filed in this case is fatally defective and bad in that said appeal bond fails to set out the proper names of the parties to the suit in their proper capacities in which the suit was brought. The names set out in said appeal bond simply recite:

Williette E. Page, Appellee versus Aaron J. Smith, Appellant. Objection to probation of Will.

when in truth and in fact, the proper and correct names of the parties to the cause and in which capacities the suit was instituted are as follows :

Aaron J. Smith, petitioner for the probate of the Last Will and Testament of the late Lewis F. Tisdell of Marshall, Appellant versus Williette E. Page, next surviving kin of the late Joanna M. Tisdell of Marshall, Appellee. Objection to the probation of the Last Will and Testament of the late Lewis F. Tisdell of Marshall.

Appellee therefore submits that no valid appeal bond has been filed in the case as to put the parties thereto under the jurisdiction of this Honourable Court competently and also give jurisdiction over the sureties to said bond. "Appellee therefore prays that the appeal bond thus filed be held for a nullity, the case dismissed and the appellant ruled to all costs. And this the appellee is ready to prove.

"See appeal bond filed in the records.

" Act of Legislature approved Nov. 21, 1938.

"2. And also because Appellee says that the appeal bond filed in this case is further defective and bad in that it is not dated at all so as to put the appellant and his sureties under the jurisdiction of this or any other court of law and thereby make said bond efficacious and enforceable against the signatories thereto.

"Wherefore appellee prays that the said bond be vacated and the judgment of the court below affirmed with costs against the appellant.

"And this appellee is ready to prove.
"See appeal bond.

" Act of Leg. approved Nov. 21, 1938.

"3. And also because appellee says that the appeal bond filed in this case is further defective and bad in that it fails to state to what appellate court the case is removed and at what term of said court said case is appealed. Appellee submits that the bond filed in this case fails to mention the Supreme Court of Liberia altogether either in the Bill of Exceptions or in the appeal bond.

"Wherefore appellee prays that the appeal be dismissed and the judgment of the court below affirmed with costs.

"And this the appellee is ready to prove.
"See appeal bond.
" Act Leg. approved Nov. 21, 1938.

"Dated at Monrovia the 1st day of March, A. D. 1950.
"Williette E. Page, next surviving kin of the late Joanna M. Tisdell, Appellant, *[sic]* . . .
By and through her Attorney,
"[Sgd.] NETE-SIE BROWNELL Nete-Sie Brownell
Counsellor-at-Law."

Countering the points set forth and urged by appellee in her motion to dismiss the appeal, appellant filed a resistance of four counts setting up in substance : (1) That the appeal bond filed by him is sufficiently descriptive in its construction and is capable of enforcement, and therefore not defective ; (2) That since final judgment in the case was rendered in the court below on January 21, 1949, and since the appeal bond was approved and filed on the third of the following month, said bond was approved and filed within statutory time; (3) That the appeal bond in question was drawn in strict conformity with the forms laid down in our statutes, and therefore fulfills the requirements of the said statutes ; and (4) That according to the act of the Legislature passed in 1938, a case can only be dismissed if the bill (according to the resistance) is not approved by the trial judge, which appellant contends does not obtain in this case.

Having thus stated succinctly the respective contentions of the parties, we shall now consider the legal merits of the said propositions. In doing this, we shall pass upon the issues in a reverse order, that is, starting with the last or third and fourth counts of the motion and resistance and working upward.

Counts 3 and 4 of the resistance seek to controvert the legal soundness and propriety of count 3 of the motion, which count attacks the appeal bond as defective because it fails to state to what appellate court the case was removed, and at what term of the court the case was appealed. Appellant contends that his appeal bond was prepared and framed in harmony with the provisions of our statutes, and that it answers all of the requirements of the relevant statute and appellant relied upon the revised statutes in support of his argument. Consulting our Revised Statutes, we find the following provision in respect to appeal bonds in civil cases :

"Every appellant shall give a bond in an amount to be fixed by the court with two or more sureties, who shall be householders or freeholders within the Re-public, to the effect that appellant will indemnify the appellee from all costs and from all injury arising from the appeal, and will comply with the judgment of the court to which the appeal is taken, or any other to which the cause may be removed. Appeal bonds are to be approved by the judge of the court from which the appeal is taken within sixty days after final decision or judgment. Upon the approval of the bond, the clerk of said court shall forthwith issue a notice to the appellee informing him that the appeal is taken and to what term of court, and directing said appellee to appear and defend the same. The appeal shall thereupon be complete. If such bond is not given the appeal shall be dismissed. . . ." I Rev. Stat. § 426.

The foregoing statute specifically sets forth certain conditions to be stipulated and included in every appeal bond and, for failure to file a bond containing these requirements, authorizes the dismissal of the appeal. Let us then examine the statute and see what the said requirements are. A study of the statute discloses that the requirements are : (1) That every appellant shall give a bond with two or more sureties; (2) That the said sureties shall be householders or freeholders within the Republic of Liberia; (3) That the bond shall contain a clause indemnifying the appellee from all injury and all costs arising from the appeal; (4) That the bond shall stipulate that appellant shall comply with the judgment of the court to which the appeal is taken or to any other court to which the cause may be removed ; and (5) That the said bond shall be approved by the judge of the court from which the appeal is taken. Inspecting the bond, we find that all of the foregoing requirements are met by appellant. Moreover, a comparison of the bond in question with the form laid down on page 396 of volume two of our Revised Statutes reveals that the said bond is constructed exactly according to the said form; and neither this form found in volume two of our Revised Statutes nor the provision quoted from volume one of the said statutes requires an appellant to state in his appeal bond the name of the appellate court to which his appeal is being prosecuted. The reason for this is obvious,

for in the records of the court of origin, upon the transcript of which record the appellate court decides the case, is already recorded appellant's notice of appeal to the Supreme Court, which is the only court to which a cause can be moved for review from the circuit court. We are bound to take judicial notice of such records. The inclusion, therefore, of the name of the Supreme Court and the term of said Court in an appeal bond is not necessary. Consequently its omission cannot render the bond defective, especially where same is neither required nor authorized by our statutes. Count 3 of the motion is therefore not sustained.

The next count to be considered is count 2 of the motion wherein appellee contends that appellant's bond is defective because it is not dated by appellant and therefore does not place appellant or his sureties within the jurisdiction of this Court and is therefore unenforceable. This proposition would at first blush seem plausible. Superficially it tends to show that without an execution date appearing upon the face of the said appeal bond it would be difficult, if not impossible, for this Court to ascertain and decide whether said bond was executed and tendered by appellant within the statutory period of sixty days from the date of rendition of final judgment. But a careful inspection of the bond shows that it bears on its face an approval date of February 3, obviously affixed thereon by the trial judge who approved it, and from the date of final judgment to the date of approval is a period of a little less than thirty days. Consequently, it is quite easy to prove, and it is evident from the approval date, that the bond was executed, tendered, and approved by the judge within the period allowed by statute. Furthermore, Judge Bouvier has the following to say on the subject: "[A] bond which either has no date or an impossible one is still good, provided the real day of its being dated or given, that is, delivered, can be approved." 1 Bouvier, Law Dictionary 375 (Rawle's 3d rev. 1914).

It follows, then, that the date February 3 which appears on the appeal bond as the day on which it was approved by the trial judge, is sufficient evidence of the date of its execution and/or delivery. Hence the fact that said bond was executed, tendered, and approved within the statutory time is clearly proven, especially when judicial notice is taken of the records certified to us, which reveal that final judgment was rendered on January 21, 1949. The appeal bond, therefore, is not defective in this respect, and this count of the motion is hereby denied.

Coming now to the final count of the motion, count 1, appellee claims therein that the appeal bond is defective because it fails to set out the names of the parties to the suit in their proper capacities therein. Appellee relies upon the act of the Legislature approved November 21, 1938. L. 1938, ch. III.

Recourse to said act discloses that by said enactment this Court is authorized to dismiss an appeal where the appellant fails to file an approved appeal bond, or where the bond filed is defective. L. 1938, ch. III, § 1. In this case, appellant having filed a bond, the question is whether or not, according to interpretations made by this Court in previous decisions, the bond in question, because of appellant's failure to designate the capacity of the parties in the title in the suit in the court below, is sufficient to render the bond unenforceable against said parties and therefore defective, especially since the said statute of 1938 does not point out what omissions shall render a bond defective. To render a bond defective, it must possess certain defects ; and a defect in legal parlance is a lack or absence of something essential to completeness. In other words, the want of something required by law. The questions therefore arising out of the foregoing definition are : whether the descriptive omissions complained of by appellee are essential to the completeness of an appeal bond and whether such description is required by law, and whether the omission of same will render the bond unenforceable.

In our Revised Statutes the following provision is recorded :

"Every party against whom final decision or judgment may be rendered shall be entitled to appeal from any such decision or judgment to the Court of Quarter Sessions, if from a Justice of the Peace, or from the Monthly and Probate Court; and to the Supreme Court, if from the Monthly and Probate Court or the Court of Quarter Sessions and Common Pleas. . . ." 2 Rev. Stat. § 423.

Answering the foregoing questions, we refer to the decision by this Court in the case *Williams v. Johnson,* L.L.R. 247 (1893), involving ejectment :

"And secondly, with respect to the bond, the court is of the opinion that the object of the same is to indemnify the appellee from any injury that may arise from the appeal should he, the appellant, fail to prosecute his appeal to effect. We are further of the opinion that the construction of the bond, although a little informal in the first instance, in that it does not state that 'we, H. A. Williams of Monrovia in the County of Montserrado, as appellant, and J. A. Gray and J. A. Howard of the County of Grand Bassa as bail, all of the Republic of Liberia,' yet the bond in other respects is sufficiently descriptive in its construction and its legal bearing and purport, and before any court of law or equity it will have its binding effect." *Id.* at 248.

According to the *Williams* decision, a bond, although wanting in some parts, if

capable of enforcement will be considered as valid. The bond now in question, in addition to answering all of the requirements of our statutes respecting appeal bonds, is to all intents and purposes fully capable of enforcement. Moreover, since the omissions complained of are not necessary for its enforcement, they are not essential to its completeness, and an omission of such a description is not sufficient to vitiate the bond or render it defective. Count r of this motion, therefore, is not sustained ; and the motion as a whole is hereby denied, and the cause ordered heard upon its merits at the October term, 1950 of this Court; and it is hereby so ordered.

Motion denied.