

MACARS CONSTRUCTION COMPANY, INC.,
Appellant, v. K. & H. TRADING COMPANY,
Appellee.

JUDGMENT WITHOUT OPINION.

Decided April 17, 1976.

When this case was called, Counsellor *M. Fahnbulleh Jones* appeared for the appellant, and Counsellor *Nelson Broderick* appeared for the appellee and filed a motion to dismiss on the ground that no appeal bond had been filed by the appealing party as the law requires. In the resistance filed by the appellant, he denied the correctness of the allegation, and annexed an affidavit sworn to by the clerk of the trial court to the effect that an approved appeal bond had been received by him from Counsellor Jones, the appellant's counsel, and filed in the case; and that at the filing of the said bond the notice of completion of appeal had been issued, served, and returned by the Sheriff. An inspection of the record reveals that whereas there is no bond in the file, there is the notice of completion of appeal duly served and returned by the Sheriff.

It is apparent that the absence of the bond from the file in this case cannot be made the responsibility of the appealing party, according to the clerk's affidavit annexed to the resistance. The existence of this important document in the appeal record having been sworn to by the clerk of court, the parties cannot be made to suffer for any negligent acts of an officer of court. And, because of what appears to be gross negligence or patent irregularity on the clerk's part in losing the bond, it is therefore adjudged that the appellant should be and he is hereby allowed to file another appeal bond *nunc pro tunc*, as of the date of the notice of completion of appeal, which

should be the latest date on which the missing bond could have been filed. The Clerk of this Court is ordered to receive the bond when prepared and presented by the appellant's counsel, and include it in the record now before this Court. For the negligence or irregularity, the clerk of the trial court is fined in the sum of \$25 for not being able to account for this appeal document delivered to him. The case will be heard in the Supreme Court immediately after filing of the bond. Costs to abide determination. And it is so ordered.