

AFRICAN MERCANTILE AGENCIES,
Appellant, v. JOSEPH Z. BONAHE,
Appellee.

MOTION TO DISMISS APPEAL.

Argued November 11, 1976 Decided November 19, 1976.*

1. An appeal bond which does not include as obligors the heirs, executors, administrators and assigns of the appellant and his sureties is not defective because, notwithstanding the omission, the executors and administrators are legally bound, as it is common knowledge that a decedent's estate is responsible for payment of his debts.

Appellee moved to dismiss the appeal, contending that the appeal bond was defective in several respects. The Supreme Court found all appellee's arguments baseless and *denied* the *motion* to dismiss.

Joseph Williamson and *D. Caesar Harris* for appellant. *O. Natty B. Davis* for appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

At the call of this case, it was discovered that a motion to dismiss the appeal had been filed by the appellee, alleging that the appeal bond was defective for the following reasons: it did not carry an indemnification clause; it did not bind the heirs, executors, administrators, assigns, or personal representatives of the appellant and his sureties; it had not been approved by the trial judge; it did not carry a penalty clause; and the notice of the filing of the appeal bond had not been served on the opposing counsel.

Recourse to the original records in the trial court, as well as the proferted copy of the appeal bond attached to the appellant's resistance to the motion, shows that the appeal bond does carry an indemnity clause which is also

* Mr. Chief Justice Pierre did not participate in this decision.

regarded as a penalty clause; it was approved by the trial judge; and the notice of its filing was served on and received by the opposing counsel. This leaves only the issue of whether the bond is defective because it did not include the heirs, assigns, executors, and administrators.

We have been unable to find any statutory or other legal requirement that the appeal bond must bind the heirs, executors, administrators, assigns, or personal representatives of the principal and the sureties. The relevant portion of the Civil Procedure Law states that "every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed." Rev. Code 1:51.8. The appeal bond under review does meet these requirements.

Moreover, a bond which fails to include the heirs, executors, administrators, and assigns is not defective because, notwithstanding the omission, the executors and administrators are legally bound, as it is common knowledge that a decedent's estate is responsible for payment of the decedent's debts. According to RAWLES, *Bonds*, 376 (3rd ed.): "If in a bond the obligor binds himself without adding his heirs, administrators, and executors, the executors and administrators are bound, not the heirs . . . for the law will not imply the obligation upon the heir."

To render a bond defective it must possess certain defects or lack something that is legally essential to completeness. *Smith v. Page*, 10 LLR 361 (1950). We do not find that the omission complained of is legally required or that it will render the bond unenforceable.

Under the circumstances, the motion to dismiss the appeal is hereby denied. And it is so ordered.

Motion to dismiss denied.