

BEAVER COMPANY, Appellant, v.
MICHAEL BSAIBES, Appellee.

MOTION TO DISMISS APPEAL.

Argued April 22, 1971. Decided May 27, 1971.

1. Insufficient indemnification provided for in the sureties' affidavit annexed to the appeal bond, renders the appeal bond defective and subjects the appeal to dismissal upon motion properly brought.

The amount of the property pledged by the sureties in their affidavit accompanying the appeal bond was insufficient. A motion was brought to dismiss the appeal. *Motion granted.*

J. Dossen Richards for appellant. *James Bull* for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

When this case was reached it was noted that appellee had filed a motion to dismiss the appeal, limiting us, therefore, to consideration of the motion.

The issue revolves around the filing of an allegedly deficient appeal bond. The new Civil Procedure Law, of course, governs.

"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. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within

sixty days after rendition of judgment. Notice of the filing shall be served on the opposing counsel. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action." Civil Procedure Law, L. 1963-64, ch. III, § 5108.

"The bond shall be accompanied by an affidavit of the sureties containing the following:

"(a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security;

"(b) A description of the property, sufficiently identified to establish the lien of the bond;

"(c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and

"(d) A statement of the assessed value of each property offered." Civil Procedure Law, L. 1963-64, ch. III, § 6302(3).

A defective affidavit submitted with the appeal bond required, renders the bond deficient and lends the appeal subject to dismissal. *Estine v. Raymond Concrete Pile Company*, March Term, 1970.

The appeal is hereby dismissed, with costs against the appellant. The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment, ordering it to resume jurisdiction in the matter and enforce its judgment.

Motion to dismiss appeal granted.