WILLIAM Y. DAVIS, Appellant, *v.* JOHN PAYNE GIBSON, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued May 8, 1968. Decided June 14, 1968.

1. When it has been established that appellant has been grossly negligent in supervising the appeal procedures, and has displayed the same neglect in defending a motion to dismiss the appeal, even though the omissions attacked by the appellee are proved to have been caused by clerical omission in the court below, the letter of the law, in such case, will be enforced by the Supreme Court, and the errors will be imputed to the party defending against the motion to dismiss.

In the course of an appeal from a judgment in an action of ejectment, the defendant who prevailed in the lower court brought a motion to dismiss the appeal, on the grounds that no indemnification was provided for in the appeal bond, nor submission to appellate, and subsequent, judgment. It was established by a certificate obtained from the lower court six months after the motion to dismiss had been made, that the omissions attacked had resulted from clerical error in the lower court. The *motion* was *granted* and the *appeal* was *dismissed.*

Wellington K. Neufville for appellant. *Richard A. Diggs* for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the court.

To oust appellee from a piece of property situated in Maryland County, appellant instituted an action of ejectment in the Fourth Judicial Circuit Court, during the May 1966 Term of Court. Pleadings advanced as far as the rejoinder, but for some reasons the action was withdrawn and both parties acceded to arbitration. It is from

the confirmation of the award of arbitration, and other rulings of the court that appellant excepted and has come to this Court for a review.

Because of the motion filed by appellee to dismiss the appeal we have delayed examining the merits or demerits of the appeal, and are considering herein said motion.

The one count of the motion reads:

> "Because appellee submits that the appeal bond is materially defective and bad in that said bond has failed to indemnify the appellee from all costs or injury which he may sustain by virtue of the appeal thus taken, if unsuccessful, and provide that appellant will comply with the judgment of the appellate court or of any other court to which the case is removed, as is specifically provided for by the statute on appeal. Appellee contends that from inspection of the appeal bond in these proceedings, said document has failed to comply with these provisions of the law; hence, the appeal bond is materially defective and bad and should not be entertained by this Court, but rather the appeal should be dismissed. Appellee respectfully prays the Court to take judicial notice of the certified copy of the bond as is found in the record transmitted to this Court."

Appellant countering the motion, advanced two counts,

> "1. Because the omission of the alleged indemnification clause referred to in the motion is a clerical error and the act of court, which should prejudice no man. In transcribing the records in this case, the clerk inadvertently omitted this clause, to which effect he has given, under the seal of court, the certificate and a certified copy of the appeal bond filed in his office, hereunto attached, marked exhibits 1 and 2, to form a part of this answering affidavit.
>
> "2. And also because appellant submits that the omission of the said clause in the appeal bond by the clerk of court is not so material nor defective as to

prejudice the rights of the appellant, because if judgment is to be given against appellant, the Circuit Court has the power to enforce its final judgment against the appellant herein. In that, besides the proper bond being filed in said court, appellee is sufficiently indemnified by the clause within the bond which reads: 'Wm. Y. Davis, appellant-principal, Thomas Brown, and George Nyemah, sureties, are held and firmly bound unto the Sheriff of Maryland County in the sum of $500.00, to be paid to John Payne Gibson, the above-named appellee.' "

The certificate referred to was not obtained until April 19, 1968, six months after the appeal was attacked. Notwithstanding, the certificate discloses that appellant made no effort to superintend his appeal even when required to do so. To confirm this we find it needful to quote the certificate:

"This office bears record of the attached appeal bond in the relevant case of *William Y. Davis* vs. *John Payne Gibson,* in an action of ejectment, as being a true copy of the original filed in this office. The conditional paragraph left out in the copy previously sent with other records in this case, was inadvertently overlooked during preparation of the records in this case, which was never brought to our atention until today, since counsel failed to appear and have the records taxed in keeping with the rules of court, when requested to by this office.

"Issued this 19th day of April, 1968.

"[Sgd.] EDWARD GREENFIELD,
Clerk."

Besides the negligence revealed by the certificate, i.e., appellant's failure to perform a necessary function, appellant's dilatory manner in procuring this certificate renders it unacceptable to the court.

Our Civil Procedure Law, 1956 Code 6:1013, provides:

"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 motion to dismiss the appeal is, therefore, granted, with costs against appellant.

And the clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment. And it is so ordered.

Motion granted.