ROBERT KARPEH and NMONA NAGBE, Appellants, *v.* GEORGE T. FISHER, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 2, 1974. Decided May 3, 1974.

1. The doctrine of *res judicata* can be invoked in a pending proceeding only when identical issues in a prior proceeding between the same parties or their privies were conclusively adjudicated therein.
2. An appeal will be dismissed on motion when, as in this case, a bill of exceptions only has been filed and no other requirements of the appellate process were complied with by appellants.

The appellants were defendants in an action of ejectment in which judgment was rendered against them on July 5, 1973. An appeal was announced by counsel and a bill of exceptions filed, but no other steps were taken thereafter to perfect the appeal. Appellee's counsel moved to dismiss the appeal, alleging the appellate process had not been completed, as related above.

Counsel for appellants filed a submission in reply thereto. In it he alleged that he had been substituted as counsel in place of original counsel since deceased. It was, he stated, only after judgment had been rendered against his clients, his announcement of an appeal from the judgment, and the filing of a bill of exceptions on July 13, 1973, that he learned of the prior adjudication by the Supreme Court of the issues presented in the case he was appealing. Therefore, he asserted no argument against the motion to dismiss the appeal and claimed that he had informed his clients that he would withdraw the appeal, for to do otherwise would show contempt for the Supreme Court by reason of its prior decision in the same matter. Hence, he raised by implication the doctrine of *res judicata,* which, if allowed, would necessitate the negation of the case before the Supreme Court.

The Supreme Court in its opinion discounted the argument, for the prior case, which was a contempt proceeding, did not involve the same parties nor the same issues raised herein, which related to a quarter-acre lot of land and not a dispute over 6.8 feet of land settled by stipulation of the parties, in the prior case.

The Court, of course, *dismissed* the appeal for the obvious defects in the appellate procedure, including the lack of an appeal bond.

MacDonald Acolatse for appellants. *Nete-Sie Brownell* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

When this case was called, appellee's counsel moved the Court to dismiss the appeal on the grounds that although a final judgment in the case was rendered on July 5, 1973, an appeal was announced and a bill of exceptions filed on July 13, 1973, no appeal bond had been filed, nor was a notice of completion of the appeal issued and served, nor any fee paid to the clerk of the court below to prepare and transmit to this tribunal the record in the case, all necessary to the perfection of an appeal.

In a submission filed by appellants' counsel he alleged in substance that the lawyer initially retained by appellants had died. Thereafter, an associate of deceased counsel requested him to handle the action of ejectment brought against his clients and he had agreed. He states that it was only after trial, when final judgment had been rendered against his clients and the appeal process begun by him, that he became aware of the prior adjudication by the Supreme Court of the issues in the case now before us, citing *Karpeh* v. *Fischer,* 12 LLR 167 (1954). Upon learning the facts he advised his clients that when the motion to dismiss the appeal was called for argument he

would assent to the granting of the motion for to do otherwise would be contemptuous of this Court in view of his knowledge of the prior determination of the issues presented herein, as stated before. Nonetheless, although arguing *res judicata* by virtue of the prior case cited, he seems to object to the present action commenced to enforce it, claiming appellee was seeking more than had been agreed to by the parties in that prior case.

Since, of course, if a matter has been decided by the Supreme Court it becomes *res judicata,* the judgment therein being conclusive and binding upon the parties, barring any subsequent suit on identical issues by the same parties, *Phelps* v. *Williams,* 3 LLR 54 (1928), we will have to consider the case cited above by counsel for appellants, to see whether a final and conclusive judgment was rendered in that case, which involved contempt proceedings.

It is a fundamental principle of jurisprudence that material facts or questions which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become *res judicata* and may not again be litigated in a subsequent action between the same parties or their privies. But the fact that different demands spring out of the same transaction, act, or contract does not *ipso facto* render a judgment in one a bar to an action in another.

The issue out of which the appeal arose commenced with the contention of plaintiff in the court below that he is the bona fide owner in fee of a certain parcel of land on Perry Street in the City of Monrovia, which is a portion of Lot No. 19, bounded and described as follows: commencing at the North West corner of the adjoining Southern lot owned by George T. Fisher and running North 37 degrees East 132 feet parallel with Perry Street thence North 54 degrees West 82-1/2 feet, thence South 54 degrees and East 82-1/2 feet to the place of com-

mencement, consisting of one-fourth acre of land and no more as more fully appears, as alleged in the complaint, in a copy of the Public Land Sale Deed from the Republic of Liberia to George T. Fisher attached to the complaint as Exhibit "A," which also charges defendants are unlawfully and wrongfully occupying a portion thereof.

Appellants claim otherwise, alleging occupation of land covered by a deed within the area of Half-Way Farm, 4th Row, No. 19, bearing no relation to land allegedly owned by the plaintiff. The deed defendants rely upon sets forth a description of the land claimed.

> "Commencing at the South Western angle of the abutting (1/20) one-twentieth of said Farm Lot owned by C. W. H. King and running South 38 degrees West 200 links; thence running North 52 degrees West 128 links, thence running South 52 degrees 128 links to the place of commencement and containing one-fourth (1/4) of an acre of land and no more."

The opinion relied upon by appellants' counsel as aforesaid, has made no reference to Block No. 19, a portion of which contains four lots, the third of which belongs to Robert Karpeh and the fourth to George T. Fisher. It has failed to state the points of controversy settled in the stipulation entered into, including the metes and bounds each contending party was to occupy. There was no conclusive judgment between George Fisher, the defendant therein, and Robert Karpeh and Nmona Nagbe, who were the plaintiffs. Nor is there any recital in the opinion of the contentions of the respective parties.

A judgment is essential to the doctrine of *res judicata.* When invoking the doctrine of *res judicata* the finality of the judgment or the final determination of the matter in the prior action is essential, since it is the general rule that the judgment must be final and not interlocutory.

According to authorities, a judgment is an adjudication of all the matters which are essential to support the judg-

ment, when every proposition assumed or decided by the court leading to the final conclusion has been effectually passed upon in resolving the ultimate question. The foregoing is universally applied no matter the injustice done by such application to a particular case. But the doctrine does not apply to a subsequent action if the judgment first obtained was rendered because of a misconception of other available remedies. In such a situation the plaintiff is entitled to pursue his cause of action. The issue between the contending parties in the case, as aforesaid, relates to one-fourth of an acre of land upon which no prior judgment had been rendered and not the 6.8 feet of land referred to in the opinion referred to. It would, therefore, be paradoxical to conclude that an opinion given on one is a judgment on the other.

The opinion referred to by appellants' counsel specifically mentions the name of George T. Fisher as one who, sometime in the past, had instituted an ejectment action against Sagbe Blamo, mother of Josiah Karpeh, who had leased a portion of his land to sundry persons. In the instant case, George T. Fisher is the plaintiff against Robert Karpeh and Nmona Nagbe, who were summoned, appeared, and submitted pleadings in the names stated, being two distinct and separate persons.

According to authorities, identical persons or parties must be involved before the doctrine of *res judicata* can be applied. Nmona Nagbe and Robert Karpeh were not parties in the contempt proceedings in the opinion referred to by appellants' counsel. There is no prior conclusive judgment on the issues involved in these proceedings.

Authorities can be quoted in support of the views herewith expressed.

> "The general rule is that a person relying upon the doctrine of *res judicata* as to a particular issue involved in the pending case bears the burden of introducing evidence to prove that such issue was involved

> and actually determined by the prior action, where this does not appear from the record. . . . It must clearly appear from the record in the former cause, or by proof by competent evidence consistent therewith, that the matter as to which the rule of *res judicata* is invoked as a bar was, in fact, necessarily adjudicated in the former action. If the judgment in the prior case may have been based on any one of several issues involved therein, but is ambiguous and uncertain as to which of the several issues was the one determined in arriving at the decision, the party invoking the application of the doctrine of *res judicata* is generally required to show upon which issue the judgment was in fact based; and where this is not done, the judgment does not constitute a conclusive adjudication as to any of the issues involved." 30 AM. JUR., *Judgments,* § 283 (1940).

We are of the opinion that there must be an end to litigation; when a party has had an opportunity to present a defense and neglects to do so, the demands of the law require that he take the consequences.

Having lengthily commented on the principle of *res judicata,* which was by means of pseudotactics introduced in the submission by appellant's counsel to serve as a bar to further litigating this matter, we shall now consider the motion to dismiss the appeal.

As often as it is necessary for this court to say, we shall reiterate that although the right of appeal is vouchsafed to any person against whom a judgment has been rendered, yet such right is regulated by statutes which must strictly be followed. Any appeal not complying strictly with the statute regulating appellate procedure will render the appeal subject to dismissal. *Caulker* v. *Republic,* 5 LLR 145 (1936); *George* v. *Republic,* 14 LLR 158 (1960).

Our Civil Procedure Law is clear as to what is necessary to perfect an appeal.

"The following acts shall be necessary for the completion of an appeal:

"(a) Announcement of the taking of the appeal;

"(b) Filing of the bill of exceptions;

"(c) Filing of an appeal bond;

"(d) Service and filing of notice of completion of the appeal.

"Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal." Rev. Code 1:51.4.

We should not forget that the appeal bond is essential to perfecting an appeal and when not obtained or defective, the appeal it relates to will be dismissed by the appellate court.

Having carefully considered the record in this case and the points raised in the motion to dismiss the appeal, we are of the opinion that the failure to file an appeal bond and issue and serve a notice of completion of the appeal, are grounds for granting the motion and, therefore, the appeal is dismissed with costs against appellants. The Clerk of this Court is hereby ordered to inform the court below of this judgment, with instructions that it resume jurisdiction and enforce its judgment in this matter. It is so ordered.

Motion to dismiss appeal granted.