SALEEBY BROTHERS, Lebanese Merchants Doing Business in Liberia, by their Agent, RICHARD HAIKAL, Appellants, *v.* WILMOT P. BRIGHT, Appellee.

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

Argued November 19, 1964. Decided January 15, 1965.

1. A variance between the sum specified in the body of an appeal bond and the sum specified in the penal clause of the same bond will not be deemed a material defect in the bond where the bond fulfils its purpose of adequate indemnification of the appellee from costs and injury arising from the appeal.
2. Failure by an appellant to file with the clerk of the Supreme Court a certified copy of the notice of appeal is not a sufficient ground for dismissal of the appeal.

A motion for dismissal of an appeal in an action for damages for malicious prosecution was *denied.*

Momolu S. Cooper and *Richard Diggs* for appellant.
G. P. Conger-Thompson, for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Appellee instituted an action of damages for malicious prosecution against appellants in the Circuit Court of the Fourth Judicial Circuit, Maryland County, during its February term, 1959.

From the records certified to this Court in this case, it is observed that the trial, which commenced on the 15th day of October, 1958, was terminated in favor of appellee. Appellants, being dissatisfied with the several rulings and final judgment of the trial judge, noted an exception to the said final judgment and prayed an appeal

to this Court of last resort for review and final determination. Appellants having met all of the requirements in perfecting their appeal, the cause was duly placed on the docket of this Court for hearing and final disposition. At the call of the said cause for review, appellee filed a motion praying the dismissal of said appeal on the ground that the appeal bond was materially defective. For the benefit of this opinion, we deem it necessary to quote said motion which reads, in its body, word for word as follows:

"Appellee in the above-entitled cause most respectfully motions this Honorable Court to dismiss the appeal as taken by appellants, and submits the following legal reasons therefor:

"1. Because appellee says the appeal should be dismissed because the appeal bond is materially defective and bad, as the penal sum contained in the body of said bond as required by law is insufficient; that is to say, the said bond carried on its face the sum of nine hundred and ninety-nine dollars ($999.00) which is the amount that the sureties have subscribed themselves to indemnify appellee.

"All of which appellee is ready to prove.

"2. And also because appellee says that in keeping with statute civil appeal bonds must carry a penal sum of one and one-half times the value of the amount of the debt or judgment to secure appellee from all costs arising from said action. Appellee submits that in line with this provision of the statute said appellants' appeal bond should have carried the amount of one thousand, four hundred and ninety-eight dollars and fifty cents ($1,498.50) instead of nine hundred and ninety-nine dollars ($999.00) as shown in said bond. Appellee most respectfully requests this Honorable

Court to take judicial notice of the records certified to it by the clerk of the trial court. *"All of which appellee is ready to prove.*

"3. And also because appellee says that appellants have violated the mandatory requirements of Rule IV of the Revised Rules of the Supreme Court of Liberia, in that appellants have failed to file with the clerk of said Court a certified copy of the notice of appeal to the effect that he has properly supervised his appeal. For this incurable error, appellee prays for the dismissal of appellants' appeal with costs against them.

"Wherefore appellee prays the dismissal of the appeal and an affirmation of the judgment of the trial court."

Countering appellee's motion quoted *supra,* appellants filed a three-count resistance which reads, in its body, as follows:

"1. Because appellants submit that Count 1 of the motion is without legal merit in that, while it is true that on the face of the appeal bond in this case appears the amount of $999.00 'to be paid to Wilmot P. Bright, the above-named appellee, or his legal representatives,' nevertheless the penal clause of said bond reads as follows: 'The condition of this obligation is that we will indemnify the appellee from all costs and from all injury arising from the appeal taken by the above-named appellants, and will comply with the judgment of the court to which said appeal is taken, or any other to which said action may be removed. The penalty of this bond is $1,500.00 (one thousand five hundred and 00/100 dollars); the amount awarded appellee as damages.' The appeal bond in this case was approved by

His Honor, John A. Dennis Resident Circuit Judge of the Fourth Judicial Circuit, Maryland County in the following manner: 'Approved for $1,500.00, [sgd.] JOHN A. DENNIS, trial judge, 10/11/60.' This shows that the penal sum contained therein is $1,500.00 and not $999.00.

"And this the appellants are ready to prove.

"2. And also because appellants say, as to Count 2 of the motion, that the appeal bond in this case, which was approved by the trial judge in the sum of $1,500, is quite adequate and sufficient to secure the appellee from all costs arising from said action. Appellants submit that this stipulation in the appeal bond is all that the law requires. Wherefore appellants pray that Count 2 of the motion be overruled and the motion denied with costs against the appellee.

"And this the appellants are ready to prove.

"3. And also because appellants say that Count 3 of the motion is void of legal merit and should therefore be overruled, in that the alleged failure to serve a certified copy of the notice of appeal with the clerk of Court, who is not a party to the action, does not constitute any of the legal grounds for which, under our statute, an appeal may be dismissed. Wherefore, appellants pray that the motion be denied with costs against the appellee.

"And this the appellants are ready to prove."

Appellee, strongly contesting the position taken by appellants in their resistance to his motion to dismiss the appeal under review, filed an answering affidavit. For the benefit of this opinion, we deem it expedient to incorporate in this opinion the body of the appeal bond in question. It reads as follows:

"Know all men by these presents that we, Saleeby Brothers, Lebanese merchants doing business in Harper City and in other parts of Maryland County, R.L., represented by their agent, Richard Haikal, appellants-principal, and Wm. A. Tubman, E. B. Cooper of Harper City, Cape Palmas, Md. Co., R.L. sureties, each being a freeholder or householder within the Republic of Liberia, are held and firmly bound unto the Sheriff of Maryland County, in the sum ($999.00) nine hundred ninety-nine dollars 00/100, to be paid to Wilmot P. Bright, the above-named appellee, or his legal representative, for which payment, we firmly find ourselves and our personal representatives jointly and severally by these presents.

"The conditions of this obligation are that we will indemnify the appellee from all costs and from all injury arising from the appeal taken by the above-named appellants, and will comply with the judgment of the court to which said appeal taken, or any other to which said action may be removed.

"The penalty of this bond is $1,500.00 (one thousand five hundred and 00/100 dollars)."

The principal issue involved in these proceedings at this stage is whether or not, with the two amounts appearing on the face of the bond, same could be regarded as being valid.

In the body of the bond, the amount of nine hundred ninety-nine ($999.00) dollars is set out; but in the penal clause of the said bond, we find the sum of one thousand five hundred ($1,500.00) dollars inserted and approved by the trial judge for this last-named amount. It is peculiar to note that during arguments counsel for appellee was asked whether one thousand five hundred dollars was sufficient to cover one and one-half times the amount of the principal sum involved. To this question he replied in the affirmative.

It is obvious that the greater amount in the bond, the

one thousand five hundred dollars, especially when placed in the penal clause of the said bond and approved by the judge, said sum thereby being declared adequate to indemnify the appellee from all costs and from all injury arising from the appeal taken by appellants, cannot but be considered valid.

It is evident that should appellants succeed in the reversal of the judgment of the lower court, the greater sum appearing on the face of the bond would be considered by the lower court as the indemnification sum should the circumstances in this case so warrant it.

Appellants' failure to file with the clerk of this Court a certified copy of the notice of appeal in keeping with the revised rules of this Court is a violation of said rules; but this does not furnish grounds for the dismissal of an appeal.

The statute on appeals furnishes the following grounds for the dismissal of an appeal:

> "An appeal from a court of record may, upon motion properly taken, be dismissed for any of the following reasons:
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> "(a) Failure to file approved bill of exceptions within the time specified in section 1012 above;
>
> "(b) Failure to file an approved appeal bond or material defect in an appeal bond (insofar as such failure or defect is not remedied in accordance with the provisions of section 1014 above);
>
> "(c) Nonappearance of the appellant on appeal; or
>
> "(d) Negligent failure to have notice of appeal served on the appellee.
>
> "An appeal shall not be dismissed on any other ground, except as otherwise expressly provided by law." 1956 Code. tit. 6, § 1020.

In view of the foregoing the motion under considera-

tion is not well founded in law and is therefore unmeritorious. It is our considered opinion that same should be denied with costs against the appellee. And it is hereby so ordered.

Motion denied.