JOHNSON BLEBO, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued December 19, 1939. Decided December 29, 1939.

1. An appeal bond should bind the appellant in a sum certain as a penalty for failure to perform the conditions of the said bond. Where no sum is mentioned or contracted to be paid in an appeal bond, no amount certain can be imposed under such bond as a penalty for failure to prosecute the appeal.
2. A failure of an appeal bond to bind the appellant in a sum certain renders the bond fatally defective, and the appeal should be dismissed.

Defendant was convicted of grand larceny in the circuit court and appealed from said conviction to the Supreme Court. Appellee moved for dismissal of the appeal on the ground defendant's appeal bond was defective. On appeal to the Supreme Court, *motion granted and judgment affirmed.*

Oliver Bright for appellant. *M. Dukuly,* Attorney for Montserrado County, by appointment of the Attorney General, for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

This cause is here on appeal from a final judgment of conviction for grand larceny entered in the Circuit Court of the Fourth Judicial Circuit, Maryland County, against Johnson Blebo, appellant. When the case was called for hearing, M. Dukuly of the Department of Justice, representing the Republic of Liberia, appellee, by request of the Attorney General of Liberia, filed a motion praying for the dismissal of said appeal for the following reasons:

1. "Because the appeal has not been taken in strict conformity with the appeal statute of this Republic in that the Appeal Bond, one of the essential prerequisites to perfecting an appeal before this Honourable appellate tribunal, has been flagrantly disregarded when appellant's Bond is totally void of any penal sum whereby the appellee may be indemnified from all injury arising from the appeal taken by the appellant; the appellee's counsel submits that the said bond as it stands has no contractual obligation binding appellant to the payment of any sum in case he does not prosecute the appeal or when the appellee is injured by means of the appeal taken. The indemnifying clause as contained in said bond is a legal nullity in view of the incurable defect observed in this motion. Wherefore said appeal should be dismissed and the judgment of the lower court affirmed.
2. "And also because the appeal should be dismissed for the legal reason that appellant is not represented in person or by counsel and under the Rule of this Court the appeal is dismissable."

In considering this motion, we shall first pass on the second count thereof.

The clerk of the Court informed the Court that Counsellor Oliver Bright had appeared in the clerk's office and had entered on the record that he represents the appellant, and this fact was admitted by appellee's counsel who, when asked by the members of the Bench if he had any knowledge of the same, replied in the affirmative and informed us that he had also served a copy of the above motion on said counsellor. The second count of the motion is therefore overruled because the force of the Rule of Court referred to in said motion cannot, under these circumstances, be made operative.

Count one of the motion remains for our judicial disposition.

Upon inspection of the bond in which appellant contracts to indemnify the appellee in case he should fail to prosecute his appeal successfully, we discover, as appellee contends, that the bond does not mention any sum whatever as a penalty in case the appellant fails to prosecute his said appeal successfully, as is required by statute to be contained in every appeal bond. The indemnification clause in said bond stipulates only the foregoing:

> "The conditions of this obligation are that we will indemnify the appellee from all cost and from injury arising from the appeal taken by the above appellant, and will comply with the judgment of the court to which said appeal is taken, or to any other to which said case may be removed.
>
> "In witness whereof we have hereunto subscribed our names this 26th day of December A. D. 1938 etc."

Our statutes mandatorily provide the following:

> "Every appellant shall give a bond in an amount to be fixed by the court with two or more sureties, who shall be householders or freeholders within the Republic, to the effect that appellant will indemnify the appellee from all costs and from all injury arising from the appeal, and will comply with the judgment of the court to which the appeal is taken, or any other to which the cause may be removed. . . ." 1 Rev. Stat. § 426.

It is essential to the successful prosecution of an appeal, under the provisions of the statute just recited, that an appeal bond should bind the appellant in some sum certain as a penalty for failure to perform the conditions of the said appeal bond. A failure so to engage the appellant renders an appeal bond fatally defective because, if no sum is mentioned or contracted to be paid, no sum certain can be imposed under such a bond in case of failure to prosecute the appeal.

Our statutes further provide:

"[T]he appellate court might dismiss an appeal upon motion properly taken for any of the following reasons only:

"1. Failure to file approved Bill of Exceptions.

"2. Failure to file an approved Appeal Bond or where said bond is fatally defective.

"3. Failure to pay cost of lower Court.

"4. Non-appearance of Appellant." L. 1938, ch. III, § 1.

It is obviously the intention of the lawmakers that the filing of an appeal bond which is defective in such a manner as to make it unenforceable renders such a bond fatally defective, and an appeal founded upon such a bond should be dismissed.

For these reasons, we are of opinion that the appeal bond filed in this cause is fatally defective, and the motion raising the question is well founded in law; therefore, the appeal should be dismissed. It is hereby so ordered.

Motion granted.