CAVALLA RIVER CO., LTD., Appellant, *v.* GEORGE R. FAZZAH, Appellee.

MOTION TO DISMISS APPEAL.

Argued April 24, 1939. Decided May 5, 1939.

1. An appeal bond which fails to name and be signed by two or more sureties who are householders or freeholders within the Republic of Liberia is fatally defective, and the appeal should be dismissed.
2. Statutory requirements governing appeal bonds must be complied with, and the Supreme Court is powerless to dispense with such requirements, no matter who is the principal on the bond and no matter what amount is fixed in the bond.

Appellant appealed to the Supreme Court from an adverse judgment rendered in the lower court. Appellee moved to dismiss the appeal because of inadequacy of appellant's appeal bond. On motion to dismiss the appeal in the Supreme Court, *motion granted.*

H. Lafayette Harmon for appellant. *S. David Coleman* for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

One of the most carelessly prepared documents we remember having seen is the paper filed as an appeal bond in this case, and it is hardly necessary to recall that the filing of a legal bond is the second of the several jurisdictional steps in the prosecution of an appeal. *Wodawodey* v. *Kartiehn,* 4 L.L.R. 102, 1 Lib. New Ann. Ser. 105 (1934).

The motion submitted by appellee to dismiss this case attacks the legality of the appeal on five grounds, four of which are directed against the said bond. The second of these grounds reads as follows:

"And also because appellee says that the appeal bond as filed in this case is fatally defective and bad and not such a legal bond as is contemplated under the law, in that said bond carries in its body one Isaac R. Woods as a surety who does not sign the bond as such but on the other hand signs same as a witness. Wherefore appellee prays that for such fatal legal blunder and defect the same sought to be dismissed."

And appellant's traverse of the above, contained in the second count of the brief it filed, reads:

"Appellants further submit, that count two of appellee's motion is misleading and not supported by the law and records in this case, in that, under the law governing bonds, it is not necessary that the names of the obligors should appear in the body of the instrument; the law provides that if the obligors, in witness of their obligation to perform certain covenants and conditions, have affixed their hands and seals to the bond, that is sufficient to bind them, nor does the omission of some of the obligors named in the body of the instrument to sign necessarily invalidate it as to those who do sign. Said bond having been duly executed and signed by the principal appellant and two sureties, whose right to sign same has not been contested, the same is valid and legal bond as contemplated under the law."

The above-quoted count in the motion and the submission in the brief just read constitute an issue we are presently considering. Referring now to the bond, same rehearses:

"[T]hat we A. J. Miller as agent for Messrs. Cavalla River Company, Limited the above named appellants-principal and Bestina Weah of Krootown and Isaac R. Woods of Brewerville sureties, each being a householder within the Republic are held and firmly bound unto George R. Fazzah, appellee in the sum of twenty-five ($25.00) dollars to be paid to said appellee or his

legal representatives jointly severally firmly by these present.

"Signed: in the presence of

A. KARNGA
ISAAC R. WOODS
P. G. WOLO

"The Cavalla River Co. Ltd.,
(Sgd.) R. J. MILLER
Appellant-Principal
Manager.

"D. MAXIMORE, *Surety*
BESTINA WEAH, *Surety.*"

According to the contention of appellant's attorney, the signature of Isaac R. Woods, one of the sureties as per the recitals in the bond, can be legally placed anywhere on the instrument. Perhaps that argument might have been considered plausible had the said Isaac R. Woods, although signing as a witness and in the column of witnesses, appended to his signature the term "surety," as did the other persons designating themselves as sureties, and had thus made it clear that although his signature was placed in the column of witnesses he still intended to bind himself as a surety as had been rehearsed in the bond.

On the other hand one D. Maximore not only signs with the other obligors, but distinctly writes under his name the term "surety." But nowhere else in the bond does the name of D. Maximore appear as undertaking any of the covenants nor does it appear that he is a householder within the Republic of Liberia in accordance with a statute which requires that all sureties must be either freeholders or householders. 1 Rev. Stat. § 426. No such enabling status is claimed for D. Maximore.

Our learned colleague, Mr. Justice Russell, differs with our views and maintains that, as the amount of the bond was fixed at twenty-five dollars only, the bond signed by such a large corporation as the Cavalla River Company with one surety would be sufficient; that, furthermore, such a bond would be sufficient without any

surety; and that therefore the bond should be accepted even though it appeared that there was no person who had legally bound himself as surety. Superficially, Mr. Justice Russell's contention may appear very plausible, but in the opinion of his colleagues it is both legally and logically unsound. Should it become possible in a case like this, where the principal obligor on a bond is a large corporation, to dispense with the number of sureties fixed by the section of the statute above referred to at two or more sureties or to dispense with any surety whatever, then, as pointed out in the case *Delaney* v. *Republic of Liberia,* 4 L.L.R. 251 (1935), ours is the wrong forum before which to raise that question so long as our statute provides:

> "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.

And a second statute, ostensibly passed to dispense with or reduce the causes for dismissing appeals, still carries a provision that an appeal shall be dismissed in the event of "failure to file an approved appeal bond, or where said bond is materially defective." (L. 1935–36, ch. VII, § 1.) We, then, as that branch of government whose function is to interpret and not to enact laws are powerless to do otherwise than comply with the laws as we understand them. Moreover whether the amount involved be large or small is a matter of no concern to us in settling a principle, for a principle once settled here becomes a precedent binding upon ourselves and the courts of subordinate jurisdiction in future cases, whether

the amount involved be twenty-five dollars or twenty-five thousand dollars.

We have most reluctantly decided to dismiss this appeal, not only because we always prefer to probe the facts in each case to the bottom, but also because in this and other cases now upon our docket there are allegations that the assignment of the lease and chattel mortgage from Sammi A. Wahab to the Cavalla River Co., Ltd., was fraudulent, and a decision by us whether said assignment were or were not fraudulent would certainly facilitate our labors in all the other causes. The motion in our opinion should therefore be granted with costs against the appellants; and it is hereby so ordered.

Motion granted.