EDMORE H. DELANEY, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CIRCUIT COURT OF FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 20, 1934. Decided January 18, 1935.

1. If a bill of exceptions is not tendered within ten days after final judgment, the appeal should not be heard.
2. But if a mistake is made by the clerk of the court by virtue of which the bill of exceptions appears to have been tendered without the legal term, and the court upon inspection of the original records finds that it was tendered within the legal time, a motion to dismiss, based upon the error of the clerk, will be denied.
3. The neglect to file an appeal bond is a failure to take one of the steps to give this Court jurisdiction and hence, upon motion properly made, the appeal should not be heard.

On motion to dismiss, for jurisdictional defects, an appeal from a conviction for forgery, *motion granted.*

Abayomi Karnga and *D. C. Caranda* for appellant. *The Attorney General* for appellee.

MR. JUSTICE DOSSEN delivered the opinion of the Court.

At the May term, 1933, of the Circuit Court, First Judicial Circuit, Montserrado County, Republic of Liberia, Edmore H. Delaney, defendant, was indicted, tried and convicted for the crime of forgery; and on the 7th day of December, 1933, His Honor Martin N. Russell, presiding by assignment, rendered final judgment in said cause. Defendant excepted to the several rulings and said final judgment and appealed to this Court for review upon a bill of exceptions. At the call of the case before this Court, the Honorable the Attorney General representing the Republic of Liberia, appellee, submitted a motion to dismiss the appeal and predicated said request upon the following, to wit:

"1. Because the bill of exceptions was not submitted and approved within ten days from the date of final judgment as the law prescribes; the bill of exceptions was approved thirty-six days after rendition of final judgment; there is therefore a lapse of time of twenty-six days etc., etc."

After a careful inspection of the records filed, however, this Court observes that the said bill of exceptions was tendered seven days after final judgment and not thirty-six days as set forth and contained in count one of appellee's motion to dismiss, the error in the Attorney General's motion being due to a mistake of the Clerk of this Court who, in supplying the Attorney General with a copy of the record, inadvertently dated the final judgment in November instead of December, as was actually the time when said final judgment was rendered. This Court, therefore, upon satisfying itself of said error, had same corrected, and hence, said count is therefore without merit and cannot receive the favorable consideration of this Court.

Count 2 of said motion to dismiss reads:

"No appeal bond is filed by appellant in accordance with the provisions of the statute governing appeals; wherefore said appeal should be dismissed, and the judgment of the trial court should be affirmed."

That important prerequisite of the law not having been observed nor performed, as was in the case of *Morris* v. *Republic*, 4 L.L.R. 125, 1 Lib. New Ann. Ser. 126 (1934), we are compelled to reiterate the same principle of law enunciated in that case, which exists in this case under review. For appellant's neglect to file an appeal bond within the statutory time is fatal to the successful prosecution of this appeal.

The neglect or omission of one of the parties to do, or to cause to be done, any act essential to the progress of a cause must be taken as a waiver of his rights; and it would be decidedly prejudicial to the lawful rights of the

opposite party for the Court to allow such waiver without so pronouncing when the point is properly raised by the other party.

The statute of 1894 controlling appeals (L. 1893–94, 10 (2nd)) is very positive and mandatory and must be strictly and carefully observed and followed by appellants in bringing appeals to this Court; any omission or variation therefrom is fatal to the successful prosecution of the appeal.

Counsel for appellant very strenuously endeavored in his arguments to show that, the trial judge having previously ruled in the *Morris* case cited *supra* that an appeal bond is not necessary to be given in criminal cases, and the trial judge having absolutely refused in that case the approval of a bond duly tendered, in said case appellant did not follow the requirement of the statute in that particular, and hence no appeal bond has been executed nor filed as the law requires; but this omission is fatal to the appeal. Appellant in the *Morris* case also took the same position, and this is what this Court said:

> "Appellant in resisting said count strongly contended that during the trial below, when an appeal bond was presented to the trial judge for his approval, said judge refused to do so and ruled: 'The court refuses the approval of the appeal bond on the ground, that it is the opinion of the court that in criminal cases, an appeal bond is unnecessary because the indemnifying clause which is one of the essential requisites in all appeal bonds under our statute cannot be complied with when the Republic is a party.' . . . That appellant was legally powerless to force the trial judge to perform an act which in his opinion was unnecessary is conceded, yet there being other remedies to which appellant could have resorted, to secure the benefits which he needed to surround his cause with such safeguards as the law in such case made and provided, neglecting and failing to avail himself of said right

vouchsafed to all who desire to appeal and placed under similar circumstances amounts to a waiver of said rights and tends as a bar to the benefits which he intends to enjoy under the law from this Court."

The Court will not entertain a case legally deficient in its records; and the omission of a copy of the appeal bond in the records is fatal to an appeal. Although this case presents many important issues which this Court would like to pass upon and decide, yet so long as this and other cases remain unreversed, this Court will be bound to uphold the principle set forth and contained therein and dismiss all and any other appeal of like nature, as the omission of a copy of the appeal bond in the records, as is in this case, is fatal to any appeal. *Johnson, Turpin and Dunbar* v. *Roberts,* 1 L.L.R. 8 (1861).

Count 2 of appellee's motion to dismiss being supported by the records and the issue therein raised being in harmony with the spirit and meaning of the law in such cases made and provided, the Court is therefore of the opinion that same should receive the favorable consideration of the Court. The appeal should therefore be dismissed and the trial court ordered to resume jurisdiction, and execute its judgment; and it is so ordered.

Motion granted.

MR. JUSTICE RUSSELL being the trial judge in the lower court took no part in the consideration or decision of this case.

MR. CHIEF JUSTICE GRIMES, concurring, read and filed the following:

In the case *Morris* v. *Republic,* I found it necessary to differ with, and dissent from, the three of my colleagues who then, as in the case now under consideration, filed an opinion to the effect that "the failure to file an appeal bond duly approved by the trial judge within sixty days

after the rendition of final judgment is ground for dismissal of the appeal."

I was careful to explain, however, that I did not disagree with them in the general principle they then ennunciated, and are now reiterating. Indeed I stated that in my opinion, although whether an appeal bond was necessary in a criminal case may have been a moot question until the decision of the case, *Warner* v. *Republic,* 1 L.L.R. 525, decided by this Court in 1892, yet the amendatory statute of appeals of 1893–94 definitely settled the question, and so long as it remains unrepealed an appeal bond is necessary in *all* except capital cases.* Furthermore, referring to the dissenting opinion I then filed, and especially on page 133 of the New Annual Series No. 1, I not only followed the reasoning of Mr. Justice T. McCants-Stewart in the case *Coleman* v. *Republic,* but also divided the steps necessary in taking an appeal into two categories, viz.: 1) those necessary to be taken by the party, and 2) those incumbent upon the officers of the court to perform.

In spite of these views which I then expressed and still hold, I felt that I was justified in withholding my signature from the judgment they gave dismissing the appeal because the records showed that the appellant in that case had properly executed an appeal bond, and presented it for approval within one day after final judgment had been rendered, and it was then that the trial judge, now Mr. Justice Russell, had entered an order declaring the approval of said bond unnecessary, although he allowed the bond to be filed without his approval, a certified copy of which was included in the record sent up to us for our review.

Anxious to reiterate, and confirm in this case, the views I had then expressed in the *Morris* case, I carefully inquired of the counsel for appellant in the present case

* *Ledlow* v. *Republic,* 1 L.L.R. 383 (1901); *Roye* v. *Republic,* 1 L.L.R. 528 (1892).

whether or not he had followed the same procedure and presented for approval in the case at bar a bond duly executed as had been done in the *Morris* case. His reply in the negative, in my opinion, destroys the analogy he had been anxious to show between the two cases. Nor does his contention that, in spite of the specific character of the opinion expressed by Judge Russell while a Circuit Judge in the *Morris* case (tried six months earlier), it had also a general effect convince me that he was thereby relieved of the necessity of properly executing and tendering an appeal bond, in view of the plain principles of law involved and the numerous decisions of this Court in support thereof commencing from that of *McBurrough* v. *Republic,* 1 L.L.R. 385 (1901).

Appellant, however, did not pursue such a course. On the contrary he seemed to have felt, as Mr. Karnga strenuously argued here, that once an appearance bond was filed, an appeal bond was of no practical utility, and hence his whole argument tended to support the views Mr. Justice Russell appeared to have held while a Circuit Judge.

We are of opinion that the arguments thus advanced here are presented to the wrong forum. The courts are not at all concerned with whether or not a law as enacted by the Legislature is good or bad, useful or not.

For,

> "While the courts may, and, when the question arises and is properly presented, must, determine the constitutional power of the legislature to enact a particular statute, where a law does not transcend the limits of legislative power it cannot be held invalid by the courts because they may question the wisdom of the enactment. Within constitutional limits, the necessity, utility and expediency of legislation are for the determination of the legislature alone. The remedy for unwise legislation is not in the courts but remains in the people, who, by making the necessary changes

in the legislative body, may have the unwise, improvident or pernicious legislation of one legislature corrected by another. . . ." 25 R.C.L., "Statutes," § 60; *Roberts* v. *Roberts,* 1 L.L.R. 107, esp. 112 (1878).

Moreover, as we pointed out in the case *Wodawodey* v. *Kartiehn and George,* 4 L.L.R. 102, 1 Lib. New Ann. Ser. 105, each step prescribed by the Legislature in taking an appeal is jurisdictional, and the omission of any one step necessary to be taken by appellant deprives the appellate court of the power to hear and determine the appeal upon its merits.

For the reasons thus given I have felt it my duty to affix my signature to the judgment of the majority of my colleagues dismissing this appeal.