

Ex parte THOMAS HAYWARD PROUT,  
Petitioner.

PETITION FOR RELEASE, PENDING DISPOSITION OF APPEAL FROM CIRCUIT  
COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided February 3, 1928.

1. When an appeal is noted, bill of exceptions filed, and appeal bond approved and filed, the appellant is no longer under jurisdiction of the trial court.
2. That court is precluded by its own acts from making any further orders in the case.
3. An appeal acts as a supersedeas or stay of the proceedings of the trial court, and the appellant should be released from custody upon filing his appeal bond.
4. The Constitution which declares that excessive bail shall not be required will not support the contention that both an appeal and an appearance bond are required to effect an appeal.

Petitioner, defendant below, was convicted of grand larceny, and filed a bill of exceptions and appeal bond, both of which were approved by the Circuit Court. Refusal of Circuit Court to release prisoner until filing of an appearance bond, *reversed*.

MR. JUSTICE MCCARTHY delivered the opinion of the Court.

The petitioner Thomas Hayward Prout was indicted by the grand jury for Montserrado County for the crime of grand larceny and was subsequently tried and convicted at the November term of the First Judicial Circuit Court, 1927, of said offense to the value of thirty-four dollars, and on the 3rd day of December, 1927, was sentenced to seven years' imprisonment and restitution of the stolen property. Petitioner being dissatisfied with the judgment, rulings and several opinions of His Honor E. J. S. Worrell, the trial judge, noted an appeal, and thereafter filed his bill of exceptions and appeal bond, both of which were approved by the Judge aforesaid. It is further

shown that notwithstanding the filing of the appeal bond and bill of exceptions, His Honor the Judge refused to release petitioner until he filed an appearance bond. We are of the opinion that when an appeal is noted and bill of exceptions and appeal bond approved and filed, the applicant is no longer under the jurisdiction of the trial court. The court is precluded by its own acts from making any further order in the case. We fail to discover any principle of law upon which His Honor based his contention. If the appeal bond was materially defective in any of the legal requisites, he should have refused it, but having approved it, his only course was to release him; and he should not have been moved by any other motive. The learned judge contended further that though the appeal bond had been approved and filed, the petitioner was not entitled to his release until he filed an appearance bond. We cannot support this contention, first, because an appeal acts as a supersedeas or suspension of the proceedings of the trial court, and the appellant should be released from custody upon filing his appeal bond. And no other principle of law can be effectually applied.

This procedure in our opinion is foreign to all others that have come to our notice and is considered an oppression. And an offender is entitled to a speedy, public and impartial trial; he is entitled to every consideration given to him by the law of the land, and any other course pursued in the trial of offenders is not in harmony with the organic law of the land. We will give our hearty support to the judge who seeks to safeguard the interest of the state, yet it must be remembered that the interest of the citizen is equally as great and should be so considered. If it were otherwise, the whole fabric of our democratic liberty would be destroyed.

The act of the trial judge in requiring both an appeal and appearance bond in the execution of an appeal is erroneous, for we are of the opinion that the Constitution

declaring that excessive bail should not be required will not support the contention that both an appeal and an appearance bond are required to effect an appeal.

Wherefore it is ordered by this Court that upon the filing of the proper appeal bond, petitioner must be released from further custody and it is so ordered.

*Reversed.*