

ARNOLD HENRICHSEN, Principal, and DANIEL N. SMITH, Surety, Appellants, v. JOHN N. W. HORACE, Associate Police Magistrate of the Municipal District of Buchanan, Grand Bassa County, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
GRAND BASSA COUNTY.

Argued April 14, 21, 1938. Decided April 29, 1938.

1. In an appeal the entire records should be sent up.
2. It is illegal for any person to be deprived of life, liberty, property or privilege without due process of law.

Appellant was sued for assault and battery in the magistrate's court of Buchanan, and his appearance bond was estreated. On appeal, the Circuit Court affirmed the estreatment. On appeal to this Court, *judgment reversed*.

*Edwin A. Morgan* for appellants. No appearance for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

The above entitled cause was heard in the Law Division of the Circuit Court, Second Judicial Circuit, Grand Bassa County, November term in the year of our Lord nineteen hundred thirty-seven.

Exceptions were taken to the rulings, opinions and final judgment of His Honor Edward Summerville, Circuit Judge presiding at the trial of the aforesaid case heard and determined at the November term, 1937, of the Circuit Court of the Second Judicial Circuit and brought to this Judicature for its final adjudication.

At the call of the case Counsellor Morgan for appel-

lants submitted in the first and second counts of his bill of exceptions as follows, to wit:

- “1. Because Your Honour affirmed the judgment of the Associate Police Magistrate for the Municipal District of Buchanan, Grand Bassa County, estreating the appearance Bond of Arnold Henrichsen, defendant, in an action of Common Assault and Battery, before the expiration of the day assigned for the hearing of the said case.
- “2. Because Your Honor affirmed the judgment of the Associate Police Magistrate for the Municipal District of Buchanan, estreating the Appearance Bond of Arnold Henrichsen, defendant as aforesaid without giving the said defendant, principal to said bond and his surety an opportunity to come to court and show cause why the amount stipulated in said bond should not be forfeited by them; notwithstanding the fact that they were arrested to show cause in keeping with the writ of arrest issued by order of the said Associate Magistrate. Thereby depriving them of their property without Due process of law.”

It is worthy of observation to note, from a careful inspection of the records, that the appearance bond referred to by the appellant was not produced at the trial, and no copy thereof was in the transcript of records sent up for our review, and hence this Court fails to see the grounds upon which the trial judge predicated his ruling.

It appears to us proper that the said appearance bond should have formed a part of the records, so that this Court might be in position to examine the same in order that it might find out whether the trial judge was legally correct in ordering said bond estreated.

It was further shown that the defendant did not have his day in court as the law directs in order that a fair and impartial trial might be awarded, for although he was cited to appear and show cause why his bond should not

be forfeited, upon his appearance a commitment for his incarceration had been issued, and he was summarily ordered imprisoned in spite of his plea for an opportunity to be heard.

These flagrant errors on part of the trial judge render the entire proceedings illegal, especially as defendant was deprived of his day in court. Therefore it is the opinion of this Court that for the foregoing reasons the decision of His Honor the Judge should be reversed; and it is hereby so ordered.

*Reversed.*