CHARLES D. B. KING and WILLIAM N. ROSS, Executors of the Will of the Late JOANNA EVA COLEMAN, and M. D. COLEMAN, Guardian for JOANNA EVA COLEMAN, JR., Legatee of the Will of the Late JOANNA EVA COLEMAN, SR., Appellants, *v.* MARIA A. KING, Appellee.

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

Argued December 18, 1941. Decided December 30, 1941.

A neglect to file an approved bill of exceptions and an approved appeal bond will result in a dismissal of the appeal upon motion properly made.

On motion to dismiss on jurisdictional grounds in action of ejectment, *motion granted.*

S. David Coleman and *C. T. O. King* for appellants. *H. Lafayette Harmon* for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

In this cause appellee filed a motion moving the Court to dismiss the appeal, assigning as reasons the following:

(1) "Because there is no approved Bill of Exceptions filed in this case in keeping with the Statute Law of Liberia governing Appeals, so as to bring this case properly and legally before this Appellate Court, for review, as will more fully appear from the records certified to this Honourable Court."

(2) "And further because there is no approved Appeal Bond filed in this case in keeping with the Statute Law of Liberia governing Appeals, so

as to bring this case properly and legally before this Appellate Court for review, as will more fully appear from the records certified to this Honourable Court."

Appellants filed resistance to said motion on the following grounds:

(1) "Because Appellants say that the Appeal has been duly and regularly effected by them in keeping with law; since indeed all the necessary documents incident to perfecting Appellants' said Appeal have been executed and filed by them in connection with this action."

(2) "And also because appellants further say that the Clerk of this Honourable Court, upon receipt of the records aforesaid on the 5th day of April, A.D. 1941, forwarded an itemized list of the relevant papers constituting the case which had been assessed by him for payment of the necessary filing fees and which fees were accordingly paid by Appellants; certified copies of the schedule of documents and receipt, respectively, under signature of the Clerk of this Honourable Court, bearing also seal of Court being herewith filed together with the originals of said documents as executed for the better information of this Honourable Court. The same being marked as, Exhibit 'A' April 5, 1941 and Exhibit 'B' (Receipt) April 7th, 1941."

It will be observed that the resistance filed by appellants just quoted does not completely respond to the reasons assigned in the motion for the dismissal of the appeal, as the motion declares that there has been no approved appeal bond and no approved bill of exceptions filed, while the resistance simply states that there has been filed every document necessary and that the clerk of this Court, when he received the papers constituting the appeal, made a bill of costs and charged fees for an appeal bond and

bill of exceptions. He, the appellant, also made profert of the bill submitted by the clerk.

In several causes coming up here on appeal in recent years, particularly from the Circuit Court for the First Judicial Circuit, bills of exceptions and appeal bonds have appeared in the records unapproved, and, in some cases, they have been entirely absent in the record received in this Court.

In one instance, His Honor the Judge of the Circuit Court for the First Judicial Circuit, in writing gave information to us that he had directed that all bills of exceptions and appeal bonds be sent to him by the clerk when filed and he would approve them *nunc pro tunc.* It has happened that in some cases the clerk of the said circuit court has failed to do so. Counsellors, as did appellants' counsel in this case, have urged that it was the acts of the court that should prejudice no man. We therefore have to reiterate here the principle laid down by this Court in the case *McAuley* v. *Laland,* 1 L.L.R. 254 (1894), when it was said:

> "And while we must admit the binding force of the legal maxim that 'the acts of the court should prejudice no man,' we are of the opinion that the acts of the court should be carefully distinguished from the unauthorized, unlawful or neglectful actions of its officers or of the parties to the suit. The neglect or omission of one of the said parties to do, or to cause to be done, any act essential to the progress of a case 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 to be made and withdrawn at the pleasure of his opponent." *Id.* at 255.

It seems also not out of place for us to again repeat the legal proposition enunciated by this Court in the year 1861 in the case *Johnson* v. *Roberts,* 1 L.L.R. 8:

> "First—There are material defects in the records

forwarded to this court, the most prominent of which is that the evidence in the case is wholly omitted, notwithstanding it is indispensable to the decision of every case pending before a court of judicature.

"The court cannot entertain any case that is legally deficient in its records. A true copy of the bond is indispensably necessary to be forwarded, the original to be retained on the files below, as the security of the court on behalf of him against whom the appeal is taken out. All cases sent forward on appeal must be taken out within sixty days, having the signature of the judge to the exceptions, as well as all other preliminaries contemplated by the law relating to appeals. These preliminaries are indispensably necessary to a legal appeal.

"The clerk whose duty it is to forward the records of the court under seal cannot do so unless the parties suing file bond, according to law, and the party appealing ought here themselves superintend the lawful prerequisites. It is for the safety of the parties that said requisitions be met, and it must therefore be a gross injustice to the appellee to compel him to answer to any appeal taken out contrary to law.

"The law will not admit of invasions upon itself, and for the court to entertain any appeal which may be deficient in its most important and indispensable features, and which are most calculated to lead to a just decision in the case, would not be in keeping with the record and inviolable rights of the nation.

"Therefore the court decides that said case be dismissed, with all costs in this court." *Id.* at 8–9.

And in *Adorkor* v. *Adorkor,* 5 L.L.R. 172 (1936) this Court held that:

"Our statute controlling appeals declares *inter alia* that 'all defendants wishing to appeal from any County Courts of record, shall be allowed ten days from the rendition of final judgment to prepare and

tender his bill of exceptions to the Judge of said court for his signature . . . provided the said bill of exceptions is submitted within the aforesaid ten days. The appellant shall in all cases sign the bill of exceptions before submitting the same to the said Judge for his signature. Appeal bonds are to be approved by the Court from which the appeal is taken, within sixty days after final judgment. . . .' L. 1893–94, 10, § 1.

"Section 425 of our Revised Statutes appears to us to put the responsibility of presenting said bill of exceptions in even more emphatic terms as follows:

> " 'It *shall be the duty* * of the party appealing from any decision or judgment of any court of record or judge thereof, which does not appear upon the face of the ordinary proceedings in the case, to cause such decision or judgment, with the evidence and prayer or motion upon which it is founded, to be reduced to writing and to have the same signed by the judge from whose decision or judgment the appeal is taken.' Rev. Stat. 495, § 425.

"By inspection of the records sent up in this cause, we observe that this very important prerequisite of the law was not met, as the law in such case made and provided required. Counsellor for appellant in trying to support the incurable omission made by appellant in this particular, tried very strenuously to show to the court that the trial judge in this cause left his place of assignment before the expiration of the time allowed for the performance of this act and therefore appellant was unable to have said bill of exceptions presented to, and signed by, the trial judge as the law directs.

"The Court is not convinced that the actions of the trial judge in this particular were sufficient to defeat the appellant, as appellant was not without a remedy.

* Italics added by the Court.

For, had she herself sent her bill of exceptions to the trial judge by registered post within the time prescribed by law, instead of merely filing same in the office of the clerk, the post office date stamp on the said letter would have been accepted by us as the date it was tendered to the trial judge and had he neglected and refused to sign same, appellant had a further remedy; she could have thereupon applied to the Justice of this Court presiding in chambers for a writ of mandamus to compel him to sign same or show cause why, which act on the part of appellant would have had the favorable consideration of this Court; but failing and omitting so to do amounts to a waiver of said right and a bar to this Court's going into the merits of this cause, no matter how much we might be disposed so to do; for we are bound to uphold and support the decision handed down in the case *Anderson* v. *Dennis,* decided January term, 1872, 1 L.L.R. 55, motion to dismiss appeal, 1 L.L.R. 505; *Anderson* v. *McLain,* decided January 1868, 1 L.L.R. 44; *Melton and Banks* v. *Republic,* 4 L.L.R. 115, 1 Lib. New Ann. Ser. 117." *Id.* at 173–75.

Coming now to the merits of the motion, our inspection of the record has revealed that:

(1) There is a copy of a bill of exceptions filed by appellants, but the same is not approved by the trial judge. There is therefore no *approved* bill of exceptions filed in this case,

and

(2) There is no appeal bond whatever found in this appeal record.

This brings us to a consultation of the statute of appeal, the latest one of which is printed in the Acts of the Legislature of 1938.

"That the 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.

We cannot overlook the fact that the statute governing appeals in civil causes not only requires every appellant to file an appeal bond and a bill of exceptions, but it also emphatically requires him to file an *approved* appeal bond and an *approved* bill of exceptions. Thus it would appear to us, and is therefore our opinion, that it is the duty of every appellant to see that his bill of exceptions and appeal bond are approved by the trial judge before filing them with the clerk of the trial court for transmission to the appellate court, except where the trial judge has left his circuit before same can be presented to him, in which case a registered postal receipt from the local post office would be evidence to the trial judge that they were prepared and posted within statutory time, and said judge would, if posted in time, in such case approve them as of that date.

In case of the trial judge's failure or refusal to approve them, there is a remedy left to appellant in remedial proceedings.

Should an appellant fail to see that these requisites are perfected, he cannot be expected to enjoy the benefit of a review of his cause by this Court.

Appellants having failed to file an approved bill of exceptions and an approved bond, we are of the opinion that they have been remiss in seeing that their appeal is properly before this Court and that therefore the motion should be sustained and the appeal dismissed with costs against appellants; and it is hereby so ordered.

Motion granted.