

ALFRED MORRIS, Appellant, v. REPUBLIC OF  
LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,  
SINOE COUNTY.

Argued April 3, 1935. Decided April 11, 1935.

1. An appeal bond, the indemnity of which is less than the amount of the judgment, is inadequate, and the appeal should be dismissed.
2. When, as in cases of malicious mischief, the law punishes the offender by both punitive damages and fine, omission of the fine by the trial court is an error which this Court, in affirming the judgment, will correct.

Defendant was convicted of malicious mischief in a court of a justice of the peace, and his appeal to the Circuit Court was dismissed because his appeal bond was held inadequate. On appeal to the Supreme Court, *judgment affirmed*.

No appearance for appellant. *R. F. D. Smallwood*, by appointment of the Attorney General, for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

This case was filed in this Court on the 8th day of October, 1934. The appellant failing to appear at the November term of the Court, 1934, to which the appeal had been taken, the cause was continued to this term of the Court. At the opening of this session on April 1st, the case was bulletined and assigned for hearing on the 3rd day of April, 1935.

The appellant having failed to appear in person or by counsel, at the call of the case for hearing by this Court, Counsellor R. F. D. Smallwood, County Attorney for Montserrado County, acting for the Attorney General in behalf of the Republic, appellee, filed the following motion:

"The appellee in the above entitled cause, respectfully motions this Honourable Court to render judgment by default in this action and affirm the judgment of the trial court for the following legal reasons, to wit:

"1. Because this action was regularly assigned for hearing that upon the call of the case appellant failed to appear in person or by counsel to prosecute his appeal.

"See Rule XI of the Supreme Court, 5, Liberian semi-annual Sub-secs. 1 & 2.

"2. Appellee is of the opinion that the case was sufficiently proven in the Justice of the Peace Court which rendered judgment against the defendant in the court below, now appellant; but the Justice of the Peace erred in not imposing upon defendant a fine as the law requires; this is not a cause for reversal of judgment. Appellee submits that it is the duty of the appellate court to correct the judgment of the lower court and to give such judgment as it should have given."

The Rule of Court referred to reads thus:

"The following procedure shall be had in the case of the non-appearance of parties, namely (1) Where no counsel appears and no brief has been filed for appellant, when the case is called for trial, the appellee may move to dismiss it, or, if the appeal is from a judgment, he may move for affirmance; but in such case he shall open the record and submit to the court his grounds for so moving: (2) where the appellee shall fail to appear when the case is called for trial, the court may hear argument on behalf of the appellant and render judgment in his favour: (3) when a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the appellant." (Rule XI, subsec. 2.)

This case comes within the category of the first provision of this rule, wherefore the Court ordered the records read for its enlightenment.

On the reading of the records it was discovered that on the 3rd day of July A. D. 1934, prosecution for malicious mischief was instituted in a justice of the peace court of Sinoe County, by the Attorney of said county, upon the complaint of William N. Witherspoon, who complained that one Alfred Morris had maliciously, and unlawfully killed two goats of his which were at the time laden with young ones. We gather from the judgment recorded that the charge was satisfactorily proven in the court of the justice of the peace as he adjudged that the said defendant should pay punitive damages in the sum of fourteen dollars and forty cents and all costs of the case, amounting to thirty-two dollars and seventy-nine cents in all.

To this judgment the defendant, now appellant, excepted and appealed to the Circuit Court of the Third Judicial Circuit, Sinoe County.

When the Judge presiding in the Circuit Court called the case for hearing, the County Attorney for the plaintiff had filed a motion in the case praying the dismissal of the appeal on the grounds of the insufficiency of the appeal bond, in that the amount of indemnity was inadequate as the amount of twenty-eight dollars, the amount of said appeal bond, was insufficient to cover the sum of thirty-two dollars and seventy-nine cents, the amount of the judgment from which the appellant was appealing.

This Court is in accord with the ruling of Judge Monger in the dismissal of the appeal on the motion of the plaintiff in this respect, for the law requires an appellant to give a bond to indemnify the appellee from all costs and from all injury he may sustain, and the injury suffered by William N. Witherspoon having been assessed by the justice of the peace at fourteen dollars and forty cents and the cost added to said amount making a judg-

ment of thirty-two dollars and seventy-nine cents in favor of plaintiff, an appeal bond in the amount of twenty-eight dollars (\$28.00) was manifestly inadequate to indemnify the plaintiff when the total amount of the judgment was thirty-two dollars and seventy-nine cents.

In a case on review it is the function of the appellate court on said review to pass on all issues brought before it in the bill of exceptions, and to give a judgment affirming or reversing the judgment of the trial court or to give such a judgment as the lower court should have given. L. 1893-94, 11, § 2. Following such a procedure we have discovered from the records that the trial court, in rendering judgment in this case, neglected to impose a fine on the defendant in accordance with the law on malicious mischief. See the *Criminal Code*, page 17, section 74, the relevant portion of which reads as follows:

“Any person who shall wrongfully, unlawfully and maliciously, . . . *shoot, cut, maim or otherwise injure the live stock or other domestic animals of another on the pretext that said live stock or domestic animal was committing* damages to growing crops or trespassing upon the land or premises of the person so killing, cutting or maiming them without giving personal notice of such damage or trespass to the owner of the animal or live stock; . . . or any personal property not herein enumerated shall be guilty of a misdemeanour. Malicious Mischief shall be punished by amercement in punitive damages to the value of the property injured which shall be remitted to the person injured, and in addition the offender shall be fined in a sum not exceeding two hundred dollars. Where the value of the property injured is less than fifty dollars this crime shall be tried by a Justice of the Peace.”  
(Italics added.)

This Court, however, is not in the position to analyze the evidence adduced at the trial since the law does not

require the court of a justice of the peace to keep a record of its proceedings; and as the Circuit Court to which the appeal from the justice of the peace court was taken, and within which it was legal to make a record of the evidence on such appeal (the law having given it concurrent original jurisdiction in such matters), was not able to go into the merits of the case as it was dismissed on a motion, we find ourselves unable to do otherwise than affirm the judgment of the trial court, with an amendment of a fine of fifteen dollars to be included in said judgment, and with all costs against appellant; and it is so ordered.

*Affirmed.*