LIBERIAN DEVELOPMENT COMPANY, LTD., by its President, LEROY FRANCIS, Appellant, v. **REVEREND P. C. BROWN**, Pastor, **W. B. DAVIS**, Assistant Pastor, **JOHN A. WEEKS**, Chairman, and **JOSEPH W. S. BARBER**, Trustee of Mary Sharpe Memorial Church, Appellees.

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

Argued March 16, 1954. Decided May 28, 1954.

Lack of notice to the parties of the time and place of arbitration proceedings is a statutory ground for setting aside an arbitration award.

Appellees instituted an action for breach of contract against appellant. The parties agreed to submit the issue to an arbitration board which filed an award in favor of appellees. Appellant objected to the award which was nevertheless confirmed by the court below. On appeal to this Court, *arbitration award set aside and case remanded.*

A. B. Ricks for appellant. *Richard A. Henries* for appellees.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

In July, 1949, the parties entered into a building contract by which appellant was to erect a church edifice in the then Borough of Krutown, Monrovia, in accordance with plans and specifications and under terms and conditions agreed upon by the contracting parties.

In the course of time appellant informed the board of trustees of Mary Sharpe Memorial Church of the completion of the work, but the said board expressed dissatisfaction therewith. Upon failure to harmonize the differences between the parties, the appellees instituted an action of damages for breach of contract against the appellants.

Subsequently the parties agreed to waive jury trial and to submit the matter to a board of arbitrators upon the following single issue:

"Whether the contractors have fully performed their part of the contract in the construction of the church edifice in accordance with the plan and specifications mutually stipulated and agreed upon by the said contractors on the one hand, and the

Pastor and Trustees of Mary Sharpe Memorial Church on the other hand."

A board of arbitration was set up by the court below and on October 13, 1952, presented to the court the following award:

"We, the undersigned, to whom the above case was referred to as arbitrators beg to submit our findings, to wit:

"That after a thorough scrutiny and final examination of the church building, we find that the structure is not in keeping with the terms of the agreement, in that said construction is bad; and said building is to be taken down completely and be reconstructed as follows:

"1. Roof to be taken down.
"2. Walls to be raised twelve feet high.
"3. Change the position of the belfry.
"4. Lintils to be reenforced with steel.

"Said reconstruction will cost approximately five thousand and five hundred dollars.
"Respectfully submitted,
"Clifford E. Brown, Arbitrator.
"Reginald Poison, Arbitrator.
"T. A. Dund as, Arbitrator."

The defendants filed a three-count objection to the above award ; but only the following, Count "I," appears to us worthy of notice:

"The arbitrators did not act fairly towards defendants when they held their meetings and passed upon said subject matter without any notice having been served either upon said defendants or upon their attorneys and in their absence. Defendants therefore have had no opportunity either to defend themselves before said arbitrators or even to make any explanation."

Counsel for appellees strenuously argued that, because the arbitration stipulations were valid, the parties were estopped from raising any objections to the award, since such a stipulation is conclusive on all matters mentioned therein; and, in addition, that it was unnecessary for the parties to appear because, under the terms of reference, the arbitrators were only to determine whether the building was completed in accordance with the terms of the agreement. Although this contention might seem

plausible, the statute controlling arbitration clearly gives either party to an award the right to file objections in writing, at any time before judgment, showing either corruption in the arbitrators, gross partiality, want of notice of the time and place of the proceedings, or error in law apparent on the face of the award. (Rev. Stat., sec. 1387.) Hence the contention must fail. It is evident that, if lack of notice of the time and place of the arbitration proceedings can be alleged as an objection to the award, it involves a statutory right which can only be waived by the party himself or his legal representative, no matter how unessential it might have appeared to the arbitrators or to opposing counsel.

We have consequently decided to vacate the award and the judgment thereon, and to remand this case to the trial court with instructions to appoint another board of arbitration consisting of the same personnel, or others, as the contending parties may nominate in accordance with the method of nomination and appointment previously followed, which new board shall then immediately proceed in the manner provided by statute. Costs are awarded against appellees; and it is hereby so ordered.

Reversed.