

NOR WHERE, Appellant, v. **KORKOR**, Appellee.

APPEAL FROM THE PROVISIONAL MONTHLY AND PROBATE COURT,
TERRITORY OF MARSHALL.

Argued May 15, 1957. Decided June 14, 1957.

1. Failure by an appellant to file a return of service of notice of appeal is a material error constituting ground for dismissal of the appeal.
2. An appellant is required to superintend the appeal and is responsible for the completion of the requisites thereof.

On appeal from a judgment of the court below, appellee moved for dismissal on the ground that appellant had failed to perfect the appeal. The motion was granted, and the *appeal dismissed*.

A. B. Ricks and *James H. Smythe* for appellant. *Albert D. Peabody* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.

Korkor, the appellee in the above entitled case, entered an action of debt against Nor Where, the appellant, before Justice of the Peace A. W. Gardiner of the Territory of Marshall. The matter was heard by the Justice of the Peace, who rendered judgment against the said Korkor, to which he excepted and appealed to the Provisional Monthly and Probate Court, Territory of Marshall. The appeal was heard by the Territorial Judge who rendered judgment on May 15, 1956, dismissing the case, to which judgment the defendant excepted and appealed to this Court.

At the call of the case, counsel for appellee informed the Court that he had filed a motion to dismiss the appeal on substantially the following grounds :

1. Although the records show that a notice of appeal was issued by the clerk of the trial court, same was never served on appellee, who therefore was not given notice as required by law of the perfection of the appeal by the appellant.
2. The failure of the appellant to perfect said appeal by the issuance, service and return of the notice of appeal is evident in the omission of the legally required returns of the sheriff on the back of the notice of appeal, which omission is an

incurable blunder.

The appellant filed a resistance, Count "1" of which alleged, in substance, as follows :

The records show that the notice of appeal was issued by the clerk of the trial court and served by the ministerial officer of said court, and that no returns were made to said notice of appeal. Appellant should not suffer therefor because appellant had no duty to perform as ministerial officer.

Appellee thus denies the service of any notice of appeal upon him; and appellant attempts to resist by contending that, although the records show that the notice of appeal was issued by the clerk of the trial court and served by the ministerial officer of said court, and that no returns were made to said notice of appeal, appellant had no duty to perform as ministerial officer. We are at a loss to see how the appellant came to know that the notice of appeal was served on the appellee when the said notice was never returned, which fact he has admitted in Count "1" of his resistance, *supra*. Granted that appellant had no duty to perform as a ministerial officer of the court, it was nevertheless appellant's duty to superintend his case and to insure that all prerequisites to the completion of the appeal were complied with. His failure to do so was a material error.

The records certified to this Court show that the notice of appeal, whereof the issuance, service and return gives this Court jurisdiction, was not returned. As stated in Syllabus "1" of *Greaves v. Johnstone*, 2 L.L.R. 121 (1913):

"The omission from the records of a return to the notice of appeal is a material error, and is ground for dismissal of the appeal."

During the trial of this case in the court below, the Territorial Judge committed many errors which we would like to point out and expatiate upon; but the motion to dismiss the appeal prevents us from going into the merits of the case. We are of the opinion that the motion to dismiss the appeal should be granted ; and it is hereby granted with costs against appellant.

Appeal dismissed.