JOHN N. WILLIAMS, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

S. A. D. THOMPSON, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL IN PROSECUTION FOR MISFEASANCE.

Argued April 11, 1961. Decided May 18, 1961.

1. As important as the other jurisdictional steps necessary to the completion of an appeal might be, service of the notice of appeal is most important because without it the appellate court is without jurisdiction over one of the parties, and so would be unable to render judgment against him should the case be decided in favor of the other party.
2. Unless the appellee is notified by the proper ministerial officer that he should appear and defend his interest in the appellate court, he will have been deprived of fundamental rights should the court render judgment against him, because the appellate court would be without jurisdiction over his person.
3. It is not sufficient that the notice of appeal should be issued; without its service by the ministerial officer its issuance is useless since the appellate court does not get jurisdiction over the appellee by virtue of the issuance but by service of the notice of appeal.
4. The service of the notice of appeal is properly established only by the return of the sheriff indicated on the back of the notice; and wherever this record is not made to appear the court will presume the correctness of the certified records.

Motions to dismiss two separate appeals from judgments in criminal prosecutions were heard together and granted.

Richard Diggs for appellant, John N. Williams. No appearance for appellant, S. A. D. Thompson.

Assistant Attorney General J. Dossen Richards for Republic of Liberia, appellee in both cases.

MR. JUSTICE PIERRE delivered the opinion of the Court.

In each of these two criminal cases, appeal was announced and taken from the judgment rendered against the defendant in the court below. In each case, when the matter was called for hearing before this bar, the appellee's counsel had filed a motion to dismiss, and each such motion was based on the ground that the notice of appeal certified in the record from the court below, did not show that it had been served by the sheriff in keeping with statute, since the return of the sheriff was not made to appear as required by law.

Important as the other jurisdictional steps necessary to the completion of an appeal might be, service of the notice of appeal is most important because, without it, the appellate court is without jurisdiction over one of the parties, and so would be unable to render judgment against him should the case be decided in favor of the other party.

> "The giving of a notice is in the nature of a condition precedent to the right to call on the other party for the performance of certain duties required to be done. In a sense, it means knowledge, and in legal parlance is a summons placing the appellee under the jurisdiction of the Supreme Court. Where this is omitted to be given or done, the appeal and parties are not under the jurisdiction of this Court. But this act must be totally omitted to be done. When in this event, that is, where no notice was given, or if given no return thereto is made of its service, this Court would cease to exercise jurisdiction." *Flood* v. *Conneh,* 3 L.L.R. 257, 261–62 (1931).

There is a long line of opinions supporting this principle. For example, Syllabus 1 of *Greaves* v. *Johnstone,* 2 L.L.R. 121 (1913), says:

> "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."

Unless the appellee is notified by the proper ministerial

officer, that he should appear and defend his interest in the appellate court, he will have been deprived of fundamental rights should the court render judgment against him, since the appellate court would be without jurisdiction over his person. It would be unfair, therefore, to hear an appeal, where both parties were not properly under our jurisdiction.

It is not sufficient that the notice of appeal should be issued; without its service by the ministerial officer, its issuance is useless, since the appellate court does not get jurisdiction over the appellee by virtue of the issuance, but by service of the notice of appeal. When this Court heard and determined a motion to dismiss the appeal in *Jones* v. *Republic*, 12 L.L.R. 297 (1956), we followed the authority of our holding summarized in Syllabus 2 of *Brownell* v. *Brownell*, 5 L.L.R. 76 (1936):

> "It is the service of the notice of appeal which alone gives the appellate court jurisdiction over the appellee."

And in several other cases this Court has taken the same position. Syllabus 2 of *Morris* v. *Republic*, 4 L.L.R. 125 (1934) says:

> "The service of a notice of appeal upon the appellee by the ministerial officer of the trial court completes the appeal, and places appellee under the jurisdiction of the appellate court."

This principle seems so well established by so many decisions of this Court that we shall not hesitate to uphold it in all future cases of this kind.

The service of the notice of appeal is properly established only by the return of the sheriff indicated on the back of the notice. And whenever this record is not made to appear, the court will presume the correctness of the certified record. It is the responsibility of the appealing party to tax the certified record in the clerk's office before it leaves the trial court so that he may be satisfied that all of the things necessary to be done to effect a

proper completion of appeal have been done, before the record left the clerk's office. (See Rule 31 of the Circuit Court Rules.)

The instant appellants contend that the notices of appeal were indeed returned by the sheriff, but that the record of the said returns were omitted by the clerk in copying for transmission to the Supreme Court. As much as we would have liked to give favorable consideration to this contention, we were faced with a situation in which transparent justice had to be weighed against our personal views. The question of the absence of the sheriff's returns was raised for the first time in the motion to dismiss; so we had the verbal assurances of counsel for the appellants against the physical presence of the documents in the records, and these documents spoke for themselves. That no oral testimony can be taken to explain a written document is a maxim as old as the practice in this jurisdiction. As much as we would have liked to review these cases, the circumstances make it impossible for us to open the records.

In view of the foregoing we have no alternative but to dismiss the appeals.

Appeals dismissed.