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

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

Argued October 11, 1961. Decided December 15, 1961.

1. Reargument may be granted on a showing of patent and prejudicial error or oversight by the Supreme Court or its officers.
2. Where an appellant's failure to have notice of appeal served on the appellee was caused by an error of the clerk of the trial court under exceptional circumstances over which the appellant had no possibility of control, a judgment dismissing the appeal may be reversed by the Supreme Court on reargument.

Appellant was convicted of grand larceny, and appealed to the Supreme Court. The appeal was dismissed for failure to serve notice. (*Williams* v. *Republic,* 14 L.L.R. 290 (1961). On reargument, the prior judgment granting the motion to dismiss the appeal was *reversed.*

O. Natty B. Davis for appellant. *Solicitor General J. Dossen Richards* for appellee.

CHIEF JUSTICE WILSON delivered the opinion of the Court.

On May 22, 1961, following the *sine die* adjournment of the March, 1961, term of this Court, a petition for reargument in this case was filed in the Chambers of His Honor, Justice Dessaline T. Harris, one of the concurring Justices, who had sustained a motion filed by appellee to dismiss the appeal.

The Justice, though maintaining his agreement with the opinion dismissing said appeal, granted the petition for reargument so that petitioner could be given an opportunity to convince the Court of a palpable omission to pass upon any material points of law or fact which may

have inadvertently escaped the notice and consideration of the Court, as claimed by petitioner.

At the call of the case during the present term of Court, arguments were advanced in support of the petition and countered by resistance from the prosecution. The main point in issue was that of the absence or any indication in the record certified to the Court of the service of the notice of the completion of appeal. This was the identical issue raised at the trial of said case held at the March, 1961, term of this Court.

Reviewing the issue at this term of Court, appellant contended that, whilst it is true that the record is deficient in respect of said returns, in that no certified copy thereof was forwarded to this Court by the clerk at the time of the transmission of the record in the case, a certificate of the court, buttressed by sworn statements of certain ministers of the Gospel and leading citizens of Maryland County, declares that the original notice of completion of appeal does carry on the back thereof returns of the sheriff which show that said notice was served on the appellee; but the clerk of court has, by his certificate, accepted responsibility for not transmitting said returns on the back of said notice when preparing the records for transmission; he being a new man in office; and the fact that the document being two in one, namely the notice, and on the back thereof, the returns, the latter of which escaped his notice. The certificate of the clerk and sworn statements of the ministers of the Gospel are of record, and the genuineness thereof is not contested.

The Solicitor General, for the appellee, strongly contested the legal sufficiency of the petition for reargument, and advanced, in substance, the following resistance:

1. That the exhibits annexed to the petition, constitute new matter which, under the law, could not have been overlooked.
2. That there is absence of any manifest error in the opinion of the court or the omission of any material

fact or principle of law that has been overlooked or disregarded.

3. That the statute cited by appellant in Count "5" of this petition vesting in the Court, the right to have the original record in the case sent up for inspection where it is deemed necessary so to do, is within the discretion of the Court; and that, since the Court has not deemed it necessary to exercise that discretion, it could not be made a ground for reargument.

The contention of the prosecution, as previously raised, was that, since the omission to transmit the returns to the notice of completion of appeal, constitutes a diminution of record, the procedure provided under our rules should have been followed, and that failure on the part of the appellant to supervise the preparation of the record for transmission is a neglect from which appellant cannot benefit.

Briefly commenting on the issues raised in the petition and the resistance made by the appellee, since said issues are almost identical to those raised in the previous trial by this Court, we wish to remark that, on the record certified and transmitted to this Court in the case, the opinion handed down at the March, 1961, term on the motion to dismiss the appeal is not void of consideration of all of the material issues presented at the time, and we quote the relevant portion of said opinion, in which Mr. Justice Pierre, speaking for this Court, said:

> "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." *Williams* v. *Republic,* 14 L.L.R. 290, 293 (1961).

Whilst maintaining and upholding the laws and rules of our courts, which have been observed in the opinion cited, *supra,* where substantial justice and the right to a fair, speedy and impartial trial, are by any neglect of the court or any of its officers, threatened, the court would be negligent of its sacred duty to ignore patent errors committed by it or its officers to the detriment of a party.

Against the rule which requires litigants to supervise the preparation of record for transmission to the Supreme Court so that no omission, errors or diminution should thereby occur, is the opinion of this Court handed down in *Page* v. *Jackson,* 2 L.L.R. 47 (1911), Syllabus 1.

> "An error committed by the clerk of the trial court in transcribing the records on appeal is not ground for the dismissal of the appeal."

The peculiarity of this case, which makes it singular and exceptional, is the certificate of the clerk of the trial court which confesses the error committed by him and states that he was a new man in office and was not acquainted with the procedure of transmitting records on appeal. He stated that the statutes requiring the filing of the returns of the sheriff to the notice of the completion of the appeal had been complied with by the appellant, but having been made on the back of the said notice, he inadvertently omitted to transcribe same.

We are mindful of the provisions of section 380 of the 1956 Code, especially sub-paragraph (c) which provides that an appeal from a court of record may be dismissed for failure to have notice of appeal served on appellee; and also of the opinion handed down by this Court in Syllabi 2 and 3 of *Brownell* v. *Brownell,* 5 L.L.R. 76 (1936) which read as follows:

> "2. It is the service of the notice of appeal which alone gives the appellate court jurisdiction over the appellee.
>
> "3. The only legal evidence of such service is the official return of the proper ministerial officer."

At the same time, we cannot overlook the opinion of this

Court recorded in *Page* v. *Jackson,* quoted, *supra,* in this opinion, declaring that an error committed by the Court or any of its officers is not ground for the dismissal of an appeal.

The fact that the omission of the clerk to transcribe and certify to the returns of the sheriff to the notice of appeal, which he admits was made and duly filed in his office by the sheriff, is an error of the clerk of court over which appellant had no control. The appellant should therefore not be denied the right of a review by this Court of his appeal because of this error.

Since this Court has ever and anon held that the acts of the Court should prejudice no man, especially where due diligence has been employed by the parties in a case, as to a large extent is evident in the instant case, as verified by the clerk of Court, under seal (a fact which, because of the fault of the clerk of Court, was overlooked in passing upon the motion to dismiss the appeal), the judgment of this Court, handed down at the March, 1961, term of this Court, sustaining the motion to dismiss the appeal, is hereby reversed and the clerk of this Court is hereby ordered to send a mandate to the Court below for immediate transmission of a certified copy of said sheriff's returns to be considered along with the record in the review of said appeal. And it is so ordered.

Reversed.