# EDWARD WHEA and DOUGH-BIE, Appellants, c. CHARLES BONWEIN and AKE KARLSTROM,

General Manager, Liberian American Swedish Minerals

# Company, Appellees.

**APPEAL FROM** zriz clue mz couse or zriz szcoun y **uDlCIAL CIRCUIT,**

GRAND BASS A COU NTY.

A rgued April 8, 1964. Decided May 22, 1964.

1. Where notice of completion of an appeal is not served within 60 days after rendition of judgment, the appeal will be dismissed.
2. Falsification by a clerk and sheri if of records as to the date of service of notice of completion of appeal may be investigated by the Supreme Court and a clerk or sheriff found to leave committed such acts may be reprimanded and **punished.**

On appeal from a judgment in an action of ejectment, the Court called the clerk and sheriff of the circuit court before it and found that a certificate which purported to show the date of service of notice of completion of appeal had been falsely dated by those officers and that the notice of completion of appeal had not been timely filed. The Court reprimanded and fined the clerk and sheriff and ordered the *ap p eal dismissed.*

*Samuel M. Payne* for appellants. *O. Watt y B. Davis*

# for appellees.

**Mr. JUSTICE** HARRis delivered the opinion of the **Court.**

# This action of ejectment was instituted by the above- named plaintiffs-appellants against the above-named de- Pendants-appellees in the Circuit Court of the Second Judicial Circuit, Grand Bassa County, during its May term, '9 I. The case was heard during the November,

I9\*3 term of said court, His Honor, A. Lorenzo Weeks,

presiding over said court by assignment. The trial ended in a verdict and judgment in favor of the defendants, to which verdict and judgment the plaintiffs-appellants took exceptions and announced an appeal to this Court of dernier resort.

At the call of the case for hearing, the clerk informed the Court that the appellees had filed a motion to dismiss the appeal, which motion we hereunder quote:

“And now comes Charles Bonwein, appellee in the above-entitled cause, by his counsel, D r. ) uris. O. Natty B. Davis, counsellor at law, and most respect- fully moves this Honorable Court to dismiss the ap- peal in this cause, and affirm judgment given in the court below for the following legal and Iactual rea- sons, to wit:

“i. Because appellee says that the appeal thus taken is seriously defective in its material parts, in that it has not been taken in harmony with the provisions of our statutes ; for al- though our statutes and Supreme Court de- cisions provide that notice of appeal, which confers jurisdiction upon this Court, must be issued, served and returned within 6o days, yet the records in this case show that the said no- tice of appeal was not served until six months after date of rendition of judgment. For judgment was rendered on the 9th day of Feb-

ruary, ' 9\*3. and the notice of appeal was not served until the z1st day of August, 9 3 which is contrary to the provisions of our stat- utes, as well as the long line of decisions of this Honorable Supreme Court.

(See copy of notice of appeal herewith filed as a part of this motion and marked exhibit A-I

*And this the a p pellee* (I *read y to* proce.

# “Wherefore, appellee prays that this appeal be dis-

missed, and that the judgment of the trial court be ordered affi rmed with costs against the appellants.”

The motion was not resisted by the appellants’ counsel but, on the contrary, conceded. Our statute on the dis- missal of a ppeals reads as follows:

“An appeal I rom a court of record may, upon mo- tion prope rly taken, be dismissed for any of the fol- lowing reasons:

“ (a) Failure to file approved bill of exceptions within the time specified in section ior 2 above ;

# “(b)

“ (c)

“ (d)

Failure to file an approved appeal bond or material defect in an appeal bond ; ( insofar as such Iailure or defect is not remedied in accordance with the provisions of section ioi4, above) ;

# Non-appearance of the appellant on appeal ;

or,

## Negligent fa ilure to have notice served on

the appellee.

“An appeal shall not be dismissed on any other ground, except as otherwise expressly provided by l aw.” 9s 6 Code, tit. 6, § I O2O.

## Our statutes require the notice of the completion of an

appeal to be issued, served and returned within 6o days after the rendition of final judgment; and noncompliance therewith, or a negligent compliance therewith, that is to say, if filed beyond the statutory time, which is 6o days, is ground :tor the dismissal of the appeal. In this case, the notice of appeal is attacked as having been served and returned quite six months after the rendition of final judgment and not within 6o days ; and the appellee there- fore prays this court to dismiss the appeal.

# Recourse to the records in this case as certified to this

Court by the clerk of the trial court proves substantially that the notice of appeal was issued on March 21, \*9°s. and was never served and returned until August 21, \*9°s.

quite five months at ter the rendition of final judgment, Iar beyond the statutory time of 6o days.

“The service of a notice of a ppeal upon the appel- lee by the ministerial ofhcer of the trial court com- pletes the appeal and places ap pe11ee unde r the juris- diction of the ap pellate court. When not completed within the statutory time, this Court will dismiss said appeal for want of jurisdiction.” iMo *rris* v. *R e p ublic,* 4 L.L.R. 12 ( '934) › Syllabus 2.

Ten days after the motion had been heard and argu-

ment had thereon, case suspended and ruling reserved, the ap pellant filed a submission in the clerk’s office, in which submission the returns of the sheriff to the notice of the completion of the a ppeal was attacked as being, *in ter alia,* a typographical error. The concluding para- graph of the said submission reads as follows:

“6. That out of Iat rness and justice to the appel- lants, and the Iact that this Court is the last and final forum for the adjudication of causes from whose decisions no appeal will lie, as well as the constitutional safeguards and privi- leges vouchsafed to the appellants in the ac- quisition and enjoyment of property, an in- vestigation by this Court of the act complained against should be necessary and therefore con- ducted ; for neither appellants nor their coun- sel had any official duty to perform in the serv- ice and returns of and to the notice of a ppeal which is the subject of the stage at which the cause has reached. The officers of court should be made to answer in an investigation so that the Court may take some appropriate action in the name of justice, impartiality, and fair play in Iavor of the ap pellants whose interest would be seriously and adversely af- fected should this Court render judgment

against them in the light of the motion to dis- miss.”

Accordingly, and predicated upon the complaint con- tained in the said submission, on April •3› I 9^4, the Court had both the clerk and sheriff of the Circuit Court of the

Second Judicial Circuit, Grand Bassa County, betore it and queried the sheriff, Thomas R. Horace, Esq., as to which of the returns was correct—the original return made to the notice of the completion of appeal or the one

given to appellants’ counsel and issued on April 6, I 9\*4› purporting to show that the notice of the completion of the appeal was served on March 2 I, I 9^3\* His answer was that the original return to the notice of the comple-

tion of the appeal, as certified in the records sent up to this Court, is correct, and not the one dated April 6, I 9° 4: and that the clerk of the trial court induced him to sign

the certificate. The Court exceedingly regrets such acts on the part of the said clerk and sheriff and hereby strongly reprimands them. The sheriff is fined in the sum of

$ I oo, and the clerk is fined in the sum of $$o, to be paid into the Office of Internal Revenues of Grand Bassa County within 48 hours at ter the reading of the judgment and mandate of this Court in the court of origin Ior at- tempting to deceive this Court, it having been substantially proven that the original returns to the notice of the com- pletion of the appeal as certified to this Court in the records is true, and not the one subsequently given to the appellants, dated April 6, I 9\*4; hence, the one dated April 6, I9° 4›

is therefore ignored by this Court.

For the foregoing reasons, the ap peal is dismissed with costs against appellants. The clerk of this Court is here- by commanded to issue a mandate to the court below ordering it to resume jurisdiction and enforce its judg- ment. And it is hereby so ordered.

*A p p eal dismissed.*