LLOYD'S INSURANCE COMPANY OF LONDON, represented in Liberia by the Liberian Insurance Agency, Appellant, *v.* THE AFRICAN TRADING COMPANY, Appellee.

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

Argued March 13, 17, and 18, 1975. Decided May 2, 1975.

1. A policy of insurance is a contract, whereby for a stipulated consideration one party undertakes to compensate the other for loss on a specified subject by specified perils.
2. Under established procedure a plaintiff is entitled to withdraw an action once and thereafter file a new action.
3. When a party to a judicial proceeding admits by some act the jurisdiction of a court, he may not thereafter, simply because his interest has changed, deny the court's jurisdiction, especially when such change would be to the prejudice of another party who has acquiesced to the position formerly taken.
4. A broker who performs services for a foreign insurer is that company's agent.
5. The existence or extent of the authority of an agent presents a question of fact which should be determined by the jury.
6. Service may be effected on a foreign insurance company, or any foreign corporation, by service on its soliciting agent resident in Liberia.

Appellee purchased a large consignment of enamelware which was to be shipped from Hong Kong. The bankers of the firm advised the shipment should be insured. The firm thereupon ordered insurance from the Liberian Insurance Agency, which placed the order with the appellant in London. The insurance was duly issued. The cargo was damaged in transit and consequently suit was brought for breach of contract after payment requested by appellant went unsatisfied.

After trial a jury returned a verdict for appellee. An appeal was taken from the judgment.

The Liberian Insurance Agency by and through which the suit was brought, denied it was agent for appellant. The Supreme Court found it was and consequently the

action had been properly brought, thereby bringing the foreign insurer under the jurisdiction of the Liberian courts. The judgment, therefore, was *affirmed*.

Beauford Mensah and *D. Caesar Harris* for appellant. *Samuel E. H. Pelham* and *Richard A. Diggs* for appellee.

MR. JUSTICE HORACE delivered the opinion of the Court.

Sometime in 1973, appellee placed an order with a company in Hong Kong by the name of Ting Fung Iron Works, Ltd., for a large consignment of enamelware. The general manager was advised by the Foreign Department of the Bank of Liberia, presumably his bankers, to insure the firm's foreign orders with the Liberian Insurance Agency which, from the record before us, we conclude is partly owned by the Bank of Liberia. Appellee readily accepted the proposition and instructed the bank to have the enamelware consignment, valued at $153,956.37, insured for eleven percent thereof. The firm's account was debited in the amount of $4,503.46, representing the insurance premium. The said sum was paid to the Liberian Insurance Agency, which had the enamelware insured by Lloyd's through W. E. Found & Co., Ltd., insurance brokers at Lloyd's which, according to the insurance certificate issued to appellee, was "authorized by underwriters at Lloyd's to countersign and issue" the certificate.

The consignment, consisting of 4,368 packages, arrived at the Free Port of Monrovia on October 13, 1973, in badly damaged condition. The Liberian Insurance Agency was promptly informed of the situation by appellee. Having been furnished with a Lloyd's form of application for a certificate of survey, appellee completed same and filed it with appellant on October 15, 1973.

Mr. Peter Koval, an insurance adjuster of the Liberian

Insurance Agency, was sent to the Monrovia Free Port to make a survey of the damaged cargo. Finding the damage very extensive after examining about 200 cases and a like number of cartons, he decided to report his preliminary findings to his principals in London, W. E. Found & Co., Ltd., and ask for instructions as to how to proceed. As a result of Mr. Koval's report two specialists arrived in Monrovia from London in January, 1974, to make a survey of the damaged property. They went to the warehouses where the enamelware was stored and after a thirty-minute perfunctory examination of a few cases left the warehouse. They returned to London a few days later without making a report on their survey to either appellant or appellee.

In order to minimize losses appellee paid the port charges and customs duty on the consignment. Not hearing from either the Liberian Insurance Agency or its principals for some weeks, appellee sought the aid of the Mississippi law and accounting firm to assist him in recovering for the great loss sustained.

The record shows that on March 3, 1974, counsel for appellee notified the Commissioner of Customs by letter of the loss, and requested an appraisal of the cargo; a report by a customs appraiser finding sixty-five percent damage to the shipment; and a letter dated April 4, 1974, from appellee's counsel to the appellant and W. E. Found & Co., Ltd., making demand for payment in the sum of $114,215.92, the cost of the shipment damaged, as well as incidental expenses, including customs duty paid and port charges.

After waiting a few weeks and receiving no reply to his letter, counsel for appellee instituted an action of damages for breach of insurance contract on behalf of their client, against Lloyd's Insurance Company of London, by and through the Bank of Liberia as agents for Lloyd's, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The Bank of Liberia filed an answer aver-

ring that it was not the agent for Lloyd's in Liberia, but the Liberian Insurance Agency was. Thereupon plaintiff withdrew its action and filed a new action against Lloyd's, but this time designating the Liberian Insurance Agency as agents for Lloyd's.

This new action, with written directions, and upon which a regular writ of summons was issued, was filed on May 21, 1974. The writ of summons was served and a return made as to its service, and on May 31, defendant filed a three-count answer. Because of the importance we place on this answer, as will be shown later in this opinion, we quote the three counts.

> "1. Because, under the laws of Liberia, an aggrieved party may seek relief against an accused by filing in the court of competent jurisdiction a 'complaint.' In this case, the plaintiff has neither instituted against nor served upon defendant a 'complaint'; nor has defendant been given notice of the filing of a suit against said defendant, nor has plaintiff sought to amend. . . . The document entitled 'amended complaint' is both illegal and misleading and should therefore be dismissed.
>
> "2. And also because defendant submits that the facts alleged and exhibits attached to plaintiff's amended complaint are all false and misleading and denies plaintiff's right to recover thereon.
>
> "3. And also because defendant denies all and singular the averment of facts contained in the complaint not specifically traversed."

On June 5, 1974, plaintiff filed a reply, the first two counts of which pointed out that plaintiff had filed a former action against defendant which had been withdrawn for the reasons stated. Plaintiff cited our Civil Procedure Law on amended pleadings. Rev. Code 1:9.10.

The reply also pointed out that the denials in the answer raised issues of fact to be decided.

Pleadings rested with the reply, but the legal maneuvering had just commenced, for on July 5, 1974, plaintiff made an application for Farrell Lines, Inc., to be joined as a defendant because plaintiff did not know at the time the suit was instituted that said Farrell Lines, Inc., was also a representative in Liberia for Lloyd's, and that the ends of justice would best be served if both of Lloyd's representatives in Liberia were made defendants. The judge presiding over the June 1974 Term of the Civil Law Court, ordered that a writ of summons be issued against Farrell Lines, Inc., as a party defendant. Farrell filed a resistance to the application of plaintiff on July 10, 1974, and an amended resistance on August 8, 1974. Farrell Lines also filed an answer to the complaint, to which plaintiff filed a reply.

The next point of interest is that on June 19, 1974, the Liberian Insurance Agency, twelve days after plaintiff had filed its reply, filed a "motion to drop" on the ground that it was not the agent for the insurer, only the insured, since it was an insurance broker.

The motion was opposed by plaintiff. We think it important to mention here that when the first action was filed naming the Bank of Liberia as agents for Lloyd's, the Morgan, Grimes and Harmon law firm, which is now representing appellant, were not the lawyers for the bank.

On September 4, 1974, Judge Tilman Dunbar, Resident Judge of the Civil Law Court for the Sixth Judicial Circuit, entered his ruling on the motion to drop, denying it on the ground that, as raised in the resistance, the movent was not the last pleader, citing *Horace* v. *Harris,* 9 LLR 372 (1947).

We agree with the learned trial judge that the motion should have been denied, but not for the reason given by him. More will be said on this point later in this opinion.

On the same September 4, 1974, the trial judge ruled on the issues of law overruling count one of the answer and

ruling the complaint, counts two and three of the answer and the reply, to trial by a jury. Because of the importance we attach to the portion of the trial judge's ruling on the point raised in the first count of the answer, we deem it proper to quote it.

> "Defendant in its answer basically questioned the jurisdiction of the court in that according to the complaint received, labeled an amended complaint . . . because it has never been served with a complaint, could not be an amendment to what did not exist. Counsel for plaintiff was asked to reconcile what appears to have been the confused state of affairs regarding the naming of the complaint in this action. The counsel for plaintiff pointed out that the first action filed in these proceedings were against the Bank of Liberia, alleged representative of Lloyd's Insurance Agency of London. This action was filed on the 26th of April, when the responsive plaintiff filed a notice of withdrawal of the whole action and gave notice that he reserved unto himself the right to refile. Counsel for defendant in this action was not counsel of record for defendant in this Liberia suit, so then the Morgan, Grimes & Harmon law firm could not have known of the filing of the former action. They were brought into the case when the action was refiled against Lloyd's Insurance Company of London, represented in Liberia by Liberian Insurance Agency and this action was not denominated according to the records in the file an amended complaint. But strange enough, Counsellor Mensah was asked to show us his copy of the complaint which, as alleged in count 1 of the answer, was an amended complaint. When we saw this answer, we found out that the word amended has been superimposed on the defendant's copy of the complaint. This inscription was written in pen and ink and was not typed. So in face of the withdrawal of the entire action in the Bank of Liberia suit and a new

action refiled against Counsellor Mensah's client, we are not disposed to accept as genuine the inscription written on the copy of defendant's alleged copy of the complaint. The court does not know who did the writing but will not allow itself to be controlled by anything not of the record."

We do not know what happened, but it does seem strange that only the defendant's copy of the complaint had the word "amended" superimposed by pen and ink; the court's copy and the plaintiff's copy both showed that there was no word other than "Complaint" typed thereon. Moreover, the record before us clearly shows that written directions were filed with the complaint, and a writ of summons was issued based on said complaint and the return thereto made by the sheriff. Suffice it to say the whole affair presents an ugly picture.

On October 7, 1974, the trial court entered its ruling on the answer of Farrell Lines's and plaintiff's reply, overruling count one of said answer where Farrell Lines averred that the issuance of the writ of summons against it, before passing on the application for it to be joined as a party defendant, was premature. The reply in its entirety and counts 2, 3, 4, 5, and 7 of the answer were ruled to a jury trial.

Immediately after the ruling, plaintiff's counsel asked for assignment of the case for trial. Counsel for Farrell Lines then noted for the record that its defense was the same as the Liberian Insurance Agency, and, therefore, prayed for a separate trial. This application was resisted by plaintiff's counsel. The next day, before the court could rule on the application made by Farrell Lines and commence the trial, plaintiff withdrew its resistance and the court had no alternative but to grant Farrell Lines's request for a separate trial, albeit reluctantly.

On October 8, 1974, a jury was duly empanelled and the trial commenced. Four witnesses testified for plaintiff, namely Mr. Ali, general manager of plaintiff corpora-

tion, Mr. Peter Koval, insurance adjuster, Mr. Burphy, Customs appraiser, and Counsellor Pelham. The gist of the testimony of Mr. Ali, Mr. Koval, and Mr. Burphy has already been recounted in this opinion.

Counsellor Pelham was called mainly to identify the letter written by him to W. E. Found & Co., Ltd., which he did. After the plaintiff's witnesses had testified and were cross-examined, plaintiff offered its documentary evidence, all of which included the insurance policy, invoices and the bill of lading for the consignment of enamelware, the Bank of Liberia's advice of debit for the insurance premium paid by plaintiff, and plaintiff's application on Lloyd's form for a survey of damaged freight, which had been attached to the complaint as exhibits to form a part thereof. Defendant interposed no objections to the admission into evidence of written proof. The foregoing caused some consternation among us, since defendant had set forth in count two of its answer that "the facts alleged and exhibits attached to plaintiff's amended complaint are all false and misleading."

Plaintiff having rested its case, defendant had Mr. Collins Sinclair, General Manager of the Liberian Insurance Agency, take the stand as its sole witness. The gist of this witness' testimony was that they did not act as agents for Lloyd's in their insurance transaction, but rather as agents for the African Trading Company, the plaintiff; that there was no such company as Lloyd's Insurance Company and, therefore, it would be impossible to act as that company's agent. He went on to explain that Lloyd's is more akin to an association formed by individuals who separately and individually accept insurance business; that these individuals form into groups known as Lloyd's Syndicates and there were hundreds of these syndicates. In London, only certain brokers are allowed to deal with Lloyd's and they do not deal with Lloyd's Insurance Company but with Lloyd's Syndicates; that even these brokers are not agents for Lloyd's but only place

business with Lloyd's Syndicates on behalf of their clients. In other words, they act as agents for their clients. The Liberian Insurance Agency has an association with an insurance broker known as W. E. Found & Co., Ltd., which has authority to place insurance with the syndicates which call themselves Lloyd's underwriters. At no time does a broker act as agent for an insurance company or for Lloyd's underwriters. His agency acts for its clients. In this case the client was the plaintiff; that although the policy bore the name, Lloyd's, that meant only the syndicate which accepted the insurance of Lloyd's underwriters.

On cross-examination he stated, *inter alia:*

1. That his company is not an insurance company but a firm of insurance brokers.

2. That the premium was paid to them and they paid it to Lloyd's underwriters in London, through W. E. Found & Co., Ltd.

3. That plaintiff's claim was submitted to them and they had since then continued to make extensive and vigorous inquiries with a view to obtaining settlement of the claim.

4. That they had been disappointed that the claim had not been settled.

5. That they did not have a report on the investigation or survey, even though they had been pressing for it.

When asked by the court who the insurance underwriters were, he replied that a full list had been submitted to plaintiff through its lawyer, but as they were very numerous he could not remember all the names. He also admitted that W. E. Foun & Co., Ltd., of London were shareholders in the Liberian Insurance Agency. With this testimony of its sole witness, defense rested.

After argument by counsel for both sides, the court charged the jury, which returned with a verdict awarding plaintiff damages in the sum of $114,215.92, to which de-

fendant excepted. A motion for a new trial was filed, resisted by plaintiff and denied by the court. On August 15, the trial court rendered final judgment, confirming the verdict. An appeal has been taken from the final judgment on an eight-count bill of exceptions.

Before going into the bill of exceptions, we think it necessary to examine some law on the subject of insurance generally and marine insurance in particular. In this connection we must note that our present statutory law on the subject of insurance contained in our Associations Law, is very scanty.

> "Nothing in this chapter shall be construed to permit the organization of a corporation to do a banking or insurance business. All banking or insurance business may be organized and operated only by special arrangement with the government of the Republic of Liberia." 1956 Code 4:47.

Our Commercial Law also contains a section which is relevant.

> "It is not an injury to violate any immoral or illegal contract including the following: . . .
>
> "2. All bets and wagers, and contracts for the payment of money or delivery or transfer of any valuable thing upon any contingency or event, or upon the decision of any question, dispute or controversy as such contracts are illegal, but this shall not apply to contracts made and intended by way of insurance or indemnity from actual loss or damage sustained by means of such contingency, event or decision." 1956 Code 7:40.

In the reported cases on the subject, the most pertinent we have found is *Flood* v. *Conneh,* 3 LLR 257 (1931), when this Court held that a policy of insurance is a contract whereby for an agreed premium one party undertakes to compensate the other for loss or damage from a specified peril. In relation to property it is also a con-

tract whereby the insurer becomes bound for a definite consideration to indemnify the insured against loss or damage to the property named in the policy.

Because of the lack of more material in our law, we have to rely on the common law to resolve the issues raised in this controversy.

> "Insurance: A contract, whereby for a stipulated consideration one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is usually called the 'insurer' or 'underwriter'; the other the 'insured' or 'assured'; the agreed consideration, the 'premium'; the written contract, a 'policy'; the events insured against 'risks' or 'perils'; and the subject, right or interest to be protected the 'insurable interest.' A contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event is applicable only to some contingency or act to occur in the future." BLACK'S LAW DICTIONARY.
>
> "Marine Insurance: A contract whereby, for a consideration stipulated to be paid by one interested in a ship, freight or cargo subject to the risk of marine navigation, another undertakes to indemnify him against risks connected with navigation, to which a ship, cargo freightage, profits or other insurance interests in movable property may be exposed during a certain voyage or fixed period of time." BLACK'S LAW DICTIONARY.

Now let us examine briefly the pertinent portion of the insurance contract in the instant case to see whether it falls within the definitions quoted above.

> "We hereby declare under the authority of underwriters at Lloyd's that an insurance has been effected on account of African Trading Company for the sum of $168,956 (say One Hundred and sixty-eight thousand nine hundred and fifty-six U.S. dollars) or order

on interest as specified hereon as valued per TUNGKU GHAU /&/ or steamer (classification clause) at and from Hong Kong to Monrovia.

"Conditions of Insurance: Institute cargo (all risks) clauses including risks, strikes, riots, evil commotions and malicious damage as per institute clause."

The certificate of insurance no. LB 3124922, is countersigned by a representative of W. E. Found & Co., Ltd., London, and dated July 11, 1973. On the reverse side of the certificate, and a part thereof, we find pertinent provisions.

"This insurance attaches from the time the goods leave the warehouse or place of storage at the place named in the policy for the commencement of the transit, continues during the ordinary course of transit and terminates either on delivery

"(a) to the consignee's or other final warehouse or place of storage at the destination named in the policy

"(b) to any other warehouse or place of storage, whether prior to or at the destination named in the policy, which the assured elects to use either (i) for storage other than in the ordinary course of transit; or (ii) for allocation or distribution; or

"(c) on the expiry or 60 days after completion of discharge overside of the goods hereby insured from the oversea vessel at the final port of discharge, whichever shall first occur."

From the foregoing we conclude that the insurance transaction between appellee and appellant, was a proper and legal insurance contract.

We now turn to the bill of exceptions. As to count one of the bill of exceptions, we find the contention raised unmeritorious. The record of the case before us clearly shows that a complaint and not an amended complaint was filed, an entirely new action with a different defendant, that is to say, instead of the Bank of Liberia as agent for Lloyd's the new action named the Liberian Insurance

Agency as such agent. Admittedly plaintiff irrelevantly referred to section 9:10 of our Civil Procedure Law, but that section refers to amended pleadings, not the withdrawal of the whole action and the filing of a new one. And although the current Civil Procedure Law is silent on the withdrawal of an entire action and subsequently filing a new action, long-established practice permits a party to once withdraw an entire action and file a new one. Moreover, no substantive right of the defendant was adversely affected by the withdrawal of the first action and the filing of another. Count one of the bill of exceptions is not well taken.

With respect to count two of the bill of exceptions, we feel that the motion to drop was correctly denied by the trial court, though not for the reason stated, that is, the movent not being the last pleader. The decisions of this Court relied upon as authority were handed down long before the present section applicable to motion. The section does give a party the right to move the court at any time, even during a hearing. A motion to drop relates to a misjoinder of parties, but in this case appellant was the only party defendant at the time. The proper procedure for the appellant to have followed for the relief sought would have been a motion to dismiss the action, Rev. Code 1:5.56, and that should have been done when an answer was served. But even here the motion to drop, to all intents and purposes, related to the jurisdiction of the court over appellant, and having appeared and joined issue in the answer, we do not feel that it could then challenge the jurisdiction of the court over it. The general rule is that if a defendant, though not served with process, takes such a step in an action, or seeks relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause of the person, he thereby submits himself to the jurisdiction of the court and is bound by its action as fully as if he had been regularly served with process. Likewise, if the defendant has been served

with process, any objection he may have to the irregularity of the service must be made promptly, otherwise his failure to appear and object will amount to a waiver of his right to do so. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the court's jurisdiction, especially when the assumption of a contrary position would be to the prejudice of another party who has acquiesced to the position formerly taken. *King* v. *Williams,* 2 LLR 523 (1925). Count two of the bill of exceptions is overruled.

Count three of the bill of exceptions we consider unmeritorious, because when plaintiff withdrew resistance to Farrell Lines's request for a separate trial, the court had no alternative but to accede to the request since courts should not raise issues.

Count four of the bill of exceptions we also find unmeritorious, because when appellant's witness, Sinclair, General Manager of the Liberian Insurance Agency, was on the stand he admitted that W. E. Found & Co., Ltd., was "mandatorily" a shareholder in the Liberian Insurance Agency.

Count five of the bill of exceptions is overruled, because the question related to a written instrument which was quite clear on its face, and the trial judge, therefore, correctly sustained objections to the question.

Count six of the bill of exceptions is not borne out by the record before us. What happened was that when counsel for appellant put a question to the witness it was objected to by appellee's counsel on the ground that the latter portion of the question was leading and instructive. The trial court held that the witness having heard the question, sustaining the objection would be unavailing to the appellee and he, therefore, overruled the objection. Said count of the bill of exceptions, being a misrepresentation of the facts, is overruled.

Count seven of the bill of exceptions, that the foreman

of the jury asked the judge in open court what amount should be inserted in the verdict, was raised in appellant's motion for a new trial. The record reveals that when the motion for a new trial was being argued the court asked counsel for appellee to verify that point in the record, which he could not do.

When arguing before us we asked counsel to show us in the record that this incident actually happened, he could not do so but insisted that it did happen, which was vehemently denied by counsel for appellant. Because we feel that this was a very important issue which, if true, would have warranted a new trial, we asked counsel what he did when the foreman of the jury allegedly made such a remark. He said he did nothing. The record before us does not show that such a question was put to the judge by the foreman nor that exceptions were taken at the time the remark was supposed to have been made. Since we are reviewing this case on the record certified to us, we are compelled to overrule said count of the bill of exceptions.

Count eight of the bill of exceptions deals with appellant's exception to the final judgment. This brings us to the crux of the whole matter, that is, whether the verdict and judgment are in conformity with the evidence and the law. The first thing to remember is that the evidence in the case clearly establishes the fact of an insurance contract; that the goods covered by the contract were badly damaged within the covered time specified in the contract; and that appellee took the necessary action constituting the prerequisites precedent to making a claim. Even the General Manager of appellant agency admitted on the witness stand that his company had made extensive inquiries of the insurer with a view to getting the claim settled. The position of appellant agency, therefore, is that it is not a proper party defendant because it is not an agent of the insurer but of the insured.

In considering this aspect of the matter, the first thing

to remember is that the insurer is a foreign corporation and the premium for the insurance issued by that foreign corporation, or entity, was procured by appellant agency. The next point of consideration is how the foreign corporation is to be brought under the jurisdiction of the courts of this Country except through its recognized agent. A third point to be taken into consideration is how appellant agency is to redeem its losses if the contention of appellant that it is an insurance broker and not underwriter, rendering the agency not liable, is to be taken as a valid argument.

Let us examine some law on the question. Admittedly the matter is somewhat complicated by the very nature of Lloyd's.

> "A Lloyd's association is an anomalous institution. It is a combination of individuals acting concretely as insurers, and is neither a joint stock company, a corporation, nor a partnership, although it has been held that with respect to its carrying on the business of insurance with a limited personal liability it resembles a joint stock company as well as a corporation." 46 C.J.S., *Insurance,* § 412 (1946).
>
> "The rules relating to the pleadings in actions on insurance policies in general ordinarily apply in an action on a policy of Lloyd's insurance or reciprocal insurance except where the peculiar nature of this form of insurance requires particular forms of pleadings. Where the attorney in fact for the members of a reciprocal or interinsurance exchange seeks to sue an alleged wrongdoer for damages for which insurance has been paid to the member, joining the member as a defendant on his refusal to join as must be alleged. An attorney in fact suing in his own name to recover unpaid premiums should disclose in his pleadings his authority to do so.
>
> "The defenses relied on by defendant must be fully

and clearly alleged by plea, answer or affidavit of defence. The defense to an action on a Lloyd's policy that such action must primarily be brought against the attorneys for underwriters is in the nature of a plea in abatement and, in order to be available, must be affirmatively pleaded, giving the names of such attorneys, and showing that they are within the jurisdiction, and in reach of the process of the court." 46 C.J.S., *Insurance,* § 1431 (1946).

A careful scrutiny of the record in this case reveals no defenses contemplated in the pleadings of appellant in this case.

But before going into the procedure of bringing an action against a foreign corporation, let us consider the point that appellant has put forward, that as an insurance broker, it is not an agency of Lloyd's, but the agent of the appellee.

"The insured may so employ an agent of the company as to make him his agent. However, merely permitting insurance to be procured by another does not make that other the insured's agent, especially where he also represents the insurer." 3 COUCH, 2d, *Insurance,* 282 (1960).

It has been held that "a broker who performs services for a foreign insurer is that company's agent." Further, that "the fact that an insurer has regularly appointed agents does not preclude the finding that the broker was the agent of the insurer." *Id.* 411. While as a general rule, an insurance broker is initially the agent of the insured, not the insurer, he is regarded as the agent of the insurer for the purposes of collecting or adjusting and remitting the premiums and delivering the policy. *Id.* 409.

We must also consider the question of from whom the insurance broker receives compensations, in determining whether he is the agent for the insured or the insurer.

"There is authority, however, that one receiving a portion of a premium as his commission on a policy secured through him is presumed to be a broker rather than the agent of the insured, and that a broker was the agent of the insurer when he was paid for his services by commissions received from the company, or from another agent of the company." *Id.* 412.

"In the absence of conflicting statutory or charter restrictions, an agency for an insurance company may be created by implication, it being unnecessary to show that authority was conferred by resolution of a board of directors or other authorized body. Thus, if one purporting to act as agent receives an application, accepts the premium, secures and delivers the policy, and does everything necessary to attachment of the risk, the insured may assume that he is the properly authorized agent of the insurer.

"An implication of authority arises from the fact that the insurance company has furnished an agent with policy forms, and by the insurer's act in sending a policy to a person for delivery to the insured.

"An agency may be implied from recognition or acquiescence of the insurer as to acts previously done in its behalf, especially if similar acts repeatedly have been permitted. An insurance company by the repeated acceptance of applications taken by the agent of another company, placing his name on the policies issued and on identification cards, makes him its agent. Where a broker holds himself out as a general agent, solicits a policy, collects a premium a part of which he retains as his commission according to his custom, and a policy is issued upon information procured by him, he is an agent of the insurer by implication as to the insured who, in good faith, dealt with him as such.

"An agency maybe implied from the acts of an agent of other insurers in matters concerning a loss and ad-

justment thereof in behalf of the insurer. Likewise, where a clerk in another office than that of the company is requested by the general adjuster to go to a certain city and see about a loss and examine the business, he has authority to adjust it." *Id.* 481, 482.

From the record before us all indications point to a reasonable presumption of the fact that in the insurance transaction between appellant and appellee, appellant acted as agent of the insurer and the emphatic assertion that the agency was, in fact, agent of the insured does not alter the situation.

Let us briefly consider the question of how the insurer of appellee, the insurer being a foreign corporation, could be brought under the jurisdiction of our courts. First, our law provides that after service of summons, a court may exercise jurisdiction over a nondomiciliary even though he has not been in Liberia, if a claim arises out of his transaction of any business in Liberia or out of a contract made with a person in Liberia which is to be performed here. Rev. Code 1:2.2. Personal service shall be made on a domestic or foreign corporation by reading and personally delivering the summons within Liberia to an officer, or managing or general agent, or to any other agent authorized by appointment or by statute to receive service of process, and, if the summons is delivered to a statutory agent, by, in addition, mailing a copy thereof to the defendant. *Id.* § 3.38.

"Principles respecting process in an action on a policy against a foreign insurance corporation are governed by the rules applicable in actions against foreign corporations generally, . . . except as affected by statutes which are specifically applicable to insurance corporations, and statutes prescribing the mode of service and designating the officer or agent of the corporation to be served, have been sustained by the courts as within the constitutional power of the legislature." 46 C.J.S., *Insurance,* § 1270(b)(1) (1946).

It is peculiar that if appellant was of the opinion that it did not represent the insurers, it did not forward to the insurer the process served and other documents in the suit, for instructions as to how to proceed. Rather, it undertook to join issue by declaring the allegations in appellee's complaint, and the exhibits thereto attached, as false and misleading. Nor did it assert any affirmative defense in its pleading that it was not the agent for the insurer. But even if it had put forward such affirmative defense in the fact of the written evidence admitted in the case, authorities hold that where the evidence is conflicting, questions relating to the fact or agency for the insurance company or for the insured, and as to the extent of the agency's authority are for the jury to determine. "Ordinarily the existence or extent of the authority of an agent of the insured presents a question of fact which if disputed is to be determined by the jury. This follows from the fact that the question is to be determined in the light of the particular circumstances of the case and the relations existing between the respective parties." Further, it has been held that "service may be obtained on a foreign insurance corporation by service on its soliciting agent residing in the country where suit is filed."

It is our holding, therefore, that appellant as representative of a foreign insurance corporation, or however it might want the insurer to be called was properly brought under the jurisdiction of our courts, especially since the evidence shows the undisputed connection between appellant and W. E. Found & Co., Ltd., of London, which countersigned the insurance certificate.

Appellant's counsel has contended in his brief, as well as in his argument before us, that the action of damages for breach of an insurance contract should have been brought against the underwriters named in the policy by and through W. E. Found & Co., Ltd.

We have carefully searched the copy of the policy in the record certified to us and nowhere have been able to

find the names of the underwriters to the insurance contract. While it has been held that "in accord with the general rules relating to undisclosed principals, an agent may make a binding contract of insurance on behalf of an insurer, although the identity of the latter is not at the time of contracting disclosed or known to the insured," yet the names of the underwriters should be shown in the policy, for under the English Marine Insurance Act, 1906, Section 23, under which it is presumed Lloyd's operates, "the policy must specify the name or names of the underwriters."

The question arises, however, as to how the insurer could be brought under the jurisdiction of our courts, being foreign and living beyond the geographical bounds of the courts of Liberia. In Liberia a foreign corporation, be it a foreign insurance corporation or entity, or transacting other business, must be sued through an agent resident in Liberia, subject to process of the Liberian courts.

It seems clear from the arguments put forth and the attitude of appellant, that it was not intended that appellee benefit from the insurance contract entered into with the insurers through appellant, because neither appellant nor its principals have shown any intention to honor their obligation under the insurance contract. Nor is there any showing that appellee was informed when the insurance premium was paid in Liberia, that in case of a legal suit arising out of any claim it might have against the insurers, it would have to be brought against the underwriters who are outside the jurisdiction of the Liberian courts.

In view of all the facts and circumstances of this case, we are of the considered opinion that the trial was regular, the verdict of the jury in accord with the evidence adduced at the trial, and, therefore, the judgment of the trial court should not be disturbed. The Clerk of this