

EMILIO GADDINI, represented by
L. G. GIANOTTI, manager of the Monrovia
Slaughterhouse, Appellant, *v.* ELIAS ISKANDER EL
HABR, and GEORGE HABR, by KAMAL HABR
and ELIAS ISKANDER EL HABR, majority share-
holders for the Liberia Supply Company, Ltd., and
HON. D. W. B. MORRIS, Circuit Judge, Sixth Judi-
cial Circuit, Montserrado County, Appellees.

APPEAL FROM THE RULING OF THE JUSTICE PRESIDING IN CHAMBERS
DENYING A WRIT OF MANDAMUS TO THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 24, 1969. Decided January 30, 1970.

1. An appeal must be perfected within sixty days after final judgment and the service of a notice of appeal upon the appellee by a ministerial officer of the trial court completes the appeal and places the appellee under the jurisdiction of the appellate court.
2. The failure of an appellant to timely serve a notice of appeal renders the appeal liable to attack and once a motion has been brought to dismiss for failure to timely perfect the appeal, the court may not cure the omission by an order to issue and serve such notice.
3. A party perfecting an appeal, as in all litigation, must protect his interests by diligently doing for himself the things the courts are not bound to do for him.

Statement of the case is set forth in the body of the
opinion. *Judgment affirmed.*

Joseph F. Dennis for appellant. *O. Natty B. Davis*
and *Jacob H. Willis* for appellees.

MR. JUSTICE ROBERTS delivered the opinion of the
court.

This case is one in a series of three cases which have
come before this Session of Court for adjudication arising
from the same suit and involving the same parties in the
lower court.

In its origin, respondent in these proceedings filed a bill in equity for the cancellation of management and animal supply contracts, in the Equity Division of the Circuit Court, Sixth Judicial Circuit, Montserrado County.

A decree granting the cancellation of the contracts was rendered against the Monrovia Slaughterhouse. Exceptions were tendered and an appeal announced.

In the course of the appeal, respondent in the cancellation proceedings petitioned for a writ of mandamus, praying that the sheriff's return to the notice of appeal be amended to reflect timely service upon appellee, who had refused to acknowledge receipt of the notice of appeal the first time service was attempted, contending his counsel was out of the country. The petitioner for the writ maintained he discovered the failure to serve the notice three weeks thereafter when he caused the court's ministerial officer to re-serve, at a time beyond the sixty days allowed to perfect an appeal. He contended the first attempted service tolled the statute. The respondent in the mandamus proceedings disputed the facts and contended the late filing of the return to the notice of appeal rendered the appeal defective. Mr. Justice Simpson in chambers ordered the issue heard by the trial court, which agreed with the petitioner that the return should be amended as prayed for.

It does not appear to this Court that the record upon which the trial court's finding was based supports its conclusion, as the ruling of Mr. Justice Wardsworth in chambers, from which this appeal was taken, points out.

The petition was heard by Mr. Justice Wardsworth, who succeeded Mr. Justice Simpson in chambers. In his ruling, the Justice held the following:

"1. The lower court's ruling was not in accord with the facts presented at the hearing therein.

"2. Every appeal must be perfected within sixty days after final judgment.

"3. 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. When not completed within the statutory time, this court will dismiss said appeal for want of jurisdiction. *Morris v. Republic*, 4 L.L.R. 125 (1934).

"4. A party appealing should superintend the appeal and see that all legal requisites are completed.

"5. After the failure of an appellant to serve a notice of appeal has been attacked by motion to dismiss the appeal, the court may not cure the omission by an order to issue and serve such notice. Where a party in superintending the preparation of records on an appeal discovers that a notice of appeal is missing and has not been served and returned, a Justice presiding in chambers may, upon application before the appeal is attacked by motion, issue an order for service and return of the notice of appeal. *Buchanan v. C.F.A.O.*, 9 L.L.R. 15 (1945).

"6. I regard as sheer negligence on the part of appellants' counsel not to have followed up and directed the ministerial officer, who was charged with the responsibility of serving and making his return to the notice of appeal within the statutory time; despite the fact that appellant's counsel had knowledge of the issuance of said notice of appeal and the whereabouts of the appellees upon whom the ministerial officer was commanded to serve the said notice of appeal, no effort was made to have the notice of appeal served within statutory time.

"It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to the securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that

which it is their duty to do for themselves. *Blacklidge v. Blacklidge*, 1 L.L.R. 371, 372 (1901).

“In view of the foregoing, the interlocutory writ of mandamus is hereby quashed and the peremptory writ of mandamus as prayed for is hereby denied. Costs ruled against petitioners and it hereby is so ordered.”

It is the opinion of this Court that the ruling of the Justice in chambers is sound and it is hereby affirmed, with costs against the petitioner. And it is hereby so ordered.

Affirmed.