A. F. FLOOD, Agent of the CAVALLA RIVER COMPANY, LTD., Agents of the ROYAL EXCHANGE ASSURANCE, Appellant, *v.* VAMUYEH CONNEH, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided May 15, 1931.

1. The issuing, service and return of a notice of appeal is essential to the jurisdiction of the Court.
2. A policy of insurance is a contract whereby for an agreed premium one party undertakes to compensate the other for any loss or damage from a specified peril. In relation to property it is also a contract whereby the insurer becomes bound for a definite consideration to indemnify the insured against loss or damage to the property named in the policy.

Petitioner, now appellee, the insured, brought a bill in equity for discovery and equitable relief. After decree for petitioner in the Circuit Court, respondent appealed to this Court, which remanded for a trial *de novo*. After decree for petitioner on the second trial, and appeal by respondent to this Court, *motion* to dismiss appeal *denied* and *decree affirmed*.

Barclay & Barclay for appellants. *N. H. Sie Brownell* for appellee.

MR. JUSTICE PAGE delivered the opinion of the Court.

This case has been pending in this Court since its November term, 1930, emanating from the First Judicial Circuit at its August term 1930.

At the last session of the Supreme Court it was entered on the calendar as one of the cases sent up for review; but owing to the absence of some material evidence not heard at the trial of the case by appellants, competent in itself to throw more light so as to enable the Court to give such

judgment as would result in substantial justice to all parties concerned, the same was remanded to the court from which it emanated to be tried *de novo*.

At this session it presents itself purporting to have been tried and concluded; but appellant, not being satisfied that he has received justice, appeals for another review.

This Court of last resort of the country recognizes fully its grave responsibilities and obligation to the law, as well as to the people, keeping constantly before it and in its heart that there cannot be tolerated the least partiality or favor to any man, whether he be citizen or alien.

In *West* v. *Montgomery,* January term, 1926, this Court enunciated and laid down as a principle of justice by which it is governed in its proceedings, the following:

> "The fine condition of men is never taken into account. In fine, the court knows only law and justice, and it will always, according to its legal lights, conscience and convictions, deal justice to all."

And just here, it may be in place to enunciate that the Supreme Court, one of the co-ordinate branches of the government, is awake to all interests of the country, and will do no act to impair international amity by taking, or allowing advantage to be taken, of another citizen or subject of foreign nations residing in Liberia in business relations or otherwise.

The Supreme Court, aside from its legal knowledge, has also a knowledge of human nature; it knows that men are selfish and mercenary to a certain extent and will take advantage of other men when opportunities for so doing present themselves.

While this enunciation, to the mind of the Court, may be timely, still the Court cannot and will not lend its aid in giving advantage to citizens of the country in legal matters over aliens, nor to aliens over citizens, simply to satisfy the erroneous idea that Liberians seek to rob aliens in their intercourse with them; nor will the Court give its aid to aliens in fraudulent transactions with the citizens.

The Court recognizes that Liberia is a small and weak nation; but honor is honor, and this Court will only move on lines of honor, integrity, law and justice.

Now then, here is a case before us that was once before us for final review and determination. It might appear to the casual observer that in the second trial the case has been improperly dealt with by the court below; but a review of the records shows that such is not the case.

The history of the case shows to us that on the twenty-seventh of September, 1927, one Vamuyah Conneh of Kingsville, District of Careysburg, County of Montserrado, was the owner of a Graham truck, R.L. 194, which truck he insured on said date for its original purchase value to the amount of three hundred fifty pounds sterling against accident or loss, and that the insurer paid regularly on his said policy which is numbered M.C. 5284 up to March, 1930, but the firm neglected to deliver the policy though often requested to do so.

Within the period covered by the insurance, to wit, July 15, 1929, said truck met with an accident on the Monrovia-Kakata Road. The respondents in the court below, now appellants before this Court, were promptly notified of said accident by appellee, but appellant did nothing to recover same when said truck thereafter became a total loss. The respondents, now appellants, having received several requests by petitioner, now appellee, either to replace said truck or refund its insured value, failed to do so in violation of their said contract of insurance, wherefore appellee, petitioner in the court below, instituted this action by bill in equity for discovery and equitable relief thereon.

Although respondents, now appellants, had the policy in their possession, they raised no question of the fact in their pleadings to say that appellee's claim fell within the exceptions.

After the court below ordered discovery of said policy, appellants withdrew their plea that the premium was not

fully paid (they having received evidence from Lagos that the premium was fully paid), leaving one remaining question of law, to wit: "whether the court of equity had further jurisdiction to grant relief." This point being decided in favor of the appellee, there was no other plea raised in the records, and having the contract before it, the court proceeded to render a decree in favor of petitioner now appellee; that petitioner, now appellee, is entitled to recover the insured value of the truck as per the terms of the policy.

To this decree appellants excepted and removed the proceedings to this Honorable Court at its April term, 1930 by means of a writ of error for review. This Court thought best to remand the case in order that oral testimony might be received in the premises.

Accordingly, the court of equity heard evidence on the 15th, 21st, and 22nd days of October, 1930, and rendered a decree on the 30th of October to the effect that petitioner in the court below, now appellee, is entitled to recover the insured value of the truck in keeping with the terms of the insurance policy.

To this decree appellants again excepted in the court below and prayed for an appeal to this Court of last resort at its April term, 1931.

At the call of this case for hearing at this session, appellee filed a motion to dismiss the appeal on the grounds that appellants had failed to file or give a notice of appeal to the appellee within sixty days of taking the appeal.

The points to be considered under this motion to dismiss the appeal are as follows:

(a) Failure to have a notice given to the appellee in this case of filing of the appeal.

(b) If a notice of appeal was given but not within sixty days of the taking of the appeal, would it affect the validity of the appeal or furnish grounds for a motion for its dismissal if the clerk failed to act within sixty days from the date of judgment?

From the records filed in the case, we find the following notice given by the appellant to the appellee to the effect that appellants having on the 5th day of January, 1931, completed their appeal to the Honorable the Supreme Court of the Republic of Liberia, at its April term, 1931, appeal bond filed on the 30th day of December, 1930, bill of exceptions approved by the trial court on the 7th day of November, 1930, to wit:

"You are hereby notified to be present at said Term to prosecute.

"Given under my hand and seal of the court this 4th day of April A. D. 1931

"W. O. Davies-Bright, Jr.,

"Clerk of the First Judicial Circuit Court Montserrado County, R. L.

"Filed in my office this 9th day of April, A. D. 1931 David Howard, Chief Clerk, Supreme Court." (See records.)

In considering this point, this Court has convincing proof that notice of appeal was given by appellant to the appellee, verified by a sufficient return made by the sheriff of the county of the service of this notice (see Returns). As to sub-section (b) the question to be settled is: "If notice of appeal was given but not within 60 days of the taking of the appeal, would it affect the validity of the appeal or furnish sufficient legal grounds for a dismissal of the case?"

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.

This rule of law was laid down in the case *Greaves* v. *Johnstone,* 2. L.L.R. 121 (1913). In that case the Supreme Court held that "the omission from the records of a return to the notice of appeal is a fatal defect." The completion of the appeal must not only consist in the notice given but also the return which gives evidence of service, thereby placing the parties under the jurisdiction of the Court.

We deem it unnecessary to give any further consideration to the question set up in the motion involving questions of a rather technical nature and therefore pass on to consider the salient points affecting the merits of the case.

From an inspection of the records, the trial of the case in the court below appears to have been conducted fairly and regularly to the benefit of all parties concerned, there being no objections or exceptions taken save the one point set up in the bill of exceptions, to wit, "Because the final decree of your Honour is contrary to the law and the evidence submitted in the case, to which defendants except."

From the testimony of Vamuyeh Conneh, the petitioner, T. Elwood Davies, A. F. Flood, agent for Cavalla River Company, Ltd., Monrovia, agents for Royal Exchange Assurance in Liberia, witnesses, who were duly qualified and deposed at the trial, as also the written evidence submitted, as well as the law, this Court is fully of opinion that the decree of the court is not contrary to but is supported by the law and evidence submitted at the trial, as is disclosed from the following testimony of the witnesses, *supra:*

(a) That petitioner, now appellee, did buy from the respondents, now appellants, one Graham Truck R. L. 194 on the 27th of September 1927.

(b) That this truck on the same day was insured for its original purchase value of three hundred fifty pounds sterling against accident, loss or damage,

and that the premium of his said policy numbered M. C. 5284 up to March 21, 1930, was regularly and fully paid, but the firm neglected to deliver the policy of insurance.

(c) That after a period of one month from the date of the renewal of this policy, petitioner, still being without same, again applied to the firm's agent for same but the firm agent still neglected to deliver same, but told petitioner, now appellee, that he must not worry himself; if anything should happen to the truck they were solely responsible. Petitioner, now appellee, not being satisfied, went and called T. Elwood Davies to go with him to the firm's agent, who told witness Davies that they had written to their Lagos office for the policy which claimed that they had forwarded it at some previous date, but the office here denied having received it. They had written again respecting it. Witness Davies testified that he asked that since there is a question as to the whereabouts of the policy and its delay, if anything happens to the truck by accident in what position would Vamuyeh (the petitioner, now appellee) be with regard to his insurance? Firm's agent said: "Oh well, he has his receipt, having paid his insurance up to date, and if anything should happen, if he has not got the policy his receipt would be sufficient for him to make his claim."

To this the following question was put to witness Vamuyeh, on cross examination: "Mr. Witness, explain how this truck met up with the accident complained of?" Witness Vamuyeh answered: "The truck needed some repairs which the firm's agent, Cavalla River Company, undertook, which costs me two pounds nineteen shillings and six pence; Mr. Lassy, the firm's mechanic, informed me after the accident that in the repairs they forgot to put in one of the brakes which had been taken out during

the repairs. I then informed the agent of Cavalla River Company and he said nothing. I was only able to use the truck one day after the repairs; the truck was turned over to me on a Saturday; I drove the truck up to Kingsville No. 7, and on returning on Monday, the accident took place. I did not know at the time that one of the brakes had been left out; it was in consequence of this that caused the steering rod to jump out. I am a licensed driver and driving the truck myself."

Witness Arthur Flood, agent of Cavalla River Company, Monrovia, agent for the Royal Exchange Assurance, was qualified and deposed in substance as follows: That July 22nd, Mr. Gray, agent for Lloyds, and himself inspected the damaged truck which they found apparently intact but were unable to examine it properly, owing to the position in which it was lying; they were satisfied it could be hauled out and repairs effected. On returning to Monrovia they discussed its condition with the petitioner, now appellee, and emphasized the necessity of placing a watchman to protect its parts. They applied to Messrs. Firestone for a truck to haul the damaged truck but got no reply; finally they got the answer saying they were unable to help. He also applied to Mr. J. L. Morris for the loan of a truck, but after some days received no answer. Mr. Morris then decided on his man at No. 7 and supplied him with rope and wire, August 2, 1929. The following week he reported that he was unable to complete hauling the damaged vehicle out because in the meantime its wheels had been stolen, Mr. Flood stated that in his opinion the owner of the vehicle is bound by the contract with the Royal Exchange to remove the damaged vehicle to the repair shop.

These constitute the gist of the evidence at the trial in the court below. It was at this time that discovery was made of the policy when same was delivered.

A contract of insurance is a contract whereby, for an agreed premium, one party undertakes to compensate the

other for any loss or damage from a specified peril, and in relation to property it is also a contract whereby the insurer becomes bound for a definite consideration to indemnify the insured against loss or damage to the property named in the policy, by reason of certain perils to which it may be exposed.

The instrument whereby insurance is made by an underwriting in favor of an insured is called the policy of insurance, which contains stipulations upon which the contract is made. In the policy under consideration the corporation agrees in section 2 to become liable in consequence of accident causing damage for the cost of protection and removal to the nearest repair shop of such vehicle. It is puzzling to understand how the insurer, now appellant, could impose on the assured, now appellee, liability for the cost of protection in the supply of a watchman to protect the damaged vehicle.

This Court having calmly and maturely sifted the evidence and entire records of this case and carefully considered the law bearing on the same, is of opinion that the decree of the court below be affirmed, and this Court so orders.

Affirmed.