

WILLIAM H. KETTER, P. D. GURLEY, et al., Appellants, v. JAMES B. DENNIS et al., Appellees.

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

Argued May 7, 1956. Decided June 29, 1956.

The Supreme Court will not entertain an appeal from an interlocutory order of a lower court granting a new trial after a jury verdict.

Appellants objected to the probate of a will in the Monthly and Probate Court. The cause was forwarded to the Circuit Court for jury trial. The jury rendered a verdict in favor of appellants. The trial court granted appellees' motion for a new trial. Appellants appealed to this Court from the order for a new trial. This Court *dismissed* the *appeal* and *remanded* the *case* to the trial court *for a new trial*.

William H. Ketter, pro se, and for appellants. Richard A. Henries for appellees.

MR. JUSTICE HARRIS delivered the opinion of the Court.

Gabriel L. Dennis of the City of Monrovia, Montserrado County, died leaving a will which was presented to the Monthly and Probate Court of Montserrado County for proving but was objected to by the above named objectors-appellants. The said will having been contested was, in keeping with law, forwarded to the Circuit Court of the Sixth Judicial Circuit, Montserrado County, to be tried by a jury.

Trial of the case commenced on January 6, 1955, and on January 17 the jury rendered a verdict in favor of objectors-appellants. To this verdict the respondents-appellees entered objections and filed a motion for a new trial which the court granted, and to which objectorsappellants excepted and announced an appeal to this Court upon a bill of exceptions containing eight counts. When the case was called for trial before this Court we were informed that a motion to dismiss the appeal had been filed. The motion contains four counts which we quote :

"1. That the above entitled case was tried and verdict was rendered on January 17, 1955.

"2. That, after the verdict of the jury was rendered, a motion for new trial was filed

by appellees ; which motion was resisted by appellants' counsel and, after hearing, the trial Judge granted the motion for new trial and appellants prayed an appeal to this Court. Appellees respectfully ask this Court to take judicial notice of Count '8' of the bill of exceptions filed by appellants on February 3, 1955 and copy of the Judge's ruling on the motion for new trial, herewith made profert and forming a part of this motion.

"3. That no final judgment having been rendered, there could be no appeal ; for no appeal can lie from an interlocutory ruling. The ruling on the motion for new trial being interlocutory, this Honorable Court cannot render a judgment of an appellate nature.

"4. That, because the granting of a motion for new trial places the parties in *status quo ante*, neither is affected or will suffer.

"Wherefore in view of the foregoing, appellees most respectfully pray that the said appeal be dismissed and that both parties submit to a new trial."

There are many issues raised in the pleadings in this case which we would like to consider and pass upon ; but this we cannot presently do on account of the motion to dismiss the appeal which we must first consider. Before proceeding further it is expedient to state that the objectors-appellants filed no resistance to the motion to dismiss.

A new trial is a re-examination of an issue of fact, or of facts, in the same court, after a former trial, and after the rulings and verdict of the trial court and jury have been set aside, vacated and made null and void, by an order or ruling of court predicated upon the issues raised in the motion for new trial.

The question then arises : After the rulings of the court and the verdict of the petty jury which a party regards as being adverse to his interest have been vacated and set aside does there still remain anything from which the party may legally appeal? We are of the opinion that there is nothing left from which he may legally appeal because it places the case and parties in exactly the same position they were in before the trial. In support of what we have herein stated we quote the following:

"The effect of granting a new trial is to set aside both the verdict and the judgment, without any specific mention of either. It places the case exactly in the position it occupied before there had been a trial, and the party stands as if he had never been

tried. When granted in general terms it operates as a new trial as to all the parties, reopens all the issues in the cause, and amendments to the pleadings may be permitted. There can be no appeal from the judgment, as there is nothing left to appeal from, and if, during the pendency of an appeal, a new trial is granted by the trial court, the appeal will be dismissed." 20 R.C.L. 313 *New Trial* § 97.

Count "4" of the motion to dismiss the appeal is well taken. We are of the opinion that the motion should be granted and it is hereby ordered granted. The appeal is dismissed and the case remanded with instructions that it be tried with the least possible delay. Costs are to be paid by the objectors-appellants ; and it is so ordered.

Remanded.