

E. A. POTTER, Appellant, vs. WILLIAM STEVENSON, Administrator of the Estate
of William D. Hill, Appellee.

LRSC 2; 1 LLR 53 (1871) (1 January 1871)

[January Term, A. D. 1871.]

Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.

This is a case brought up from the Court of Pleas and Quarter Sessions, Maryland County, on a writ of certiorari. The appellee not appearing, and having been returned as duly summoned, judgment by default was entered for the appellant.

The court now proceeds to render a perfect judgment in said case. In doing so it is to be remembered that several errors were complained of by the appellant against the proceedings of the court below, which errors this court is of the opinion ought to be determined and settled.

First, this court therefore decides that it was an error in the court below in sending the jury back, in the case Wm. Stevenson, administrator of the estate of W. H. Hill, vs. E. A. Potter, to reconsider their verdict to lessen the damages by them awarded. If the judge thought the damages too great or too little, he should have granted a new trial.

Secondly, the court below erred in countermanding the order granting Potter an appeal. It is not the right of the court granting an appeal to revoke its own order, but all irregularities committed by the party taking an appeal should be determined by the court appealed to.

Thirdly, the court below erred in issuing an execution against the defendant, while an attachment upon the property of said defendant was still in force and not dissolved. A Writ of sale ought first to have been ordered. (Stat. Liberia Bk. I, p. 57, sec. 17.)

It is the judgment of this court that the decision of the lower court be reversed, and the appellant be placed in respect to the property taken under said decision as if no such suit had ever been commenced, and further that the appellant recover all costs.

Key Description: Appeal and Error (Discretion of lower court, power to review)