

A. FRANCK, Agent for J. W. West, Appellant, vs. **J. F. SHERMAN**, Appellee.

[January Term, A. D. 1902.]

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

Debt.

It is not a legal appearance, where at the trial an attorney appears and states that he has only been instructed to offer a motion for continuation, but knows nothing of the case and can go no further; under such circumstances the opposite party will be entitled to judgment by default.

This case was brought up to the Supreme Court on a bill of exceptions by the appellant, for review, that substantial justice might be secured, he being dissatisfied with the judgment rendered in the court below, in Sinoe County. When the case was called up for review and final adjudication, the appellant answered in the persons of his counsellors S. A. Ross and S. E. F. Codogan. The appellee answered partially, by T. W. Haynes ; that is to say, he so far answered as to inform the court that he had been authorized by Hon. R. A. Wright, counsellor for the appellee, to motion the court to postpone the case until the January term of the court in 1903, for the reason that he had received no notice of any appeal having been taken out and sent up to this court; but that he had no further interest in the case and knew nothing of its merits; which motion, as referred to, he made. The counsel for the appellant objected to the sustaining of the motion, upon the ground that appellee had a notice served upon him, which the court would find correct by referring to the record in the case.

After examination of the record by the court it was ascertained that the appellee had been legally notified of the appeal taken; and since the court is informed by Counsel T. W. Haynes that he does not represent the case further than offering the motion referred to, as a friendly act to a brother counsel, the court, while desiring to go into the merits of the case so as to be fully able to mete out the ends of justice, considers it just to consider the non-appearance

of the appellee as an abandonment of the case.

Therefore, upon the motion of the appellant for judgment, the court adjudges that the appellant recover from the appellee the amount of debt claimed and all legal costs in the action. The clerk of this court will issue a mandate to the judge of the court below, to the effect of this judgment.