ADOLPH N. ADJAVOS, Appellant, *v.* MESSRS. FREY & ZUSLI, a Commercial Firm, by FREDERICK FREY, Agent, Appellee.

APPEAL FROM DECREE RENDERED ON BILL IN EQUITY.

Argued December 5, 1934. Decided December 21, 1934.

1. A trial judge errs who, on deciding in favor of plaintiff the points of law raised in his reply, proceeds to render a final judgment in favor of said plaintiff without first hearing evidence in support of the complaint.
2. Where the proceedings have not properly been conducted and no certain, definite and clear-cut issue has been presented, the ends of justice sometimes demand that the case be remanded with instructions that the parties be ordered to replead.

Appeal from decree rendered on a bill in equity. *Case remanded* for new trial, and repleading also ordered.

C. H. Taylor, Anthony Barclay, and *A. Dash Wilson* for appellant. *William V. S. Tubman* and *H. Lafayette Harmon* for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

When the above entitled case came on for hearing, it soon became clear that because of flagrant errors committed by His Honor, the late Aaron J. George, the Circuit Judge who presided at the trial in the court below, this Court would be compelled to remand the case to be tried according to law. The errors to which we refer, the subject of complaint in the eighth and tenth counts of the bill of exceptions, are due to the fact that when the pleadings were argued before the said judge, he not only dismissed the answer upon the point raised in the reply, but simultaneously, in the same ruling, and without having heard one scintilla of evidence, gave a final decree upon the merits of the cause. This Court

compromising the decree of the court below, in which the plaintiff, James E. Johnson, submitted to the action of the court, and obligated himself to the payment of twenty-two dollars in satisfaction of the judgment against him.

> "If the parties compromise and settle a judgment, an appeal or writ of error cannot thereafter be taken, and, if theretofore taken, should be dismissed." 2 R.C.L., "Appeal and Error," §§ 40, 42.

In view of the circumstances enumerated *supra,* this Court finds itself incompetent to do otherwise than to quash the writ of error, and rule plaintiff-in-error to all costs; and it is so ordered.

Application denied.