

MATILDA A. RICHARDS, Appellant, v. S. DAVID  
COLEMAN, Appellee.

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

Decided February 9, 1933.

1. A receipted bill of costs by the sheriff is the best evidence of the payment of costs for purposes of an appeal.
2. Issues of law raised in the pleadings must first be disposed of before submitting the facts of the case to the jury. Failure to do so will result in judgment being reversed and a new trial awarded.

In an action of debt brought in the Circuit Court, judgment was given for defendant. Motion by appellee in this Court to dismiss the appeal *denied*; case *remanded* for trial *de novo*.

*Phelps* and *Wolo* for appellant. *Coleman* and *Simpson* for appellee.

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the Court.

This was an action of debt entered in the Circuit Court of the First Judicial Circuit, Montserrado County, by Matilda A. Richards, plaintiff in the court below, against S. David Coleman, defendant in the said Circuit Court.

When the appeal was called for hearing, appellee filed an amended motion to dismiss the appeal on the following grounds:

- “1. Because the appellee says that the writ of summons as issued in this case is fatally defective in that same was issued on the third day of April, 1929, and defendant required to put in his appearance on the 6th day of April, 1929, thereby depriving the defendant the right of four days for his appearance as the law provides.

- “2. And also because appellee says that the trial judge never disposed of the issue of law in said case, consequently he could not legally have ordered the issues of fact placed before a jury as was done in said case.
- “3. And further because appellee says that the full costs in the case have not been paid in keeping with law governing appeals as will more fully appear by inspection of exhibits ‘A,’ ‘B’ and ‘C’ respectively, which wilful neglect on part of appellant renders the cognizance of said case before this Honourable Judicature a legal impracticability.

“Wherefore appellee prays that this Honourable Court in view of the foregoing will dismiss said cause for want of jurisdiction and rule appellant to pay all costs.”

On inspecting the records we discover a bill of costs for \$56.40 receipted by the sheriff which constitutes conclusive evidence that the bill of cost was paid by appellant. See *East African Company v. McCalla*, 1 L.L.R. 292 (1896), where it was held that when on appeals a question arises as to the payment or non-payment of cost, a certificate from the sheriff is the best evidence to prove or disprove that fact.

Appellee contends, however, that there was an additional bill of costs. It seems that no blame should be attached to appellant for that additional bill of costs as the clerk of court has neglected to send the said bill of costs of the court below. We do not therefore deem it equitable to dismiss the appeal on the grounds stated in the third point of said motion.

It appears, however, that both Judge George and Judge Dent who heard the case committed the error of neglecting to determine the issues of law raised in the pleadings before submitting the facts to the jury.

The case should be remanded to the court below to try the case *de novo*, and it is hereby so ordered.

The Clerk of this Court is hereby ordered to send down a mandate to the court below informing the judge to this effect.

*Remanded.*