and this deponent further states that as attorney for such defendants
below after the appeal by said Company only had been dismissed
by said Court of Appeals because it lapsed and no summons of and
severance with the other Co defendant in same cause was had
out of abundant caution, an appeal was also again prayed for and
entered by all of said defendants from the original judgment entered in
said cause by said Circuit Court on January 28th 1863 can and appeal
Bond filed in said cause as has also been done in the former appeal
by all of said defendants from the judgment of the Court directing
execution to issue against them all pending said first appeal by said
Company only as aforesaid and the said record of the cause directed by the
deponent to be sent up in due time to enable said Clerk to do so
within the space of Nine Months from the time said appeal was
so last entered and lastly by all of said defendants as aforesaid,
And this deponent further states that he believes said record had
been duly made and sent up to said Court of appeals, as was so
directed as aforesaid, and within the time prescribed as aforesaid, and the
attention of deponent to the fact that the said Clerk had forgotten
or omitted to send up said record both on said first appeal by all
of the said defendants as in said second appeal by them, was not
awakened or called thereto until in inspection of the April docket
of the Circuit Court for said Court of Appeals he found no such
appeal pending and numbered in said docket for the present year
1866 when deponent was informed the cases from the County of
Allegany would probably come up for trial, and on being advised
thereof and informed, deponent inquired of said Clerk for the Circuit
Court and was informed by him after examination, or a careful examination
of the dockets of said Circuit Court for Allegany County that the same
had been forgotten or overlooked by his deputy and that said appellant
should not be prejudiced thereby so far as such forgetfulness or inad-
vertence on his part had caused such omissions and was in his
power to remedy or correct same. Sworn before

Andrew Gordon J.P.

State of Maryland Allegany County to wit

I Horace Resley Clerk of the Circuit Court for Allegany

April Term 1867

County do hereby certify that Andrew Gordon Esquire before whom the
aforegoing affidavit appears to have been made was at the time thereof, and
still is a Justice of the peace of the State of Maryland in and for the County
of Allegany duly sworn commissioned and qualified to act as such
by said Justice does still receive due credit and authority as
well in Courts of Justice as elsewhere. And I do further certify that the
record of the case in each of the aforegoing appeals prayed and taken by
the appellants from the several decisions of the Circuit Court for the
County as stated in said record transmitted herewith to the Court of Appeals
of Maryland was duly directed by the Counsel of said appellants
George A Hamilton Esq to be sent up by the undersigned in sufficient
time after each appeal was prayed to enable the undersigned to transmit the same within nine Months thereafter and that the omission so to do
in each case was owing to the oversight or inadvertence of the undersigned.

In testimony whereof I hereto subscribe my name and affix
(Seal) the seal of said Court this 7 day of Nov 1866.

H Resley Clk

(J R Stamp)

But because the Court of appeals here are not yet advised what judgment to give and upon the premises a day thereof is further given to the
parties aforesaid with the consent of the said parties by their attorneys
aforesaid to come before the Court of appeals here on the first Monday in
April next to hear the judgment of the Court of Appeals thereof and
upon the premises for that the Court now here as yet are not so
advised but at this day to wit the said 1st Monday of April being the
1st day of the said Month in the year of our Lord 1867 came again into
the Court of Appeals here the parties aforesaid by their attorneys
aforesaid Whereupon as well the Record and proceedings aforesaid
and the judgment given in form aforesaid as the matters aforesaid by the
said the Cumberland Coal and Iron Co et al to be error assigned
being seen and by the Court of appeals here fully understood and
mature deliberation thereupon had for that it appears to the
Court of appeals here that there is no error in the Record of proceedings
aforesaid nor in the giving of the judgment aforesaid. Therefore it is con-
sidered by the Court of Appeals here that the judgment aforesaid