the parties aforesaid by their attorneys aforesaid, but because the Court of Appeals here cannot yet advise what decree to give & pass upon the premises. Afterwards to wit on the 5th day of January 1867 the following Motion to dismiss appeal was filed in the words and of the tenor following to wit,

Lycurgus N. Phillips Ex'r of
Noah Phillips
vs
Isaac E. Pearson and others

The Appellee respectfully moves the Court to dismiss the appeal in this cause as having been prematurely taken before there was any decree passed in the cause by the Court.

Randall and Hagner for appellees.

The Counsel for the appellees agree to argue this cause on the Motion to dismiss the appeal — and if not dismissed, on its merits at the same time and they have respectfully submitted their argument on the above case to the Court in writing.

Randall & Hagner for the appellee Pearson.

Afterwards to wit on the 7th day of January 1867 the following petition was filed in the words and of the tenor following to wit

Phillips Ex'r Phillips
vs
Isaac E. Pearson and others

In the Court of Appeals of Maryland
Appeal from a decree of the Circuit Court for Frederick County in Equity.

To the Honorable the Judges of the Court of Appeals of Maryland

The Petition of Isaac E. Pearson, one of the appellees in the above case respectfully represents to your Honors that by reason of severe indisposition he was prevented from being present, in your Honorable Court at the time the case above entitled was called for argument, or from securing the services or attendance of some professional brother to appear in his behalf and represent his case in this Honorable Court; that he had no knowledge of until said case had been argued, that no brief has been filed on his behalf and he had fully expected that the Solicitor, who had appeared for him in the Circuit Court aforesaid would have given to said case all necessary attention and it was too late, when this petitioner learned that his said Solicitor did not intend to appear in his behalf for this petitioner, even if he had been well enough to do so, to have made timely and proper arrangements to procure the attendance, on his behalf, of some other Solicitor.

Your Petitioner suggests, that although said case was argued, on behalf of the appellant, yet no decision has yet been pronounced by your Honors; and he therefore respectfully prays that your Honors would open said case and permit him to file a statement and brief, in support of the judgment of the Court below, and to argue the same, either orally or in writing, by some Solicitor of this Court, and he declares that this application is not intended for delay but is made bona fide for the protection of his just rights.

And as in duty bound &c
Isaac E. Pearson

State of Maryland Baltimore City to wit.

On this 5th day of January A.D. 1867 before the subscriber one of the Justices of the Peace of said State and City personally appeared

April Term 1867

Isaac E. Pearson and made oath in due form of law that the matters and things stated in the foregoing petition are correct and true to the best of his knowledge and belief.

Sworn Before Jos. N. Beale J.P.

State of Maryland Baltimore City sct. I hereby certify that Jos. N. Beale Esq before whom the annexed affidavit was made and who has hereto fixed his name was at the time of so doing a Justice of the Peace of the State of Md in and for the City of Baltimore duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal of the Superior Court of Baltimore City this 5th day of January A.D. 1867.

Alfred Mace Clk.
Sup. Ct. Balto City.

Court of Appeals of Maryland to wit.

The matter of the within Petition being read and considered by the Court it is on this twelfth day of January 1867 Ordered by the Court that Isaac E. Pearson Esq be allowed until the first day of February next to file a written argument in the cause referred to in said Petition.

Test George Earle Clerk
Court of Appeals of Md

Dear Sir

Please to entitle this petition as the case is on the docket.

R. Pearson

Thereupon this cause was continued from term to term by regular continuances until the first Monday in April 1867.

And now at this day to wit the said first Monday in April being the first 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 decree given in form aforesaid as the matters aforesaid by the said L. N. Phillips Ex'r of N. Phillips above for error assigned being seen and by the Court of Appeals here fully understood, and mature deliberation therefon had for that it appears to the Court of Appeals here that there is error in the Record of proceedings aforesaid and also in the giving of the decree aforesaid.

Therefore the Court of Appeals filed the following decree in the words as following to wit.