

BLOCK V. INSURANCE CO.

PRACTICE IN SUPREME COURT: *Award of damages on affirmance of judgment.*

Where no judgment for the recovery of money is rendered against an appellant either in the Circuit Court or in the Supreme Court, the sureties on his *supersedeas* bond are not liable to pay the 10 per centum damages which sections 1311, 1312 Mansf. Dig. provide for assessing in certain cases on the affirmance of a judgment.

*On motion* to assess 10 per cent. damages against the sureties on the *supersedeas* bond of appellants.

For the facts and original opinion in this case, see *ante* p. 201. *Secs. 1311, 1312 Mansf. Dig.*, are as follows:

“Sec. 1311. Upon the affirmance of a judgment, order or decree for the payment of money, the collection of which, in whole or in part, has been superseded, as provided in this chapter, 10 per centum damages on the amount superseded shall be awarded against the appellant.”

“Sec. 1312. Upon the affirmance of any judgment, order or decree by the Supreme Court, which has been wholly or in part superseded, judgment shall be rendered and entered up against the securities on the *supersedeas* bond, and the court shall award execution thereon.”

PER CURIAN. No judgment was rendered against the appellants for the recovery of money in the Circuit Court, or

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here. The sureties are not liable, therefore, to pay the penalty prescribed by the statute. *Stephens v. Shannon*, 44 Ark., 178; *Worth v. Smith*, 5 B. Mon., 504; *Graham v. Sweigert*, 12 ib., 527.

Motion denied.

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