

though he has given an approved appeal bond for the due prosecution of that appeal.

The question presented by this petition is of great practical importance, and no precedent has been produced, and I am aware of no case in which the point now raised has been decided.

That the right of appeal should be preserved inviolate, no one will deny, and that nothing should be done by the court from whose judgment the appeal is taken to abridge, or in any way to impair, its enjoyment or to interfere with the substantial object of the privilege, is a proposition too clear to admit of doubt. Certainly this court feels no disposition to do so, and therefore, when it is asked to take a step in a cause, after an appeal taken and bond given for its due prosecution, it is indispensably necessary that it should be shown beyond all reasonable doubt that the step which it is called upon to take can, in no contingency which is at all likely to appear, prove injurious to the appellant. The reason for this is obvious. The party appealing can only arrest the execution of the judgment or decree of the court, of which he complains, by giving bond in an adequate penalty and with approved surety to indemnify the other party for any loss or injury he may sustain by reason of the delay. The latter, therefore, though he may not get the fruits of the judgment of the court in which he has been successful, so early as he otherwise would, is protected from loss by the appeal bond, if in the opinion of the superior court he has a title to such indemnity. But, if on the other hand the inferior tribunal proceeds notwithstanding the appeal, to execute its judgment, either in full or partially, upon the hypothesis that in any event which in its view of the case is likely to appear, the appellant will not be aggrieved by such complete or partial execution, and in the opinion of the superior court the entire judgment of the court below shall turn out to be erroneous, it is quite obvious that serious and irreparable injury may be done, because the party who has thus reaped the fruits of the recovered judgment has given no indemnity to the opposite party, and may himself be insolvent or inaccessible to his prosecution.