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Civil Practice Act Cases;Notes and Comments

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CIVIL PRACTICE ACT CASES

APPEAL AND ERROR—CO-PARTIES—NECESSITY UNDER CIVIL PRACTICE ACT OF SERVING NOTICE OF APPEAL ON DEFAULTED PARTIES.—The unsettled question as to whether Rule 34[1] of the Illinois Supreme Court required service of notice of appeal on defaulted parties has been settled by the case of *Kaminskas* v. *Cepauskis*.[2] From an adverse decree in a foreclosure suit, the plaintiffs appealed, neglecting to serve notice of appeal on the trustee under the trust deed and the mortgagor's heirs, who had defaulted in the trial court. The Appellate Court denied the motion to dismiss the appeal despite the contention that Rule 34 had been violated, and the ruling was affirmed by the Supreme Court, which said: "It is obvious the trustee was only a nominal party and had no interest in the appeal. It is likewise clear that the heirs of the mortgagor could not be affected by a reversal of the decree by the Appellate Court. . . . Having no interest which could be affected by the appeal, they were not necessary parties. . . . "

There has previously been a conflict as to this question, the Appellate Court, Fourth District, holding in *Lewis* v. *Renfro*[3] that notice of appeal must be given even to defaulted parties, while the Appellate Court, First District, had held that parties need only be served where they have an interest in the outcome of the appeal.[4] The instant case in the Supreme Court resolves this conflict. Rule 34 has also been amended to require service of notice only upon parties "who would be adversely affected by any reversal or modification of the order, judgment or decree. . . . " Although this amendment became effective August 1, 1938, and hence inapplicable to the instant case, the decision therein will yet be of value in relation to cases in which appeal had been taken before such amendment, and it may serve to throw light on the meaning of the words "adversely affected" as used in the amended rule. R. W. BERGSTROM

APPEAL AND ERROR—PROCESS AND NOTICE—VALIDITY OF SERVICE OF COPY OF NOTICE OF APPEAL BEFORE SUCH NOTICE IS FILED.—A possible means of thwarting appeal by a technicality has been eliminated by the Illinois Supreme Court in *Schafer* v. *Robillard*.[1] The court, in construing that section of Supreme Court Rule 34 which says "A copy of the notice by which the appeal is perfected shall be served . . . within 5 days after said notice of appeal is filed . . . ,"[2] held that this is a mere limitation upon the time for such service and that hence a service of the copy before the filing of the notice is valid. R. W. BERGSTROM

1 "A copy of the notice by which the appeal is perfected shall be served upon each appellee and upon any co-party who does not appear as appellant. . . ." Ill. Rev. Stat. 1937, Ch. 110, § 259.34.

2 369 Ill. 566, 17 N.E. (2d) 558 (1938).

3 291 Ill. App. 396, 9 N.E. (2d) 652 (1937). See note, 16 CHICAGO-KENT REVIEW 52.

4 People ex rel. Wilmette State Bank v. Village of Wilmette, 294 Ill. App. 362, 13 N.E. (2d) 990 (1938). See note, 16 CHICAGO-KENT REVIEW 273.

1 370 Ill. 92 (1938).

2 Ill. Rev. Stat. 1937, Ch. 110, § 259.34.