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CIVIL PRACTICE ACT CASES

Appeal and Error—Right of Review—Whether Attorney Ordered to Withdraw From Case Has Such an Interest in the Subject Matter as to Entitle Him to Appeal from Such Order—In Almon v. American Carloading Corporation 1 the Illinois Supreme Court for the first time held that an attorney who had been found disqualified to represent the parties in a pending case could not appeal from such order as he had no such interest in the judgment or decree to be rendered on the merits of the controversy as would be required to support an appeal. It was also held that such order was not a final order within the meaning of Section 77 of the Civil Practice Act, 2 nor was it one of those interlocutory orders which, under Section 78 thereof, 3 are appealable. In that proceeding certain members of a labor union sued their employer and the union officials for withholding checks allegedly belonging to plaintiffs. The union officials directed the attorney retained by the union, toward whose pay each union member contributed a fixed amount, to represent the union officials in the suit. The plaintiffs sought to have him removed as attorney on the theory that he represented each of them through his arrangement with the union and hence was disqualified from appearing on behalf of a part of the members in any proceeding involving a dispute with other members thereof. The trial court so held, but on appeal to the Appellate Court for the First District such order was reversed on the ground that the union, as such, had a separate juristic personality from its members so that the relationship of attorney and client had never existed between the attorney in question and the plaintiffs. 4 On further review, the Supreme Court reversed and remanded with directions to dismiss the appeal.

Prior to the Civil Practice Act, one not a party to the suit had no right to appeal, 5 but a person not a party of record had a right to review by writ of error if he could show an interest in the judgment or decree to be reviewed. 6 Though the writ of error is now abolished, 7 the right

2 Ill. Rev. Stat. 1941, Ch. 110, § 201.
3 Ibid., § 202. It was urged that the order expelling the attorney possessed the elements of restraint, so as to be of the same character as an interlocutory order for injunction. It was held that such was not the case, since the latter is designed to preserve the status quo of the merits of the case, whereas the former had no bearing thereon.
4 The Supreme Court, having granted leave to appeal, refrained from discussing whether or not the union was a separate entity from the members on the ground that that issue was neither before it nor before the appellate court. That question is, therefore, still open to debate. See, on that point, Milk Wagon Drivers Union v. Associated Milk Dealers, 42 F. Supp. 584 (1941).
5 People ex rel. Galloway v. Franklin County Building Association, 329 Ill. 582, 161 N. E. 56 (1928).
6 People ex rel. Yohnka v. Kennedy, 367 Ill. 236, 10 N. E. (2d) 806 (1937).
7 Ill. Rev. Stat. 1941, Ch. 110, § 198.
of a person not a party to the proceedings to secure review of the judgment or decree is preserved by Section 81 of the Civil Practice Act. According to the holding in the instant case, however, such right has, in no way, been enlarged, consequently any person seeking review under that section must clearly disclose the interest upon which he relies to support his right of appeal. If, under the former practice, no such right existed because the person complaining was neither a party to the record, one injured by the judgment, one who would be benefited by its reversal, nor one competent to release errors, it follows no such right exists today.

Cases dealing with the immediate factual problem found in the instant case are, fortunately, rare, since the ethics of the profession forbid an attorney retained by one side of a case from appearing on behalf of the other parties. The somewhat analogous problem of the right of an attorney to act as counsel and thereafter to seek a court order for an allowance of fees as compensation for his services has, however, been adjudicated many times. Whether any such order is open to attack at the instance of the attorney depends on the question as to the nature of such allowance. If made to the attorney directly, he is a person "injured by the judgment or who will be benefited by its reversal" in the event the trial court rejects such application, hence is competent to appeal. If, however, the allowance is made to the successful party, as to reimburse him for counsel's fees paid or to be paid, the attorney is not such a person affected by the allowance or disallowance thereof as to justify his appeal therefrom any more than he would be entitled to carry on an appeal in his own name in behalf of any disappointed client. If the right to seek compensation for work done is not sufficient to support an appeal, it is rather difficult to see how an attorney could contend that an order preventing him from rendering such service, even assuming it to be a final order, should warrant him maintaining an appeal therefrom.

8 Ibid., § 205, specifically recites that: "The right heretofore possessed by any person not a party to the record to review a judgment or decree by writ of error shall be preserved by notice of appeal."