KWASI ADAI et al., Natives of the Gold Coast, Appellants, v. **JAMES DAWSON JACKSON et a**l., Natives of the Gold Coast s Appellees.

ARGUED MAY 4, 1914. DECIDED MAY 12, 1914.

Dossen, C. J., MeCants-Stewart and Johnson, JJ.

A notice of appeal should be directed to the appellee by the clerk of the trial court, and served and returned by the ministerial officer of said court.

Mr. Justice Johnson delivered the opinion of the court:

Damages, Violation of Contract—Motion to Dismiss. This was an action originating in the Circuit Court of the third judicial circuit, Since County, and is brought up to this court on appeal by the defendants in the court below, now appellants against whom judgment was rendered.

When the case was called for hearing, in this court, counsel for appellees submitted a motion to dismiss same:

1. Because there is no legal notice of appeal issued in this case, and

2. Because the paper purporting to be a notice of appeal, filed in this case, has not been legally served upon appellees by the proper ministerial officer of the court below. On inspecting the records of this case we find filed therewith a paper which purports to be a notice of appeal directed by the clerk of the court below to the marshal of Sinoe County commanding him to notify the plaintiffs in the court below, now appellees, that the appeal has been taken, and that said notice was served and returned by that officer ; and the question for the opinion of

the court is, whether said document was legally issued, and served.

The general principle that a notice of appeal is essential in order to complete the appeal has been well established; but we are now to consider the manner in which the notice should be given.

By the statute laws governing appeals it is provided that the clerk of the court from which the appeal is taken shall after the bond is filed, and the payment of costs by appellant, forthwith issue a notice to appellee informing him that the appeal is taken and to what term of court ; and that said appellee appear to defend the same, which shall complete the said appeal. The language of the statute is in our opinion mandatory and should be strictly followed; a notice therefore, directing an officer or other person to notify appellee, is not a legal compliance with the said statute. The notice should have been directed to the appellee.

Counsel for appellants raised the questions : (1) that the notice of appeal might be served by any person; and (2) that if the appellant erred in having said notice served by the marshal of Sinoe County, he was misled by the decision of the court in the case *Morris et al. v. Gatlin et al.* (I Lib. L. R. 252) ; where it was held that the service of the notice of appeal upon the appellee can only be legal when done by the ministerial officer of the Supreme Court or his lawful deputy; and when returns thereto are made by the same person.

As to the first point, we are of the opinion that in so important a matter, as an act which the statute requires to be performed, in order to complete the appeal and to transfer the jurisdiction to the appellate court, such as the service of a notice of appeal, the said act should be performed by the ministerial officer of the court in which the case was tried and determined which in the case at bar is the sheriff of Sinoe County.

This principle seems to have been established in the case *Melton v. Republic* (Lib. Ann. Series, No. 1, p. 29) where the appeal was dismissed because the sheriff acted as ministerial officer instead of the marshal. It was held that the court will refuse jurisdiction in cases in which the proper ministerial officer of an inferior tribunal does not act.

As to the second point, we must observe that the practice governing appeals in vogue at the time the opinion cited above was given, required the notice of appeal to be issued by the clerk of this court, and therefore the marshal of this court or his deputy was the proper person to serve said notice (see Act Leg. Lib. Approved Feb. 20, 1875). By the statutes of 1894-5, the method of giving notice having been changed, the rule in said case ceased to operate. Legal maxim, "where the reason of the rule ceases, the rule itself ceases."

We are therefore of the opinion that the principle established in the case *Morris et al. v. Gatlin et al.,* relative to the service of a notice of appeal does not apply in this case.

While we have repeatedly declared that this court will not regard technical objections which do not materially affect the case, we must here observe that the objection raised to the manner in which a notice of appeal is issued and served is not a technical objection but a material point, which claims the serious consideration of this court, affecting as it does, the very existence of the case in this court.

We are therefore of the opinion that the appeal should be dismissed; and it is so ordered.

Arthur Barclay, for appellants.

Chas. B. Dunbar, for appellees.