

**PANKEY V. HOT SPRINGS NAT'L BANK, 1938-NMSC-030, 42 N.M. 425, 80 P.2d 765
(S. Ct. 1938)**

**PANKEY
vs.
HOT SPRINGS NAT. BANK**

No. 4375

SUPREME COURT OF NEW MEXICO

1938-NMSC-030, 42 N.M. 425, 80 P.2d 765

April 29, 1938

Appeal from District Court, Sierra County.

Action by Joseph L. Pankey against the Hot Springs National Bank. From the judgment, the plaintiff appeals.

COUNSEL

E. L. Medler and Wm. A. Gillenwater, both of Hot Springs, for appellant.

Edward D. Tittmann, of Hillsboro, and Mechem & Hannett, of Albuquerque, for appellee.

JUDGES

Hudspeth, C. J., and Sadler, Bickley, Brice, and Zinn, JJ., concur.

OPINION

{*426} {1} The question for decision is the effect of a failure of appellant to comply with section 1 of Supreme Court rule VII, adopted July 29, 1935, which reads as follows: "Within fifteen days after the allowance of an appeal or the issuance of a writ of error, the appellant or plaintiff in error shall give notice thereof to the opposite parties, and make proof of service to be filed in the district court. No party not so served shall be deemed an appellee or defendant in error unless brought in by order of the court allowing the appeal or writ of error, on motion of the appellant or plaintiff in error, heard as an adversary proceeding, and in discretion and on just terms."

{2} Attorneys in the lower court for Hot Springs National Bank filed a petition for leave to appear amici curiae for the purpose of suggesting want of jurisdiction in this court by reason of the failure of appellant to serve the notice required by section 1 of rule VII, quoted above. At the hearing we ruled that the petition would be treated as a special

appearance of appellee for the purpose of moving the dismissal of the appeal. It appears that after the expiration of the 15-day period and the filing of the petition in this court appellant served notice of the appeal on defendant and filed proof of service in this court. The court allowing the appeal clearly has jurisdiction of the matter of bringing in an appellee. The language of the rule is clear. In an adversary proceeding "the court allowing the appeal * * * on motion of the appellant * * * in discretion and on just terms" may, by order, bring in an appellee.

{3} The motion to dismiss the appeal will be continued for 60 days, within which time the appellant may file a supplemental transcript. It is so ordered.