

AMBROSE V. GREGORIO, 1927-NMSC-074, 33 N.M. 9, 261 P. 820 (S. Ct. 1927)

**AMBROSE
vs.
GREGORIO**

No. 3181

SUPREME COURT OF NEW MEXICO

1927-NMSC-074, 33 N.M. 9, 261 P. 820

November 07, 1927

Appeal from District Court, McKinley County, Holloman, Judge.

Suit by F. J. Ambrose against John Gregorio for an injunction. From a judgment for defendant, plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

A judgment holding a complaint insufficient for injunction will not be reviewed for failure of the trial court to permit the complaint to be amended, where there was no request or offer to amend, and no specific exception.

COUNSEL

H. W. Yersin, of Gallup, for appellant.

H. W. Atkins, of Gallup, for appellee.

JUDGES

Watson, J. Parker, C. J., and Bickley, J., concur.

AUTHOR: WATSON

OPINION

{*10} {1} OPINION OF THE COURT Appellant sued for an injunction. Appellee answered the complaint, and appellant filed a reply. The cause was heard upon the pleadings and the evidence. The court thereupon rendered judgment, holding that the

complaint did not set forth a cause of action entitling the appellant to the injunction, dismissing the temporary injunction, and awarding costs to appellee.

{2} To this judgment appellant excepted and moved for an appeal, which was granted.

{3} Several errors are here assigned, but the only one argued is that the court erred in not permitting appellant to amend his complaint. This, if it be error, is not available. Appellant made no objection or exception, aside from the general one in the judgment, and did not offer to amend nor request permission to do so. He cannot therefore be heard to object. While under Laws 1917, c. 43, § 37, no exception is required in the trial of equity cases, the many decisions to the effect that error, to which the attention of the trial court was not directed in some manner, is not available on review are too familiar to require citation. This case does not seem to come within any of the exceptions to that rule.

{4} The judgment must therefore be affirmed.

{5} It is so ordered.