

**CLARK V. MAISEN, 1929-NMSC-066, 34 N.M. 344, 280 P. 922 (S. Ct. 1929)**

**CLARK  
vs.  
MAISEN**

No. 3187

SUPREME COURT OF NEW MEXICO

1929-NMSC-066, 34 N.M. 344, 280 P. 922

August 13, 1929

Appeal from District Court, Bernalillo County; Helmick, Judge.

Rehearing Denied October 15, 1929.

Suit by J. Lewis Clark against H. A. Maisen. From an adverse decree, plaintiff appeals.

**SYLLABUS**

**SYLLABUS BY THE COURT**

Where, in a suit in equity for an accounting, there is nothing in the transcript from which the facts upon which the court acted can be ascertained, the judgment of the district court will be affirmed.

**COUNSEL**

J. Baron Burg, of Albuquerque, and J. Lewis Clark, of Estancia, for appellant.

Simms & Botts, of Albuquerque, for appellee.

**JUDGES**

Parker, J. Bickley, C. J., and Watson, J., concur. Simms and Catron, JJ., did not participate.

**AUTHOR: PARKER**

**OPINION**

{\*345} {1} OPINION OF THE COURT We cannot see how the appellant can have any relief in this case. This was a suit in equity brought by appellant to wind up the affairs of

an alleged partnership between him and appellee. The court heard the evidence, and on June 9, 1925, rendered a decree in which he found that appellant was not a partner of appellee, but that he was an employee of appellee at a compensation equal to one-half of the net proceeds of the business. The court ordered appellee to file a statement showing the business done during appellant's connection therewith, which was done. On November 23, 1925, the court made and entered a final decree finding that appellee had fully accounted and that he owed appellant nothing and that appellant take nothing as against the appellee. Appellant has appealed from this latter decree.

{2} Heretofore we have stricken from the transcript all findings of fact and conclusions of law made by the court because the same were not ordered by the court to be filed and made a part of the record. We also struck out of the record a so-called statement of facts for the reason that the same was not authenticated. We filed an opinion stating our reasons for such action. There is no bill of exceptions in the record showing the facts upon which the court acted.

{3} Under such circumstances, all that is before us are the two decrees of the court; one to the effect that appellant was not a partner of appellee, but was simply an employee; the other to the effect that appellee had fully accounted and owed appellant nothing for his services as such employee. No appeal was taken from the former decree, and it may be doubtful whether it is before us for any purpose; but, be that as it may, there is nothing to do { \*346 } but to affirm the judgment of the court below, and it is so ordered.