

Manuel Gonzales and others

vs.

William Boren

102

SUPREME COURT OF NEW MEXICO

1885-NMSC-001, 3 N.M. 285, 5 P. 336

January 05, 1885, Filed

Error to First Judicial District Court, Taos County.

COUNSEL

Catron & Thornton, for plaintiffs in error.

M. W. Mills, for defendant in error.

JUDGES

Axtell, C. J. Wilson, J., concurs.

AUTHOR: AXTELL

OPINION

{*286} {1} This cause was brought into this court by writ of error to the district court for the county of Taos. It appears to be an action of forcible entry and detainer, begun before a justice of the peace. The complaint, however, does not allege that the complainant, Boren, was possessed or entitled to the possession of the property in question, nor does it set forth any of the statutory grounds upon which such an action can be brought. Judgment was rendered by the justice in favor of Boren for the possession of the property, and \$ 99.95 damages, from which judgment the defendant Gonzales appealed to the district court, at the next term of which he failed to appear to prosecute his appeal. The appellee, Boren, then docketed the case, and moved to dismiss the appeal, at the same time asking that the judgment of the justice be affirmed, and a new judgment rendered against Gonzales and his sureties. Thereupon, the court entered a judgment dismissing the appeal and affirming the judgment of the justice, and also gave a new judgment for the property, and damages against Gonzales, and his sureties on his appeal-bond. This was error. No judgment whatever could have been

properly entered upon the complaint in favor of Boren, and the district court had no authority to dismiss the appeal, and at the same time affirm the judgment of the justice.

{*287} **{2}** The judgment of the district court is therefore reversed, and the cause remanded to said court, with directions to proceed therein in accordance with this opinion, and the law applicable to the case.