

GRADI V. BACHECHI, 1918-NMSC-037, 24 N.M. 100, 172 P. 188 (S. Ct. 1918)

CASE HISTORY ALERT: affected by 1927-NMSC-095

**GRADI et al.
vs.
BACHECHI et al.**

No. 2104

SUPREME COURT OF NEW MEXICO

1918-NMSC-037, 24 N.M. 100, 172 P. 188

February 23, 1918, Decided

Appeal from district Court, Bernalillo County; Raynolds, Judge.

Suit by Lorenzo Gradi and others against Arthur O. Bachechi and others, Judgment for plaintiffs, and defendants appeal. Affirmed.

SYLLABUS

SYLLABUS BY THE COURT.

1. Where the record on appeal does not contain the transcript of evidence, the findings of the trial court are conclusive.
2. Requested findings of fact and conclusions of law are not part of the record proper, unless ordered to be filed by the court.

COUNSEL

H. C. MILLER, of El Paso, Tex., for appellants.

NEILL B. FIELD, of Albuquerque, for appellees.

JUDGES

PARKER, J. HANNA, C. J., and ROBERTS, J., concur.

AUTHOR: PARKER

OPINION

{*101} {1} OPINION OF THE COURT. PARKER, J. This is an appeal from the district court for Bernalillo county. Lorenzo Gradi and others brought suit against Arthur O. Bachechi, Ettore Franchini, Ovidio Franchini, and Leo Bonaguidi, to enjoin them from selling keg beer not the product of the W. J. Lemp Brewing Company; from further using certain bar fixtures furnished to them by appellees; for an accounting of profits lost by appellees on account of appellants' breach of contract, and to recover the balance due on a certain promissory note executed by appellants and delivered to appellees. From a judgment entered against them appellants have perfected this appeal.

{2} The record on appeal does not contain the transcript of the evidence taken at the trial. The findings are therefore conclusive. *Jahren v. Butler*, 20 N.M. 119, 127, 147 P. 280.

{3} We have no way of ascertaining what questions were presented by appellants to the trial court for decision, because of the state of the record. Included in the record proper is a paper purporting to be findings of fact and conclusions of law, requested by appellants, but refused by the trial court. That is the only paper in the record which even intimates what questions were presented to the trial court. That paper is not a part of the record proper under section 4491, Code 1915. As none of the questions argued by appellants are jurisdictional, there is nothing for us to review.

{4} The judgment of the trial court will therefore be affirmed; and it is so ordered.

HANNA, C. J., and ROBERTS, J., concur.