

GRAY V. TAYLOR, 1911-NMSC-020, 16 N.M. 171, 113 P. 591 (S. Ct. 1911)

**S. T. GRAY, ET AL, Appellants,
vs.
ROBERT H. TAYLOR, ET AL, Appellees**

No. 1350

SUPREME COURT OF NEW MEXICO

1911-NMSC-020, 16 N.M. 171, 113 P. 591

February 04, 1911

Appeal from the District Court for Lincoln County, before M. C. Mechem, Associate Justice. See opinion affirming on original hearing, 15 N.M. 742.

For Opinion see 15 N.M. 742.

SYLLABUS

SYLLABUS

Court assumes for purposes of this case that the procedure is proper as both sides admit injunction to be the proper remedy.

COUNSEL

T. B. Catron and George B. Barber for Appellants. See 15 N.M. 742.

Hewitt & Hudspeth for Appellee. See 15 N.M. 742.

JUDGES

Parker, J. William H. Pope, C. J., and Edward R. Wright, A. J., dissent. J. R. McFie, A. J., not having heard the argument, did not participate in this decision.

AUTHOR: PARKER

OPINION

{*172} ON REHEARING.

{1} This case was decided at the last term by a divided court. A rehearing was had at the present term, and the cause resubmitted to all of the justices qualified to sit in the

case, including Associate Justice Roberts, who has since the former hearing come upon the bench. In the former opinion a quare was thrown out by the court as to whether the procedure by injunction was proper in cases of this kind, and calling attention to the case of *Torres v. Board of County Commissioners*, 15 N.M. 703, 110 P. 851, decided at the last term. In the argument on rehearing, counsel on both sides admit that injunction is a proper remedy in a case of this kind, and for that reason the court withdraws the intimation contained in the former opinion, and assumes for the purpose of this case that the procedure is proper.

{2} In the former decision the court divided upon the question as to whether the petition for the election was in accordance with the act under which the county commissioners assumed to proceed. Upon this question the court has carefully re-examined the question, and finds no reason to recede from its former position.

{3} All of the other questions in the case were fully examined in a former opinion, and have been re-examined by the court and on this rehearing the court adheres to its former decision.