

KOCH V. BACH, 1930-NMSC-055, 35 N.M. 93, 290 P. 322 (S. Ct. 1930)

**KOCH
vs.
BACH**

No. 3451

SUPREME COURT OF NEW MEXICO

1930-NMSC-055, 35 N.M. 93, 290 P. 322

June 09, 1930

Appeal from District Court, Santa Fe County; Holloman, Judge.

Rehearing Denied July 17, 1930.

Action by A. C. Koch, doing business under the name of Santa Fe Electric Laundry against Henry Bach. Judgment for defendant, and plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

1. A party who participated without objection in litigating the decisive issue will not be heard on appeal to complain that it was not properly pleaded.

COUNSEL

A. M. Edwards, of Santa Fe, for appellant.

J. O. Seth, of Santa Fe, for appellee.

JUDGES

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

AUTHOR: WATSON

OPINION

{1} OPINION OF THE COURT This case is controlled by Koch v. Ziegler, No. 3417, 35 N.M. 91, 290 P. 321, just decided. Though the pleadings, the evidence, and appellee's

position are somewhat different, appellant's contentions are the same, and must be similarly disposed of. Appellant did, in this case, except to certain findings that they were immaterial to the issues. But, if those exceptions meant that a defense of unreasonable discharge had not been pleaded, it was too late after appellant had litigated the issue without objection.

{2} The judgment must be affirmed, and the cause remanded. It is so ordered.