

LEVY V. ORTEGA, 1898-NMSC-012, 9 N.M. 391 (S. Ct. 1898)

**EUGENE A. LEVY, Plaintiff in Error,
vs.
JOSE A. ORTEGA, Defendant in Error**

No. 659

SUPREME COURT OF NEW MEXICO

1898-NMSC-012, 9 N.M. 391

August 24, 1898

Error, from a judgment by default, to the Fifth Judicial District Court, Socorro County, upon a sentence of the justice of the peace of Precinct No. 16, sentencing defendant to pay a fine of ten dollars and costs.

SYLLABUS

SYLLABUS BY THE COURT

Statutes Repealed -- Interference With Acequius. Section 39, Compiled Laws of 1884 is repealed by chapter 1 of the laws of 1895, and a judgment entered under the former subsequent to the passage of the latter act is illegal and void.

COUNSEL

Francis Buchanan for plaintiff in error.

Sec. 39, chap. 1, Comp. Laws 1884, under which plaintiff in error was tried and convicted, was expressly repealed by an act of the legislature passed February 28, 1895. Sec. 7, chap. 1, p. 15.

Freeman & Baca for defendant in error.

JUDGES

Crumpacker, J. Mills, C. J.; McFie, Parker and Leland, JJ., concur.

AUTHOR: CRUMPACKER

OPINION

{*392} {1} On the eighth day of April, 1895, Jose Arcadia Ortega lodged with the justice of the peace of precinct number 16, in Socorro county, his complaint, alleging that he was mayordomo of the public acequia of Sabinal, and that on March 24, 1895, Eugene A. Levy, plaintiff in error had unlawfully appropriated the waters of said acequia. Upon this complaint, the said Levy was tried by jury, which found the following verdict, "We, the jury, unanimously have found the accused guilty according to sec. 39 of the Compiled Laws of 1884." Upon the verdict the justice of the peace sentenced the defendant to pay a fine of ten dollars and costs; from which decision the plaintiff in error prayed for and was granted an appeal to the district court. Plaintiff in error failed to docket his appeal in the district court, whereupon the defendant in error docketed the cause and upon motion for judgment for such failure the district court dismissed the appeal and on May 17, 1895, affirmed the judgment of the court below. Subsequently the court overruled the motions of the plaintiff in error to set aside the default and to vacate the judgment.

{2} We find that section 39 of the Compiled Laws of 1884 was repealed by necessary implication at the time this proceeding was instituted, by chapter 1 of the laws of 1895, and no {*393} proceeding could be maintained under it. The judgment being void, the same is reversed and the cause remanded to the district court of Socorro county, with directions to set aside the judgment and dismiss the cause.