

**MOORE et al.
vs.
BRANNIN**

No. 3168

SUPREME COURT OF NEW MEXICO

1927-NMSC-025, 32 N.M. 249, 255 P. 395

February 01, 1927

Appeal from District Court, Colfax County; Kiker, Judge.

Action by Cora B. Moore and others against William C. Brannin. From a judgment for defendants, plaintiffs appeal. Application for certiorari to supply portions of the record.

SYLLABUS

SYLLABUS BY THE COURT

Where it is seen that the result of the issuance of a writ of certiorari would be futile, it will be denied.

COUNSEL

J. W. Wilson, of Albuquerque, for appellants.

J. Leahy, of Raton, for appellee.

JUDGES

Parker, C. J. Bickley and Watson, J.J., concur.

AUTHOR: PARKER

OPINION

{*249} {1} OPINION OF THE COURT An application for certiorari to supply portions of the record has been filed by appellee. The parts of the record sought to be brought up show that a previous appeal had been taken, which, upon application of appellant, was dismissed by the district court, and thereafter the present appeal was granted and has been perfected. The effectiveness of the order of the district court in dismissing the first

appeal would seem to be doubtful, the jurisdiction which had control of the same being in this court.

{2} Another consideration, however, impels us to deny {250} the application for certiorari. The taking of the second appeal operated as an abandonment of the first appeal, and it would therefore be immaterial to show in this court the taking of the first appeal. In *Dailey v. Foster*, 17 N.M. 377, 128 P. 71, we held that the suing out of a subsequent writ of error operated as an abandonment of the former appeal. We can see no reason for any distinction between that case and this. See, also, *Blanchard v. State*, 29 N.M. 584, 224 P. 1047.

{3} It follows that certiorari would be futile, and for that reason should be denied; and it is so ordered.