

NOCE V. NOCE, 1930-NMSC-083, 35 N.M. 156, 291 P. 293 (S. Ct. 1930)

**NOCE
vs.
NOCE et al.**

No. 3230

SUPREME COURT OF NEW MEXICO

1930-NMSC-083, 35 N.M. 156, 291 P. 293

August 19, 1930

Error to District Court, McKinley County; Holloman, Judge.

Action by Joseph Noce against Josephine Noce and another. To review an adverse judgment, plaintiff brings error.

SYLLABUS

SYLLABUS BY THE COURT

Supreme Court need not examine contentions of error in moot case merely as bearing on possible liability on injunction bond, but may affirm judgment without prejudice to that question.

COUNSEL

E. A. Martin, of Gallup, for plaintiff in error.

H. C. Denny, of Gallup, for defendants in error.

JUDGES

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

AUTHOR: WATSON

OPINION

{*156} {1} OPINION OF THE COURT As pointed out when this cause was before us on a motion to dismiss the writ of error, it is now moot. Noce v. Noce, 34 N.M. 335, 281 P.

460. We overruled the motion because of a possible liability of the plaintiff in error upon the injunction bond.

{2} On consideration of the briefs upon the merits, and bearing in mind that no such claim of liability may ever be made, we conclude that it would not be advisable for this court to spend the time necessary to determine the various claims of error. {*157} The judgment will be affirmed without prejudice to any further proceedings involving liability upon the injunction bond. The cause will be remanded. It is so ordered.