

**RICHARDS
vs.
LUCERO**

No. 3520

SUPREME COURT OF NEW MEXICO

1931-NMSC-010, 35 N.M. 356, 298 P. 662

March 28, 1931

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

Suit by A. Richards against Alfredo Lucero, wherein defendant filed a cross-complaint. From the judgment rendered, plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

1. Credibility of witnesses and weight of evidence is for the jury.

COUNSEL

R. P. Fullerton and Willis N. Birdsall, both of Santa Fe, for appellant.

McIntosh & Chavez and E. P. Davies, all of Santa Fe, for appellee.

JUDGES

Watson, J. Parker and Sadler, JJ., concur. Bickley, C. J., and Hudspeth, J., did not participate.

AUTHOR: WATSON

OPINION

{*357} {1} OPINION OF THE COURT Appellant, as assignee of a judgment rendered against appellee March 8, 1923, sued to revive it. By cross-complaint appellee sued appellant for abuse of process, alleging that, after the judgment in question had become dormant, appellant had sued out execution thereon, and, by levying the same upon appellee's stock of merchandise, had occasioned the latter damage.

{2} The trial court, upon findings, concluded that appellant was entitled to a renewal of his judgment in the sum of \$ 552.98, and that appellee was entitled to \$ 750 damages on his cross-complaint. Judgment was rendered on the cross-complaint for the excess.

{3} Appellant's only contention here is that the damages awarded for abuse of process are excessive. He admits that, if appellee's story be taken at face value, he cannot escape the substantial evidence rule. Whether this witness told the truth was a question for the trial court.

{4} The judgment must be affirmed. The cause will be remanded.

{5} It is so ordered.