

SHAFER V. SECOND NAT'L BANK, 1887-NMSC-025, 4 N.M. 292, 13 P. 179 (S. Ct. 1887)

Geo. Shafer
vs.
Second National Bank of New Mexico

No. 318

SUPREME COURT OF NEW MEXICO

1887-NMSC-025, 4 N.M. 292, 13 P. 179

February 02, 1887

Appeal from District Court, County of Santa Fe.

COUNSEL

Francis Downs, for appellee.

Wm. Breeden, for appellant.

OPINION

{1} Plaintiff commenced an action of debt in the court below upon an express contract for interest upon deposits made with defendant, amounting to the sum of \$ 917.48. Defendant pleaded the general issue. There was a trial by jury and verdict and judgment for plaintiff for the full amount of his claim. From this judgment defendant appealed, but has failed to perfect its appeal by filing in this court a transcript of the record and proceedings in the cause. Plaintiff now produces a transcript of the record, and moves to affirm the judgment, and for 10 per cent. damages, as provided by sections 2189 and 2191, Comp. Laws.¹ An examination of the record now before us fails to disclose any defense to the action. We are therefore bound to presume that the judgment was fully justified by the evidence, and that the appeal is without merit, but was taken solely for delay. The statute is intended to discourage vexatious and groundless appeals. We therefore affirm the judgment, with 6 per cent. damages.

¹ Sec. 2189. * * * The appellant shall file in the office of the clerk of the supreme court, at least ten days before the first day of such court to which the appeal is returnable, a perfect transcript of the record of the proceedings in the case. If he fail to do so, the appellee may produce in court such transcript; and, if it appear thereby that an appeal

has been allowed in the cause, the court shall affirm the judgment, unless good cause can be shown to the contrary. * * *

Sec. 2191. And, upon the affirmation of any judgment or decision, the supreme court may award to the appellee, or defendant in error, such damages, not exceeding 10 per cent. on the amount of the judgment complained of, as may be just.