

SHINNOCK V. KUHN, 1887-NMSC-020, 4 N.M. 234, 13 P. 424 (S. Ct. 1887)

Shinnock & Sherrell
vs.
P. H. Kuhn, Receiver

No. 244

SUPREME COURT OF NEW MEXICO

1887-NMSC-020, 4 N.M. 234, 13 P. 424

January 29, 1887

Error to District Court, Santa Fe County.

Rehearing Denied 4 N.M. 234 at 236.

Proceeding in equity, at chambers, by plaintiffs in error against Kuhn, receiver, defendant in error, to show cause why he should not be punished for contempt, etc. On motion to dismiss.

COUNSEL

J. H. Knoebel, for plaintiffs in error.

Edward L. Bartlett, for defendant in error.

JUDGES

Long, C. J.

AUTHOR: LONG

OPINION

{*235} {1} A final order was entered June 3, A. D. 1884, in this cause by the judge of the First judicial district, in the county of Santa Fe, sitting at chambers, July 6, 1885. Plaintiffs in error, Shinnock & Sherrell, filed their **proceipe** with the clerk of the First district for a writ of error, which issued the same day. On the fourth day of January, A. D. 1886, plaintiffs filed with the clerk of this court a transcript of the proceedings in the court below. On the second day of the present term, the plaintiffs in error having wholly {*236} failed to make any assignment of error whatever, the defendant moved to dismiss the writ of error for the reason, among others given in the motion, of such failure to assign error.

{2} Section 2189 of the Compiled Laws of this territory is as follows: "On appeals and writs of error, the appellant and plaintiff in error shall assign errors on or before the first day of the term to which the cause is returnable. In default of such assignment of errors, the appeal or writ of error may be dismissed, and the judgment affirmed, unless good cause can be shown to the contrary."

{3} This statute is in general terms, and broad enough to include causes in equity. It appears to us that it was the intention in that section to establish a general rule, and that should govern the practice in this cause. No reason has been shown for the omission to assign errors.

{4} Defendant's motion is sustained, the writ of error dismissed, and the costs arising by virtue of the writ taxed against the plaintiffs.

ON REHEARING

Long, C. J.

{5} No such waiver having been made as the one stated upon which the motion for rehearing is predicated, the same is overruled.