

ANDREWS V. WARREN LUMBER & PAINT CO., 1949-NMSC-001, 53 N.M. 51, 201 P.2d 772 (S. Ct. 1949)

**ANDREWS
vs.
WARREN LUMBER & PAINT CO.**

No. 5141

SUPREME COURT OF NEW MEXICO

1949-NMSC-001, 53 N.M. 51, 201 P.2d 772

January 05, 1949

Appeal from District Court, Dona Ana County; Carmody, Judge. Action, by C. L. Andrews against Warren Lumber & Paint Company for injuries suffered while loading sacks on truck purchased from defendant. From a judgment for defendant, plaintiff appeals.

COUNSEL

R. R. Posey and J. D. Weir, both of Las Cruces, for appellant

W. C. Whatley and William B. Darden, both of Las Cruces, for appellee.

JUDGES

Lujan, Justice. Brice, C.J., and Sadler, McGhee, and Compton, JJ., concur.

AUTHOR: LUJAN

OPINION

{*51} {1} The appellant, plaintiff below, seeks the reversal of a judgment denying him damages on account of injuries sustained by him while loading plaster sacks on his truck purchased from appellee, defendant below.

{2} There is no question but the findings of fact, unless set aside, support the judgment in this case. These findings of fact were attacked by the assignment of errors, but were not argued as required by paragraph 6 of Supreme Court Rule 15, 1941 Comp. 19-201(15), the material portion of which is as follows:

"A contention that a verdict, judgment or finding of fact is not supported by substantial evidence will not ordinarily be entertained, unless the party so contending shall have

started in his brief the substance of all evidence bearing upon the proposition, with proper references to the transcript. Such a statement will be taken as complete unless the opposite party shall call attention in like manner to other evidence bearing upon the proposition."

{3} The appellant has not stated the substance of all the evidence bearing upon the several propositions with proper reference to the transcript. No attempt was made to cite the transcript or state the substance of all of the testimony. The findings of the court, therefore, are the facts upon which the case rests in this court. In re White's {52} Estate, 41 N.M. 631, 73 P.2d 316; Robinson v. Mittry Bros., 43 N.M. 357, 94 P.2d 99.

{4} As the judgment is amply supported by the findings of the court it must be affirmed.

{5} It is so ordered.