

BARIO V. BLUMNER, 1873-NMSC-004, 1 N.M. 552 (S. Ct. 1873)

**LOUIS BARIO and PRUDENCIO BENAVIDEZ
vs.
CHARLES BLUMNER**

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF NEW MEXICO

1873-NMSC-004, 1 N.M. 552

January 1873 Term

Error to the District Court of Dona Ana County. The opinion states the case.

COUNSEL

S. B. Elkins and T. B. Catron, for the plaintiffs in error.

Kirby Benedict, for the defendant in error.

JUDGES

Bristol, J.

AUTHOR: BRISTOL

OPINION

{1} This is an action brought in the district court, in and for the third district and county of Dona Ana. The defendants appeared and pleaded the general issue. In 1868, at the June term of that court, in the absence of the defendants, and without submitting the case to a jury, the court rendered judgment in favor of the plaintiff for the recovery of the possession of the real property described in the petition, and for costs of suit. The record is before this court for review on writ of error. The court below had no authority in the premises to render judgment except upon trial and inquest by a jury and verdict found: **Vide** Comp. Laws of N. M., sec. 40, p. 200.

{2} The judgment, therefore, is reversed, and the cause remanded to the court below for trial.