

**CONLEY  
vs.  
DAVIDSON**

No. 3475

SUPREME COURT OF NEW MEXICO

1929-NMSC-092, 34 N.M. 421, 283 P. 52

November 18, 1929

Appeal from District Court, Chaves County; Richardson, Judge.

Action by H. C. Conley against H. H. Davidson. From an adverse judgment, defendant appeals. On motion to dismiss appeal.

**SYLLABUS**

**SYLLABUS BY THE COURT**

Motion to dismiss appeal, on sole ground that five days' notice required by App. Proc. Rule V, § 2, was not given, was overruled, under Rule XIV, § 3, where appellee showed no prejudice; notice omitted not being jurisdictional.

**COUNSEL**

Reid, Hervey & Iden, of Albuquerque, for appellant.

O. E. Little, of Roswell, for appellee.

**JUDGES**

Parker and Catron, JJ., did not participate.

**OPINION**

{\*421} {1} OPINION OF THE COURT Appellee moves dismissal of this appeal on the sole ground that the five days' notice required {\*422} by App. Proc. Rule V, § 1, was not given. He showed no prejudice, and the notice omitted is not jurisdictional. We have therefore overruled the motion, under App. Proc. Rule XIV, § 3.

{2} It is so ordered.