DE BACA V. PUEBLO, 1900-NMSC-004, 10 N.M. 38, 60 P. 73 (S. Ct. 1900)

MARCOS C. De BACA et al., Plaintiffs in Error,
vs.
THE PUEBLO OF SANTO DOMINGO, Defendant in Error

No. 837

SUPREME COURT OF NEW MEXICO

1900-NMSC-004, 10 N.M. 38, 60 P. 73

February 07, 1900

Error to the District Court of Bernalillo County, Second Judicial District.

Facts are stated in the opinion.

SYLLABUS

SYLLABUS BY THE COURT

1. Appellate -- Practice -- Findings of Trial Court. The findings of fact made by a judge who decides a case without a jury, are entitled to as much if not more consideration than the findings of a master or referee, and where the decree based thereon is not manifestly wrong, the same will not be disturbed.

2. Practice, Trial -- Appointment of Interpreter. The appointing of an interpreter is in the discretion of the court, and is not appealable.

3. Acequia -- Right to Water Flowing Through. The failure to work an acequia under the laws of the Territory regulating the same, will not justify those who have no interest therein in wrongfully appropriating water flowing through it.

COUNSEL

Thomas B. Catron, E. V. Chaves, H. L. Warren and Marcos C. de Baca for plaintiffs in error.

F. W. Clancy and Geo. Hill Howard for defendants in error.

JUDGES

Mills, C. J. Parker and McFie, JJ., concur. Crumpacker, J., having tried the case below, did not participate in this decision; Leland, J., absent.

AUTHOR: MILLS

OPINION

*{*39}* **{1}** 1. In this case, a jury was waived and the cause was tried by the court, which held in favor of the Pueblo, the plaintiff below. We have carefully considered all of the evidence introduced at the trial, and find that there is testimony to support the findings on which the decree is based. The findings of fact made by the judge who decides a case without a jury are entitled to as much if not more consideration than the findings of a master or referee. As the decree in this case does not seem to be manifestly wrong, and as we are bound by the repeated decisions of this court, the decree will not be disturbed. Davis v. Schwartz, 155 U.S. 631, 39 L. Ed. 289, 15 S. Ct. 237; Kimberly v. Arms, 129 U.S. 512, 32 L. Ed. 764, 9 S. Ct. 355; Zanz v. Stover, 2 N.M. 29; Torlina v. Trorlicht, 5 N.M. 148, 21 P. 68; De Cordova v. Korte, 7 N.M. 678, 41 P. 526; Field v. Romero, 7 N.M. 630, 41 P. 517; Gentile v. Kennedy, 8 N.M. 347, 45 P. 879; Givens v. Veeder, 9 N.M. 256, 50 P. 316; Express Co. v. Walker, 9 N.M. 456, 54 P. 875; First Natl. Bank v. McClellan, 9 N.M. 636, 58 P. 347; Johnson v. Gallegos, decided at this term.

{2} 2. The court committed no error in appointing one of the Indians as interpreter. The appointment of an interpreter is in the discretion of the court, and is not appealable. 11 Am. and Eng. Ency. of Law, p. 525; People v. Ramirez, 56 Cal. 533.

{3} 3. The ditch in question was built by the Indians very many years ago. It has been maintained by and belongs to them, and we are unable to see how their failure to elect a mayordomo and work the acequia, under the laws of the Territory regulating such election and work, would justify the plaintiffs in error in wrongfully appropriating water flowing through it, which the court below finds does not belong to them.

*{*40}* **{4}** There is no error in the decree complained of, and the same is therefore affirmed.