

**DURAN V. NICHOLS, 1921-NMSC-013, 26 N.M. 620, 195 P. 798 (S. Ct. 1921)**

**DURAN  
vs.  
NICHOLS**

No. 2458

SUPREME COURT OF NEW MEXICO

1921-NMSC-013, 26 N.M. 620, 195 P. 798

January 19, 1921

Appeal from District Court, Sierra County; Ed Mechem, Judge.

Suit by Alfonso Duran against J. M. Nichols. Judgment for defendant and plaintiff appeals.

**SYLLABUS**

**SYLLABUS BY THE COURT**

The findings of a trial court, based on confliction evidence, will not be disturbed on appeal, where the same are supported by substantial evidence. Kelly v. La Cueva Ranch Co., 25 N.M. 674, 187 P. 547, followed.

**COUNSEL**

Edward D. Tittmann, of Hillsboro, for appellant.

H. A. Wolford, of Hillsboro, for appellee.

**JUDGES**

Raynolds, J. Roberts, C. J., and Parker, J., concur.

**AUTHOR:** RAYNOLDS

**OPINION**

{\*620} {1} OPINION OF THE COURT. This is an action brought by Alfonso Duran in the district court of Sierra county against J. M. Nichols to foreclose a lien on the Alert mining claim, situated in Las Animas mining district in said county. The complaint sets forth notice of lien, recording of the same, which notice recited the amount of wages of \$ 38

due Alfonso Duran at the rate of \$ 4 per day for labor performed between certain dates, that the person who employed the lien claimant was M. R. Crawford, that the owner of the claim was J. M. Nichols, and that the name of the claim was Alert lode mining claim, situated in the Las Animas mining district. Judgment is asked for \$ 38 wages due, \$ 30 as attorney fee, and \$ 1.50 as costs of filing lien and the cost of the action.

{2} Defendant put in a general denial, and the case was tried to the court without a jury, the defendant relying on the claim that he was not the owner of the Alert at the time the labor was performed; that the ground covered by the location was formerly the Alert location, but was then open and government land; that the wife of the defendant located the ground which included a portion of the claim formerly known as the Alert. {621} Certain findings of fact and conclusions of law were requested by the plaintiff, which the court refused. Judgment was given for the defendant, declaring the lien sought to be foreclosed by the plaintiff's action null and void. An appeal was prayed to this court, which was granted.

{3} Appellant assigns as error the failure of the court to make certain findings of fact to the effect that he worked on the Alert claim and that appellee was the owner of the claim. In support of his assignment he argues that "the evidence is so uncontradicted as to require the court to find that the plaintiff [appellant] had a good and sufficient lien against the Alert claim in the manner and form alleged in the notice of the lien." The court refused the requested findings, but on the contrary, found that it was not shown by the evidence that there was any Alert lode claim situated in the Las Animas mining district of Sierra county, N. M., and that, further, the defendant (appellee) is not now and never was the owner of the Alert lode claim as mentioned in the complaint. The transcript of record shows that there was evidence, and it was conflicting, and the present case is governed by the rule announced by this court in a long line of decisions, recently reviewed and the principle reiterated in the case of Kelly v. La Cueva Ranch Co., 25 N.M. 674, 187 P. 547, where it is held that findings based upon conflicting evidence will not be disturbed on appeal, where the same are supported by substantial evidence.

{4} Finding no error in the record, the judgment is therefore affirmed; and it is so ordered.