

**FINLEY et al.
vs.
BLANCHARD et al.**

No. 2606

SUPREME COURT OF NEW MEXICO

1922-NMSC-038, 28 N.M. 113, 206 P. 1117

April 19, 1922

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

Action by M. U. Finley and others, doing business under the name of the Carrizozo Live Stock Commission Company, against Phil H. Blanchard and another, doing business under the name of the Gallo Mache Sheep Company.

Judgment for plaintiffs, and defendants appeal.

COUNSEL

Gibbany & Epstein, of Roswell, and H. B. Hamilton, of Carrizozo, for appellants. Geo. W. Prichard, of Santa Fe, for appellees.

JUDGES

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

AUTHOR: DAVIS

OPINION

{*113} {1} OPINION OF THE COURT This is an action by appellees, as brokers, to recover from appellants a commission for the sale of sheep. The defense was that, although appellees were the moving cause in making the sale, they did not sell the sheep at the best price obtainable, and that they had received a better offer which they failed to {*114} communicate to appellants. After hearing the evidence the trial court instructed the jury to return a verdict for appellees. Appellants assert that this was erroneous, claiming that there was some evidence to sustain their contentions, and that the jury should have been permitted to pass upon it. A reading of the transcript fails to disclose any proof in support of the position of the appellants. While it is true that the purchaser did authorize appellees to resell the sheep on commission, this was not done

until after the contract of purchase between him and appellants had been signed and a part of the purchase price paid. There is nothing to support the allegation that appellees could have sold the sheep, either before or after the making of the contract, at a higher price than was obtained. The price was in fact made by one of the appellants, not by appellees, and he himself signed the contract. The instruction of the trial court was therefore proper. The judgment of the trial court is therefore affirmed; and it is so ordered.