

FIRST NAT'L BANK V. NOCE, 1926-NMSC-041, 31 N.M. 591, 249 P. 107 (S. Ct. 1926)

**FIRST NAT. BANK OF GALLUP
vs.
NOCE**

No. 3099

SUPREME COURT OF NEW MEXICO

1926-NMSC-041, 31 N.M. 591, 249 P. 107

August 19, 1926

Error to District Court, McKinley County; Holloman, Judge.

Action by the First National Bank of Gallup against Josephine Noce. After a judgment below, plaintiff brings error.

SYLLABUS

SYLLABUS BY THE COURT

Where a question, sought to be reviewed on writ of error, has become moot, the writ will be dismissed, and this court may, under chapter 45, Laws 1917, make such order concerning the payment of costs in this court as may seem just and proper.

COUNSEL

Henry G. Coors and Harold C. Perry, both of Albuquerque, and A. L. Zinn, of Gallup, for plaintiff in error.

Simms & Botts, of Albuquerque, and H. C. Denny, of Gallup, for defendant in error.

JUDGES

Parker, C. J. Bickley and Watson, JJ., concur.

AUTHOR: PARKER

OPINION

{*592} {1} OPINION OF THE COURT A writ of error was sued out to review the action of the district court in ordering the plaintiff in error to pay into the registry of the court

certain moneys which it held under a contract between it and the claimants to the fund. Since that time the cause in which the order was made has been dismissed by the district court. This disposes of the question involved in the writ of error and renders it moot. Counsel for defendant in error have moved to dismiss the writ of error on this account, which will be done.

{2} The question is raised by counsel for plaintiff in error as to the taxation of costs in this court, the claim being that the defendant in error should be taxed with the same. In this instance it cannot be said that either party has prevailed in this court, but the present situation has arisen by operation of law out of facts which have occurred since the suing out of the writ of error. Under such circumstances it would seem just and proper that each party should pay his own costs. We have the power to make this disposition of the matter under chapter 45, Laws 1917.

{3} It follows that the writ of error should be dismissed, and that each party should pay his own costs; and it is so ordered.