

FUNKE V. PRESLEY, 1918-NMSC-127, 25 N.M. 45, 176 P. 815 (S. Ct. 1918)

**FUNKE
vs.
PRESLEY.**

No. 2208.

SUPREME COURT OF NEW MEXICO

1918-NMSC-127, 25 N.M. 45, 176 P. 815

December 02, 1918, Decided

Appeal from District Court, Socorro County; M. C. Mechem, Judge.

Action by Herm A. Funke against T. S. Presley. Judgment for plaintiff, and defendant appeals. Affirmed.

SYLLABUS

SYLLABUS BY THE COURT.

Where a judgment is supported by substantial evidence, it will not be disturbed on appeal.

COUNSEL

A. R. MACDONNEL, of Socorro, for appellant.

BRAY & BUNTON, of Socorro, for appellee.

JUDGES

HANNA, C. J. PARKER and ROBERTS, J.J., concur.

AUTHOR: HANNA

OPINION

{*46} {1} OPINION OF THE COURT. HANNA, C. J. Herm A. Funke instituted this action in assumpsit in the court of the justice of the peace. From a judgment in favor of Funke and against T. L. Presley, the latter appealed to the district court for Socorro county, where the cause was tried de novo and without a jury, resulting in a judgment for Funke in the sum of \$ 89.88. From that judgment Presley has perfected this appeal.

{2} The complaint alleged that appellant was indebted to appellee for board and lodging furnished to the latter. The appellant admitted his indebtedness on that account in the sum of \$ 42.50, but filed a counterclaim, alleging that appellee was indebted to him on account of work and labor done and performed, materials furnished, and chattels of appellant destroyed and converted by appellee, in the total sum of \$ 221.90.

{3} There are nine assignments of error specified and argued by appellant. Most of them constitute attacks upon the sufficiency of the evidence to sustain the judgment. The others are upon propositions which, upon investigation, we find to be without any merit. We have examined the evidence contained in the record, and find that it constitutes substantial evidence to sustain the judgment rendered by the court. Where there is substantial evidence to support a judgment, the same will not be disturbed on appeal, a proposition too often laid down in this court to require citation of authority.

{4} For the reasons stated, the judgment of the trial court is affirmed; and it is so ordered.

PARKER and ROBERTS, J.J., concur.