

**INTERNATIONAL SUPPLY CO. V. TORICO OIL CORP., 1930-NMSC-047, 35 N.M.
104, 290 P. 321 (S. Ct. 1930)**

**INTERNATIONAL SUPPLY CO.
vs.
TORICO OIL CORPORATION et al.**

No. 3387

SUPREME COURT OF NEW MEXICO

1930-NMSC-047, 35 N.M. 104, 290 P. 321

May 17, 1930

Appeal from District Court, Lee County; Brice, Judge.

Rehearing Denied August 6, 1930.

Action by the International Supply Company against the Torico Oil Corporation and another. Judgment for plaintiff and defendants appeal.

SYLLABUS

SYLLABUS BY THE COURT

1. A finding in favor of plaintiff in an action on account and judgment rendered thereon will not be disturbed on appeal, where, as in this case, there is substantial evidence to support it.

COUNSEL

J. D. Atwood and Howard C. Buchly, both of Roswell, for appellants.

J. H. Jackson, of Artesia, and Reese & Reese, of Roswell, for appellee.

JUDGES

Bickley, C. J. Watson and Catron, JJ., concur. Parker and Simms, JJ., did not participate.

AUTHOR: BICKLEY

OPINION

{*104} {1} OPINION OF THE COURT Plaintiff (appellee) sued defendants (appellants) on account, to recover for fishing tools sold to be used on an oil and gas well for the purpose of fishing out tools that had been lost in the well. The account consisted of several items. Plaintiff recovered a money judgment and was decreed to have a materialman's lien and foreclosure thereof. Defendants appeal.

{2} Appellants assign errors, first, that the court erred in rendering the money judgment against defendants because the account was not proven, and, second, that the material furnished was not of the character for which a materialman's lien could be claimed. As appellee makes no argument in support of the decree establishing the lien and for foreclosure thereof and says it does not care to repel appellants' {*105} attack upon this portion of the judgment, we shall consider only appellants' first point.

{3} From an examination of the record, we are convinced that the money judgment in favor of appellee should be affirmed. That portion of the judgment decreeing that the materialman's lien claimed by appellants be foreclosed is reversed. The appellants prevailing will recover their costs in this court. The cause is remanded, with directions to proceed consistently herewith, and it is so ordered.