

JENNISON V. BOOS, 1887-NMSC-010, 4 N.M. 71, 13 P. 230 (S. Ct. 1887)

**John E. Jennison
vs.
J. Boos and others**

No. 297

SUPREME COURT OF NEW MEXICO

1887-NMSC-010, 4 N.M. 71, 13 P. 230

January 14, 1887

Appeal from Sierra County.

Motion to strike record and bill of exceptions from the files.

COUNSEL

Elliott, Pickett & Elliott, for plaintiff.

S. B. Newcomb, for defendants.

JUDGES

Brinker, J. Concur: Long, C. J.

AUTHOR: BRINKER

OPINION

{*71} {1} This cause was tried, and judgment rendered, on the fourteenth day of April, 1886. On the same day a motion for a new trial was filed and overruled, and the defendants given until June 15th following to propose their record and bill of exceptions for perfecting the appeal then allowed them. On June 3d the parties agreed in writing that the time for preparing such bill of exceptions be extended to August 1st. On June 9th, in accordance with said agreement, the court ordered that the time be extended, for the purpose mentioned, until the first day of August. On the fifteenth day of November defendants obtained an order for an entry **nunc pro tunc**, showing the filing and overruling of the motion for a new trial at the preceding April term; the clerk having failed, at said term, to enter these facts of record. No further entry, stipulation, or order was made in the cause, until November {*72} 19th, when the defendants submitted to plaintiff a proposed record and bill of exceptions, which plaintiff conceded to be correct, but expressly reserved "the right to move to dismiss the cause and appeal in the

supreme court, upon any and all grounds he may elect, or for any cause whatever." December 4, 1886, the record and bill was presented to the judge, who signed it, and ordered it filed, which was done, and a transcript thereof sent to this court. Plaintiff now moves us to strike this record and bill of exceptions from the files.

{2} This case falls within the principle announced in **Evans v. Baggs, ante**, 147, 4 N.M. 67, 13 P. 207, and for the reasons there stated the motion is sustained.