

JONES V. GALLUP, 1928-NMSC-030, 33 N.M. 385, 268 P. 569 (S. Ct. 1928)

**JONES
vs.
TOWN OF GALLUP et al.**

No. 3326

SUPREME COURT OF NEW MEXICO

1928-NMSC-030, 33 N.M. 385, 268 P. 569

April 23, 1928

Appeal from District Court, McKinley County; Holloman, Judge.

Action by Arthur A. Jones against Town of Gallup and others. Judgment for defendants, and plaintiff appeals. On motion to dismiss appeal.

SYLLABUS

SYLLABUS BY THE COURT

Where the praecipe for the record on appeal calls for a partial record, it is necessary, under the provisions of section 32, chapter 43, Laws 1917, and our rule of June 8, 1927, to specify the question sought to be reviewed, and, in the absence of such specification, there is no question before the court for determination, and the appeal will be dismissed.

COUNSEL

Marron & Wood, of Albuquerque, and H. W. Yersin, of Gallup, for appellant.

Sam G. Bratton and Summers Burkhart, both of Albuquerque, for appellees.

JUDGES

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

AUTHOR: PARKER

OPINION

{*385} {1} OPINION OF THE COURT A motion to dismiss the appeal has been filed and submitted on briefs. The motion is based upon the proposition that only a partial record

is brought here by appellant, and the question sought to be reviewed is not stated in the praecipe for the record, as is required by section 32, c. 43, Laws 1917 and our rule of June 8, 1927. That the record is partial sufficiently appears from the praecipe. After calling for certain specific papers, there appears a statement as follows:

{*386} "To Summers Burkhart and Sam G. Bratton,

Attorneys for Defendant:

"Please take notice that upon the appeal to the Supreme Court from the judgment in the above entitled cause, the plaintiff deems that the papers specified in the above praecipe are all of the parts of the record necessary to present to the Supreme Court the questions sought to be reviewed upon the appeal, and, therefore, directed the clerk of the district court to return the papers therein specified, omitting any other papers appearing in the record as unnecessary thereto.

"Dated this 20th day of December, 1927.

"[Signed] H. W. Yersin,

"Francis E. Wood,

"Attorneys for Plaintiff."

{2} It thus appears that counsel for appellant at least thought that the record called for was partial, and so intended it to be. In such case the question to be decided must be stated in the praecipe, otherwise there is no question here for decision. *Norment v. Mardorf*, 26 N.M. 210, 190 P. 733; *Southern Surety Co. v. Colburn*, 32 N.M. 243, 255 P. 405.

{3} It follows that the motion to dismiss the appeal should be granted and the appeal dismissed, and the cause remanded to the district court, and it is so ordered.