

KEMP V. WILLIAMS, 1924-NMSC-084, 30 N.M. 299, 232 P. 1078 (S. Ct. 1924)

KEMP et al.
vs.
WILLIAMS et al.

No. 2904

SUPREME COURT OF NEW MEXICO

1924-NMSC-084, 30 N.M. 299, 232 P. 1078

December 22, 1924

Appeal from District Court, Torrance County; Ed. Mechem, Judge.

Rehearing Denied February 17, 1925.

Action by W. C. Kemp and others against H. C. Williams and others. Judgment for plaintiffs, and defendants appeal.

SYLLABUS

SYLLABUS BY THE COURT

Questions not presented to the lower court will not ordinarily be considered on appeal.

COUNSEL

Geo. W. Prichard, of Santa Fe, for appellants.

E. P. Davies, of Santa Fe, for appellee.

JUDGES

Parker, C. J. Botts and Fort, JJ., concur.

AUTHOR: PARKER

OPINION

{*299} {1} OPINION OF THE COURT This is an action for \$ 750, the amount claimed to be due under contract for an option granted by appellee to appellant of the right to purchase certain real estate within a certain period of time. The court found:

"That all the allegations of the plaintiff's complaint and amended complaint are true, and have been fully proven."

{*300} {2} This is the only finding made by the court, and no findings were requested by appellant. At the conclusion of the judgment, an exception was inserted as follows:

"To all of which defendant at the time excepted."

{3} It is perfectly apparent that under these circumstances there is nothing before the court for review. The general exception above quoted presented no question to the trial court, and none of the steps or conclusions, leading up to the judgment, were called to the attention of that court as erroneous, by request for finding and conclusions, or otherwise. Under such circumstances we cannot review the alleged errors set out in the brief. See *Stumpf v. Pohle*, 28 N.M. 606, 216 P. 498, where many of our former cases are collected. Also *Collins v. Unknown Heirs*, 29 N.M. 140, 219 P. 491.

{4} It follows that the judgment of the court below should be affirmed, and the cause remanded, with directions to proceed accordingly, and to enter judgment against the sureties upon appellant's supersedeas bond, and it is so ordered.