

KNIGHT V. FAIRLESS, 1916-NMSC-089, 22 N.M. 367, 161 P. 1110 (S. Ct. 1916)

**KNIGHT
vs.
FAIRLESS et al.**

No. 1942

SUPREME COURT OF NEW MEXICO

1916-NMSC-089, 22 N.M. 367, 161 P. 1110

December 29, 1916

Appeal from District Court, Otero County; Leahy, Judge.

Action between Eli Knight and Irby L. Fairless and another. From judgment for the latter, former appeals. On motion to dismiss appeal.

SYLLABUS

SYLLABUS BY THE COURT

Where there has been a bona fide attempt to comply with the provisions of section 6, c. 77, Laws 1915, in regard to abstracts of record, an appeal will not be dismissed, although the parts of the record referred to in the assignments of error are imperfectly presented in the abstract.

COUNSEL

J. L. Lawson of Alamogordo and Holt & Sutherland of Las Cruces, for appellant.

Renehan & Wright of Santa Fe, for appellees.

JUDGES

Parker, J. Roberts, C.J., and Hanna, J., concur.

AUTHOR: PARKER

OPINION

{*368} {1} OPINION OF THE COURT. Appellee has moved to dismiss the appeal upon the ground that the abstract of record fails to present parts of the record to which reference is made in the assignments of error. He relies upon section 6 of chapter 77,

Laws 1915, which provides that in such cases the appeal may be dismissed. This section is designed for the convenience of this court in examining the cases as they come before us, and gives the appellee or defendant in error no absolute right to a dismissal. In this case the abstract does present the parts of the record referred to in the assignments of error, but, perhaps, the same are so imperfectly presented as to require reference to the transcript in order to understand the facts. The pages of the transcript are referred to so that the facts may be readily obtained. There has been a bona fide attempt to comply with this statute, and, under all the circumstances, we do not deem it necessary to dismiss the appeal.

{2} The motion to dismiss the appeal will be denied; and it is so ordered.