

John B. Lamy
vs.
Mercedes Chaves de Lamy

No. 239

SUPREME COURT OF NEW MEXICO

1887-NMSC-024, 4 N.M. 291, 13 P. 178

February 02, 1887

Appeal from District Court, Santa Fe County.

On motion to reconsider order dismissing writ of error. See 12 Pac. Rep. 650; same case, *ante*, 43.

OPINION

{*291} {1} At a former day of the term we dismissed the writ of error in this cause because no assignment of errors had been filed as required by section 2189, Comp. Laws. The motion to reconsider presents no excuse whatever for the failure to file an assignment of errors on or before the first day of the return-term of the writ. It is, however, insisted that the defendant in error, by entering an appearance and consenting to an order for leave on the part of plaintiff for further time in which to file his brief, must be construed as a waiver of his right to move to dismiss the {*292} writ. A full appearance in this court by a defendant in error would waive the necessity for citation, but it is not perceived how such appearance can in any manner be construed into a waiver of the statutory duty imposed on plaintiff in error to assign error on or before the first day of the term. Nor do we see how an agreement by defendant in error, by which further time was extended to plaintiff in error to file a brief, can be tortured into a waiver of his right to move to dismiss the writ of error for a cause in no manner connected with the time in which the brief is required to be filed under the rules of this court.

{2} The motion to reconsider is overruled.