

**LAS CRUCES MOTOR CO. V. CONOVER, 1930-NMSC-046, 35 N.M. 15, 288 P. 1065
(S. Ct. 1930)**

LAS CRUCES MOTOR CO.

vs.

CONOVER

No. 3434

SUPREME COURT OF NEW MEXICO

1930-NMSC-046, 35 N.M. 15, 288 P. 1065

May 08, 1930

Appeal from District Court, Dona Ana County; Frenger, Judge.

Action by the Las Cruces Motor Company against L. H. Conover, wherein defendant filed a cross-complaint. Judgment for plaintiff, and defendant appeals.

SYLLABUS

SYLLABUS BY THE COURT

1. Refusal to find fact essential to affirmative defense, if supported by substantial evidence, cannot be disturbed on appeal.
2. Whether testimony of witness, claimed to have been impeached, was worthy of credit, was question for trial court.

COUNSEL

Holt & Holt, of Las Cruces, for appellant.

R. L. Young and W. C. Whatley, both of Las Cruces, for appellee.

JUDGES

Watson, J. Bickley, C. J., and Parker, J., concur. Catron and Simms, JJ., did not participate.

AUTHOR: WATSON

OPINION

{*16} {1} OPINION OF THE COURT This appeal is from a judgment for the purchase price of farm machinery. The defense was breach of both an alleged express warranty and an alleged implied warranty of efficiency. There was also a cross-complaint for damages occasioned by the breach.

{2} The trial court refused to find that the machinery was unfit for the purposes for which designed, and for which appellant contends it was warranted to be efficient. This refusal, unless erroneous, is decisive of the case.

{3} There was, no doubt, evidence sufficient, if believed by the trial court, to have warranted him in making the requested finding. But there was also substantial evidence to the contrary. It is contended that appellee's witness was so impeached as to render his testimony unworthy of belief. That was a matter for the trial court to determine.

{4} Under the familiar substantial evidence rule, there is nothing this court can do but affirm the judgment and remand the cause. It is so ordered.