

LEBERT V. MISNER, 1921-NMSC-091, 27 N.M. 452, 202 P. 1117 (S. Ct. 1921)

**LEBERT
vs.
MISNER**

No. 2536

SUPREME COURT OF NEW MEXICO

1921-NMSC-091, 27 N.M. 452, 202 P. 1117

November 09, 1921

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

Action by J. H. Lebert against F. B. Misner. Judgment for plaintiff, and defendant appeals.

SYLLABUS

SYLLABUS BY THE COURT

COUNSEL

J. Leahy, of Raton, and C. W. G. Ward, of East Las Vegas, for appellant. J. B. Lusk, of Roy, and A. B. Renehan, of Santa Fe, for appellee.

JUDGES

Davis, J. Raynolds, C. J., and Parker, J., concur.

AUTHOR: DAVIS

OPINION

{*452} {1} OPINION OF THE COURT Appellee brought this action to recover a commission upon the sale of real estate belonging to appellant, alleging in his complaint, among {*453} other matters, that he was a real estate agent, that he was the procuring cause of the sale made by appellant, and that appellant expressly promised him a commission if the sale was made. He claimed a commission of 5 per cent. upon the sale price. The answer denied all these allegations. Trial was had to the court without a jury. The court made definite findings in favor of appellee, three of which are as follows: "That on the 15th day of September, 1919, the plaintiff herein took one C. E. Holcomb to the said lands of plaintiff; that at said time and place plaintiff said to

defendant, 'If you sell your lands to this man (meaning said Holcomb) will you save me a commission?' to which defendant replied, 'Yes; if I sell my lands to him, I will save you a commission.'" "That shortly thereafter, at the same place and upon the same day, the said 15th day of September, 1919, the defendant and the said C. E. Holcomb did enter into an agreement whereby defendant sold to said Holcomb his 960 acres of land hereinabove referred to at a price of \$ 35 per acre." "That a commission of 5 per cent. is a reasonable commission." We have examined the transcript, and find that all these findings are supported by substantial evidence. No questions of law are presented. The liability of appellant for the amount for which the court gave judgment follows from the findings. The judgment is therefore affirmed, and it is so ordered.