

MAXWELL L. G. & R. CO. V. THOMPSON, 1895-NMSC-014, 8 N.M. 91, 42 P. 95 (S. Ct. 1895)

**MAXWELL LAND GRANT & RAILWAY COMPANY et al., Appellees,
vs.
GUADALUPE THOMPSON, Administratrix, et al., Appellants**

No. 581

SUPREME COURT OF NEW MEXICO

1895-NMSC-014, 8 N.M. 91, 42 P. 95

October 09, 1895

Appeal, from a decree for complainants, from the Fourth Judicial District Court, Colfax County.

COUNSEL

Caldwell Yeaman, Wells, and McNeal & Taylor for appellants.

Frank Springer for appellees.

JUDGES

Collier, J. Laughlin, Hamilton, and Bantz, JJ., concur.

AUTHOR: COLLIER

OPINION

{*91} {1} The history of events which preceded the filing of the bill in this case is minutely set forth in the opinion of Justice Bradley in the case of Thompson v. Maxwell, reported in 95 U.S. 391, 24 L. Ed. 481, and the purpose of the filing of the bill upon which the proceedings were had that were then before the supreme court of the United States on appeal. The bill then before that court, being a bill of review, was held not to be sustainable, as such a bill could not be used to reverse, modify, and reconstruct the decree of September, 1866. That court held, however, that "if, instead of seeking to reverse the decree of September, 1866, the bill had sought to carry that decree more effectually into execution, it would have been free from legal objections, and equally conducive to the object in view, -- the quieting of the title to the land in question." That court, therefore, reversed the decree on that bill, which had been in favor of the complainants {*92} in the lower courts, with directions to allow them to amend their bill as they should be advised, and with liberty to the defendants to answer any new matter

introduced therein, and that all the proofs in the case shall stand as proofs upon any future hearing, with liberty to either party to take additional proofs, etc. An amended bill was then filed, which, by elimination, changed it from a bill of review to a bill to quiet in complainants the title to the property in controversy. Upon the answer, practically the same questions are raised as in the case of Bent v. Miranda (decided at this term), the evidence in each case being used in both, as per stipulation of counsel, who were the same in both causes. A decision against the appellants, who were complainants in that cause, must logically conduce to an affirmance of the decree rendered in favor of the complainants in this cause, and it is so ordered. It is further ordered that this cause be remanded to the district court of Colfax county, with directions to carry said decree into effect.