

OSKINS V. MILLER, 1929-NMSC-012, 33 N.M. 658, 275 P. 97 (S. Ct. 1929)

**OSKINS
vs.
MILLER**

No. 3267

SUPREME COURT OF NEW MEXICO

1929-NMSC-012, 33 N.M. 658, 275 P. 97

February 09, 1929

Error to District Court, Santa Fe County; Holloman, Judge.

Action by George Miller against Hobart Oskins. Judgment dismissing the appeal from the Justice Court, and defendant brings error.

SYLLABUS

SYLLABUS BY THE COURT

Upon an appeal from a justice of the peace the appellee may move to dismiss the appeal for failure of appellant to cause to be filed in the district clerk's office a copy of the docket entries of the justice of the peace, together with the original papers before him.

COUNSEL

C. B. Barker and C. J. Roberts, both of Santa Fe, for plaintiff in error.

E. P. Davies, of Santa Fe, for defendant in error.

JUDGES

Parker, J. Bickley, C. J., and Watson, J., concur.

AUTHOR: PARKER

OPINION

{*658} {1} OPINION OF THE COURT This case was before us upon a motion to quash the writ of error, which motion was denied. 33 N.M. 104, 263 P. 766. The case is now here upon the merits. The district court entered the following judgment:

{*659} "That the said motion to dismiss the said appeal be and the same is hereby sustained, and the said appeal is hereby dismissed at the cost of the said appellant, Hobart Oskins, and the clerk of said court shall tax the fees of the witnesses of the said George Miller against the said appellant. To all of which the said defendant, Hobart Oskins, objects and excepts; and the said Hobart Oskins having in open court prayed an appeal to the supreme court of the state of New Mexico, the said appeal is hereby granted."

{2} This action of the court was taken upon the motion of defendant in error (plaintiff in the court of the justice of the peace), which motion was based upon the proposition that the plaintiff in error (defendant in the court of the justice of the peace) had failed to cause a transcript of the entries in the docket of the justice of the peace to be filed on or before the first day of the next term of the district court, as is required by sections 3222, 3223, Code 1915. This action of the district court was clearly correct. While it is true that the district clerk placed the case on the docket of the district court as a case appealed from the justice of the peace, he did so without authority, there being nothing filed with him except a bundle of papers, and there being filed by the justice of the peace no official certificate of his docket entries which would identify the papers filed as the official papers and files in the case. This is required by the statute. No application was made to the district court to correct this defect by supplying this transcript and certificate of the justice of the peace, and there was, therefore, nothing for the district court to do but dismiss the appeal.

{3} The judgment of the district court was therefore correct, and should be affirmed, and the cause remanded, and it is so ordered.