

STATE V. DALLAS, 1917-NMSC-006, 22 N.M. 392, 163 P. 252 (S. Ct. 1917)

**STATE
vs.
DALLAS**

No. 1890

SUPREME COURT OF NEW MEXICO

1917-NMSC-006, 22 N.M. 392, 163 P. 252

February 13, 1917

Appeal from District Court, Chaves County; McClure, Judge.

Hayden Dallas was charged with trespassing upon a school section. His demurrer was sustained in part, and the State appeals.

SYLLABUS

SYLLABUS BY THE COURT

The state has no right to appeal from a judgment rendered by the district court sustaining in part a demurrer to an information charging appellee with trespassing on a school section.

COUNSEL

Harry S. Bowman, Assistant Attorney General, for the State.

J. M. Dye and R. C. Reid, both of Roswell, for appellee.

JUDGES

Hanna, C. J. Parker and Roberts, J.J., concur.

AUTHOR: HANNA

OPINION

{*392} {1} OPINION OF THE COURT. The appellee was charged by information with trespassing upon a school section. To this information a demurrer filed by appellee was sustained in part, and the state, through the district attorney, thereupon perfected this appeal.

{2} Appellee has moved to dismiss the appeal on the ground that the statute gives the state no right of appeal from a judgment on a demurrer to an information. The able Assistant Attorney General reviews the law which controls this question and practically confesses error.

{3} Section 4517, Code 1915, provides:

"The state shall be allowed an appeal in criminal cases, only in the cases and under the circumstances mentioned in section 4519."

{4} Section 4519, Code 1915, provides:

"When any indictment is quashed or judged insufficient on demurrer, or judgment is arrested, the district court may {393} cause the defendant to be committed or recognized to answer another indictment, or an appeal to the supreme court shall be granted, if the prosecuting attorney desires it." Section 50, c. 57, Laws 1907.

{5} In *State v. Chacon*, 19 N.M. 456, 145 P. 125, this court held that appeals were the creatures of statute, and that section 2 of article 6 of the state Constitution simply defined the appellate jurisdiction of this court, and did not undertake thereby to grant to litigants the right of appeal. In *Ex parte Carrillo*, 22 N.M. 149, 158 P. 800, this court approved the holding in the *Chacon* Case, and also held that section 9, c. 77, Laws 1915, did not enlarge the right of the state to appeal, but was addressed to the rights of defendants only.

{6} In *State v. Ross*, 119 Mo. App. 401, 94 S.W. 842, the right of the state to appeal from a decision on an information was discussed. The statute construed by that court was almost identical with that of ours. The court said:

"This statute has been given a strict construction in numerous cases and the right of the state to appeal uniformly denied, except in instances falling strictly within the cases and circumstances specified therein."

{7} The court then cites a number of cases from Missouri denying the right of the state to appeal therein, and says:

"And in consonance with the doctrine of these cases it has been frequently held that no appeal or writ of error will lie on behalf of the state under these statutes in any case or prosecution for misdemeanor by information; the principles of the adjudications being that the word 'indictment,' used in the statute from an adverse ruling on which, in an attack by demurrer, motion to quash, or motion in arrest, the state is authorized to appeal, is a word of technical common-law import, and, when employed in the Constitution and laws of this state, means the same as at common law -- a presentment or accusation by the grand jury, as contradistinguished from information, which, at common law, was the presentment or accusation of the crown officer under his oath of office, and that

therefore the Legislature, having employed the word 'indictment' solely in the statute authorizing appeal by the state, necessarily limited the right of appeal to such adverse rulings on an indictment as therein contemplated and thereby excluded the right of appeal from the same rulings on an information" -- citing authorities.

{*394} **{8}** The motion to dismiss the appeal will therefore be granted; and it is so ordered.