

ROBERSON V. MOISE BROS. CO., 1920-NMSC-042, 26 N.M. 174, 190 P. 354 (S. Ct. 1920)

**ROBERSON, Treasurer,
vs.
MOISE BROS. CO.**

No. 2427

SUPREME COURT OF NEW MEXICO

1920-NMSC-042, 26 N.M. 174, 190 P. 354

May 27, 1920

Appeal from District Court, Guadalupe County; Edwin Mechem, Judge.

Rehearing Denied July 1, 1920.

Suit by Harry R. Roberson, Treasurer of the Village of Santa Rosa, N. M., against Moise Bros. Company. Judgment for defendant, and plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

Where parties to a cause in the district court stipulated that the findings and conclusions in another case shall be accepted as the findings and conclusions of law in the case covered by the stipulation, there is no question for consideration on appeal from a judgment in the latter case, in the absence of the findings and conclusions of law in the cause which the stipulation provided should control.

COUNSEL

W. T. Brothers, of Santa Rosa, for appellant.

F. Faircloth, of Santa Rosa, for appellee.

JUDGES

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

AUTHOR: ROBERTS

OPINION

{*174} {1} OPINION OF THE COURT. This is a companion case to No. 2426, Harry H. Roberson, Treasurer, v. Citizens' Lumber Co., 26 N.M. 171, 190 P. 353, and a like motion is interposed by appellant to strike certain portions of the transcript. The same inexcusable negligence in preparing the transcript in this case existed on the part of the clerk of the district court and the attorney for appellant, but the defect in this transcript of record which precludes a consideration of the case by this court is because of the following:

The parties stipulated in the lower court as follows:

"Comes now the respective attorneys in the above-entitled cause and stipulate that the findings and conclusion in cause {*175} No. 1002, Harry R. Roberson, Treasurer of the Village of Santa Rosa, New Mexico, Plaintiff, v. The Citizens' Lumber Company, Defendant, as to the issues of fact and questions of law shall be accepted in this suit, both cases being similar in the issues raised. The right of appeal is reserved by both parties."

{2} They have failed to incorporate in this transcript of record the findings and conclusions in the case referred to, and the evidence introduced in that case is not brought into this record. For this reason there is nothing here for consideration, even if we should assume that the certificate of the clerk shows sufficiently the filing of the papers referred to in the office of the clerk of the district court.

{3} The appeal in this case will therefore be dismissed; and it is so ordered.