

SWOPE V. HALL, 1965-NMSC-149, 75 N.M. 756, 411 P.2d 233 (S. Ct. 1965)

**EDNA SWOPE, Plaintiff-Appellee,
vs.
TATE HALL, Defendant-Appellant**

No. 7680

SUPREME COURT OF NEW MEXICO

1965-NMSC-149, 75 N.M. 756, 411 P.2d 233

December 06, 1965

Appeal from the District Court of Santa Fe County, Scarborough, Judge

Motion for Rehearing Denied February 14, 1966

COUNSEL

{*757} McKENNA and SOMMER, Santa Fe, New Mexico, Attorneys for Appellant.

BIGBEE and BYRD, ARTHUR COLEMAN, Santa Fe, New Mexico, Attorneys for Appellee.

JUDGES

COMPTON, Justice, wrote the opinion.

CONCUR:

M. E. NOBLE, J., IRWIN S. MOISE, J.

AUTHOR: COMPTON

OPINION

COMPTON, Justice.

{1} The grounds for reversal urged in this appeal are identical with those considered and disposed of by the court this day in Hofer v. Hall, cause number 7679. The cases were consolidated on appeal and by authority of the case, the judgment should be reversed and the cause remanded for a hearing upon the merits.

{2} IT IS SO ORDERED.

CONCUR:

M. E. NOBLE, J., IRWIN S. MOISE, J.

MOTION FOR REHEARING

ON MOTION FOR REHEARING

COMPTON, Justice.

{3} We have no doubt that the written terms of a promissory note can be explained by parol evidence, at least so far as it concerns the right of a maker of a note to offset an account then existing against the note. *Bromfield v. Trinidad National Investment Company*, (C.A. 10, 1929) 36 F.2d 646, 71 A.L.R. 542; Note in 71 A.L.R. 548, 570; *B. F. Goodrich Co. v. Brooks*, (Fla. App. 1959) 113 So.2d 593, and authorities cited therein. By affidavit filed in the case, it is made amply clear that an issue of fact in this regard was present. Accordingly, this ground furnishes no sufficient basis for the court's ruling.

{4} The motion for rehearing should be denied, and IT IS SO ORDERED.

WE CONCUR:

M. E. Noble, J., Irwin S. Moise, J.