

**RUPE V. NEW MEXICO LUMBER ASS'N, 1886-NMSC-008, 3 N.M. 555, 9 P. 301 (S.
Ct. 1886)**

**Rupe & Bullard and Duncan & Oakley
vs.
The New Mexico Lumber Association.**

No. 240

SUPREME COURT OF NEW MEXICO

1886-NMSC-008, 3 N.M. 555, 9 P. 301

January 16, 1886, Filed

Error to District Court, San Miguel County.

COUNSEL

O'Bryan & Pierce, for plaintiff in error.

W. D. Lee and **T. B. Catron**, for defendant in error.

JUDGES

Henderson, J. Long, C. J., and Brinker, J., concur.

AUTHOR: HENDERSON

OPINION

{*556} **{1}** This was an action of **assumpsit**, brought in the district court of San Miguel county for the purpose of enforcing a mechanic's lien on certain real estate described in the declaration. On appeal to this court at the last term, (3 N.M. 393, 5 P. 730),¹ the judgment was reversed, and the cause remanded for such further action in the district court as might be proper.

{2} When here before, the court held in distinct terms that the action was **assumpsit**, and that in such form of action the lien claimed could not be enforced. After the mandate had been filed in the court below, and against the objection of the plaintiff in error, the case proceeded as a suit in equity, without the slightest change by way of amendment.

{*557} **{3}** A personal judgment might have been rendered against such of the defendants as were liable; but it was in plain violation of the judgment of this court to

enforce, or attempt to enforce, the lien claimed in an action at law. The court below appointed a master in chancery, and entered a final decree on his report, condemning the premises on which the lien was claimed to sale, in satisfaction of the amount found due defendant in error.

{4} The judgment of this court in this case at the last term is conclusive upon us, and leaves nothing open for our consideration. The cause is reversed and remanded.

¹ Same case, **ante**, 261.