

FIRST NAT'L BANK V. STALEY, 1921-NMSC-023, 26 N.M. 650, 195 P. 514 (S. Ct. 1921)

**FIRST NAT. BANK OF ALBUQUERQUE
vs.
STALEY et al.**

Nos. 2478, 2479

SUPREME COURT OF NEW MEXICO

1921-NMSC-023, 26 N.M. 650, 195 P. 514

February 05, 1921

Appeal from District Court, Bernalillo County; Hickey, Judge.

Action by the First National Bank of Albuquerque against William L. Staley and another. Judgment for plaintiff in each case, and defendants appeal.

SYLLABUS

SYLLABUS BY THE COURT

In the absence of the evidence, the findings of the trial court will be assumed to be correct.

COUNSEL

E. W. Dobson and George C. Taylor, both of Albuquerque, for appellants.

A. B. McMillen, of Albuquerque, for appellee.

JUDGES

Roberts, C. J. Parker, J., and Holloman, D. J., concur.

AUTHOR: ROBERTS

OPINION

{*650} {1} OPINION OF THE COURT. The above cases can both be disposed of in one opinion. They are both appeals prosecuted from separate judgments of the district court of Bernalillo county.

{2} In the first numbered cause the appellee brought suit against appellants to recover on a promissory note executed to the appellee by Staley, secured by a thousand dollar registered Liberty Bond as collateral. The bond stood in the name of the corporation appellant, and it was alleged that the money was borrowed for the use and benefit of the corporation, and the proceeds were credited to the account of the corporation and expended by it, and that it had pledged the bond as collateral. The complaint set up that the collateral was ineffective because the bond had not been transferred as required by the rules and regulations of the treasury department, and the object of the suit was to compel the proper transfer of the bond; it having been alleged that the note was due and unpaid. The allegation of the complaint were denied by the answer, and findings of fact were made by the court, upon {*651} which judgment was entered granting appellee the relief prayed.

{3} The second numbered cause of action was a suit to foreclose a chattel mortgage filed by the appellee against the appellants, and on cross-complaint of the defendant Guy L. Rogers against appellants for money had and received. Upon issue joined trial was had and judgment was entered against the appellants in favor of the First National Bank, and also in favor of Guy L. Rogers on his cross-complaint.

{4} In both cases the findings fully supported the judgment rendered. In neither case did appellants incorporate in the transcript the evidence upon which the court based its findings. The rule is universal that in the absence of the evidence it is to be presumed that the findings of fact were supported and justified by the evidence. The appellant argues a great many questions, but, as they all depend more or less upon the evidence, which is not here, they will not be considered.

{5} The judgment in both cases was correct under the findings, and for this reason such judgment will be affirmed; and it is so ordered.