FIRST NAT'L BANK V. SWARTZ, 1917-NMSC-001, 22 N.M. 386, 162 P. 352 (S. Ct. 1917)

FIRST NAT. BANK OF IOWA CITY
vs.
SWARTZ

No. 1888

SUPREME COURT OF NEW MEXICO

1917-NMSC-001, 22 N.M. 386, 162 P. 352

January 10, 1917

Appeal from District Court, McKinley County; Raynolds, Judge.

Action by the First National Bank of Iowa City against F. C. Swartz. A judgment for plaintiff was set aside, and from a judgment for defendant dismissing the complaint, plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

Final judgments of the district courts in cases tried without a jury become final when rendered, and then and there pass from the further control of the court, except judgments falling within the provisions of sections 4227 and 4230, Code 1915. Hence, where a judgment is rendered for plaintiff in a suit on a promissory note, tried by the court without a jury, the court has not the power, 45 days after the judgment is entered, to vacate and set the same aside and render judgment for the defendant, and its act in so doing was without jurisdiction.

COUNSEL

A. B. Stroup of Albuquerque, for appellant.

John Venable of Albuquerque, for appellee.

JUDGES

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

AUTHOR: ROBERTS

OPINION

*{*386}* **{1}** OPINION OF THE COURT. This action was instituted in the district court of McKinley county by the appellant against the appellee to recover upon an alleged promissory note given by appellee to the Equitable Manufacturing Company, and by it assigned to appellant. The case was tried to the court without a jury and on December 15, 1914, after hearing the evidence, the court entered judgment for appellant for $ 587, and interest, amounting in all to the sum of $ 729.53. Forty-five days thereafter appellee filed a motion for a new trial, and on the same day there was filed in said cause findings of fact by the judge, in *{*387}* which he found that the appellee was induced to sign the note in question by reason of false and fraudulent representations made to him by the agent of appellant, and an order was entered setting aside the judgment of December 15, 1914, and entering judgment in favor of defendant dismissing the complaint and giving him his costs, from which judgment this appeal is prosecuted.

{2} The motion to vacate the judgment was not based upon an "irregularity," hence did not fall within the provisions of section 4230, Code 1915, nor was it a default judgment coming within the terms of section 4227, Code 1915. These sections of the statute are discussed in the case of Coulter v. Board of Commissioners, 22 N.M. 24, 158 P. 1086, hence the question naturally arises as to whether or not the court had jurisdiction to set aside the judgment in question in favor of appellant theretofore regularly entered.

{3} In view of the holding by this court in the case of Fullen v. Fullen, 21 N.M. 212, 153 P. 294, in which Justice Parker, speaking for the court, said:

> "It is perfectly clear that we have no terms of court, except for jury trials. The district courts are always in session, independent of the jury terms. We have no statute extending the control of a court over its judgments, after entry thereof, except in two instances, viz., in cases of defaults for a period of 60 days (section 4227, Code 1915), and in cases of irregularly entered judgments for a period of one year (section 4230, Code 1915.) It follows, both on reason and according to precedent, and taking into consideration the necessity for a rule of certainty and finality, that final judgments of the district courts in cases tried without a jury become final when rendered, and then and there pass from the further control of the court, except in the two instances above mentioned."

-- and the adherence to this rule in Coulter v. Board of Commissioners, supra, and State er rel. Baca v. Board of County Commissioners of Guadalupe County, 22 N.M. 383, 162 P. 175, not yet officially reported, we are compelled to hold that the court had no jurisdiction to set aside and vacate the judgment entered on December 15, 1914. Hence the subsequent action in sustaining the motion to vacate this judgment and entering judgment for appellee was void, *{*388}* for which reason this cause must be reversed, and remanded to the district court, with instructions to set aside and vacate the order and judgment last referred to; and it is so ordered.