

**JAMES V. LUTZ, 1915-NMSC-028, 20 N.M. 201, 147 P. 457 (S. Ct. 1915)**

**JAMES  
vs.  
LUTZ et al.**

No. 1725

SUPREME COURT OF NEW MEXICO

1915-NMSC-028, 20 N.M. 201, 147 P. 457

March 25, 1915

Appeal from District Court, Lincoln County; E. L. Medler, Judge.

Action by P. G. James against Henry Lutz and another. From an order, overruling a motion to vacate judgment, defendants appeal.

**COUNSEL**

George B. Barber of Carrizozo, for appellant.

This case, by consent, was set down for trial. Counsel for appellant was engaged in the trial of two cases on a certain day, finished therewith and left the court house at four in the afternoon. A default judgment was taken in this case against appellant at eight o'clock in the evening, without having notified counsel for appellant of the setting of the case.

It was an abuse of discretion, under these circumstances, for the court to refuse to set aside the default judgment.

Sharon v. Sharon, 16 Pac. (Cal.) 345.

No appearance or brief on the part of appellee.

**JUDGES**

Mechem, District Judge. Roberts, C. J., and Parker, J., concur.

**AUTHOR: MECHEM**

**OPINION**

OPINION OF THE COURT.

{1} This is an appeal from an order overruling a motion to vacate a judgment. We have but the appellants' side of it; the appellee having defaulted.

{2} While the court may have been justified in its action, yet the brief and argument of counsel for appellants, and the motion to set the judgment aside, show that appellants did not have an opportunity to be heard, and that no fault is imputable to them or their attorney. The circumstances of the case are such as might easily be explained in a manner to support the ruling of the trial judge; but, in the absence of any explanation on the part of the appellee, we are constrained to reverse the case and remand it, with instructions to vacate the judgment as prayed.