

**KNOLLENBERG V. MITCHELL, 1930-NMSC-117, 35 N.M. 345, 297 P. 145 (S. Ct. 1930)**

**KNOLLENBERG  
vs.  
MITCHELL, County Treasurer**

No. 3553

SUPREME COURT OF NEW MEXICO

1930-NMSC-117, 35 N.M. 345, 297 P. 145

December 20, 1930

Appeal from District Court, Otero County; Frenger, Judge.

On Rehearing April 10, 1931.

Suit by Florence C. Knollenberg against C. E. Mitchell, Treasurer of Otero County, for mandamus. The lower court awarded a peremptory writ, and defendant appeals.

**SYLLABUS**

**SYLLABUS BY THE COURT**

Under section 449, c. 133, Laws of 1921, former owner has three years from date of sale to redeem, and attempted redemption thereafter, subsequent to purchase of certificate by a third party from the county, came too late.

**COUNSEL**

J. B. Newell and Holt & Holt, all of Las Cruces, for appellant.

Knollenberg & Cameron, of El Paso, Texas, for appellee.

**JUDGES**

Simms, J. Bickley, C. J., and Watson, J., concur. Parker and Catron, JJ., did not participate.

**AUTHOR: SIMMS**

**OPINION**

{\*346} {1} OPINION OF THE COURT This is a companion case to Knollenberg v. State Bank of Alamogordo, 35 N.M. 427, 299 P. 1077, this day decided, and involves the same tax title. It is a mandamus suit to compel Mitchell, the county treasurer of Otero county, to accept redemption money and issue a certificate of redemption. The lower court awarded a peremptory writ, and the treasurer appealed.

{2} 1. There is only one question in the case. Where real estate was sold to the county February 1, 1923, for delinquent taxes of 1920, and the certificate of sale was recorded July 17, 1924, and held by the county until August 19, 1926, on which date it was sold, was a tender of redemption money on September 9, 1926, by the former owner, in time?

{3} The matter is governed by the law in force when the sale was made. In this case, that was chapter 133, Laws of 1921. The period of redemption provided by section 449 is three years from the date of sale, and, where the rights of a third person have intervened by a purchase of the certificate, redemption could not thereafter be made, after the three-year period expired. Williams v. Van Pelt, 35 N.M. 286, 295 P. 418, this day decided. See, also, Hiltcher v. Jones, 23 N.M. 674, 170 P. 884, and State ex rel. Ols v. Romero, 25 N.M. 290, 181 P. 435.

{4} It follows that the lower court erred in awarding the peremptory writ, and that the judgment should be reversed and the cause remanded with directions to discharge the writ; and it is so ordered.

### **MOTION FOR REHEARING**

#### **ON REHEARING**

{5} After careful consideration upon the rehearing, we adhere to the decision and opinion heretofore filed.