

LISCHE V. PANKEY, 1928-NMSC-041, 33 N.M. 528, 270 P. 799 (S. Ct. 1928)

**LISCHE
vs.
PANKEY, Commissioner of Public Lands**

No. 3289

SUPREME COURT OF NEW MEXICO

1928-NMSC-041, 33 N.M. 528, 270 P. 799

July 11, 1928

Appeal from District Court, Santa Fe County; Holloman, Judge.

Mandamus by Frank Lische against B. F. Pankey, Commissioner of Public Lands.
Judgment for plaintiff, and defendant appeals.

SYLLABUS

SYLLABUS BY THE COURT

An appeal involving a question which has become moot will be dismissed.

COUNSEL

R. C. Dow, Atty. Gen., for appellant.

W. A. Gillenwater, of Santa Fe, for appellee.

JUDGES

Parker, C. J. Bickley and Watson, JJ., concur.

AUTHOR: PARKER

OPINION

{*529} OPINION OF THE COURT This is an appeal by the commissioner of public lands from a mandamus requiring him to refund a sum exacted by a former commissioner as security that, if appellee were granted an extension of his oil lease, he would commence drilling operations within a specified time, and which sum was retained by the commissioner upon breach of the condition. A peculiar situation has arisen, necessitating the sustaining of the attorney general's motion to dismiss the appeal. It

appears that, due to a misunderstanding between the Attorney General's office and that of the commissioner, the refund has been made. The question is therefore moot, and the appeal must be dismissed, and the cause remanded.

The result is somewhat unfortunate, since, as announced at the original argument, the present appeal was intended to determine the duty of the commissioner in a number of similar pending claims. In view of that fact, it may not be improper to say that, from the consideration given to the case before the motion was interposed, we had not as yet satisfied ourselves of the correctness of the judgment appealed from.