

TERRITORY V. LAS VEGAS GRANT, 1891-NMSC-023, 6 N.M. 87, 27 P. 414 (S. Ct. 1891)

**TERRITORY OF NEW MEXICO, Plaintiff In Error,
vs.
UNKNOWN OWNERS OF LAS VEGAS GRANT, Defendants In Error**

No. 439

SUPREME COURT OF NEW MEXICO

1891-NMSC-023, 6 N.M. 87, 27 P. 414

August 07, 1891

Error, from an order setting aside a judgment, by default, for plaintiff, to the Fourth Judicial District Court, San Miguel County.

The opinion states the case.

COUNSEL

M. Salazar, district attorney, for the territory.

JUDGES

Lee, J. Freeman, McFie, and Seeds, JJ., concur.

AUTHOR: LEE

OPINION

{*87} {1} This is an action on the part of the territory of New Mexico by Miguel Salazar, district attorney for the counties of Mora and San Miguel, against the unknown owners of the Las Vegas grant, in an action of debt, in which a judgment was rendered by default against the defendants in the sum of \$ 16,242.88, which judgment by default was subsequently, at the same term, vacated and set aside by said district court, and said cause opened up for further proceedings therein. The plaintiff excepted to the ruling of the court thereon, and brings the case by appeal from the order of the court setting aside said default, and vacating said judgment, to be reviewed by this court.

{2} An order of the district court setting aside a judgment rendered on a default, and allowing the defendants to plead to the declaration of the plaintiffs, is a matter within the discretion of the court below, and is not such an order as may be reviewed by the supreme court while {*88} the suit is still pending in the district court. McCulloch v.

Dodge, 8 Kan. 476. So far as appears from the record, this case is still pending in the district court, and has not reached such final judgment or decision as may be reviewed in this court. The writ of error will have to be dismissed, and it is so ordered.