

**FEDERAL LAND BANK V. BELEW, 1942-NMSC-022, 46 N.M. 228, 126 P.2d 294 (S.
Ct. 1942)**

FEDERAL LAND BANK OF WICHITA

vs.

BELEW et al.

No. 4677

SUPREME COURT OF NEW MEXICO

1942-NMSC-022, 46 N.M. 228, 126 P.2d 294

May 20, 1942

Appeal from District Court, Union County; Livingston N. Taylor, Judge.

Action by the Federal Land Bank of Wichita against H. M. Belew and Alice Belew, his wife, and others to quiet title. From a judgment for plaintiff, the defendants appeal.

COUNSEL

O. P. Easterwood, of Clayton, for appellants.

D. A. Paddock, of Clayton, and Edward H. Jamison, of Wichita, Kansas, for appellee.

JUDGES

Brice, Chief Justice. Zinn, Sadler, Mabry, and Bickley, JJ., concur.

AUTHOR: BRICE

OPINION

{*229} {1} The appellee brought this action to quiet title to certain lands situated in Union County, New Mexico. The appellants claim title under a contract to purchase from the appellee.

{2} The trial court incorporated findings in its judgment, from which it concluded that the appellee was the owner of the land in question in fee simple, and that appellants had no right, title or interest therein.

{3} No objection was made or exception taken to either the findings or decree of the district court, from which it follows that the assignment of errors attacking such findings and decree raises no question for review in this court. We have held many times

(subject to certain exceptions not appearing here) that questions, points and issues not raised, presented or passed upon by the trial court are not reviewable on appeal. Thomas v. Johns, 35 N.M. 240, 294 P. 327; Collins v. Unknown Heirs of Finical, 29 N.M. 140, 219 P. 491; El Paso etc., Co. v. Stephens & Gardner, 30 N.M. 154, 228 P. 1076; Bybee v. White, 35 N.M. 270, 295 P. 295; Hase v. Summers, 35 N.M. 274, 295 P. 293; Sylvanus v. Pruett, 36 N.M. 112, 9 P.2d 142; Fullen v. Fullen, 21 N.M. 212, 153 P. 294; Murry v. Belmore, 21 N.M. 313, 154 P. 705; Hopkins v. Norton, 23 N.M. 187, 167 P. 425; Tietjen v. McCoy, 24 N.M. 94, 172 P. 1042; State v. McKnight, 21 N.M. 14, 153 P. 76; Ellis v. Citizens' Nat. Bank, 25 N.M. 319, 183 P. 34, 6 A.L.R. 166.

{4} It is assigned that the trial court erred in striking the evidence of the witness Belew. An examination of the record does not disclose that the evidence of the witness was stricken as appellants assert.

{5} The trial court did not err in admitting in evidence a written offer of appellants, made long subsequent to the execution of the contract upon which they claim title, to purchase a portion of the lands involved. It was admitted as evidence of the acquiescence of the appellants in the rescission of the original contract. For such purpose it was admissible.

{*230} {6} We have examined the testimony, and find substantial evidence to establish that the original contract of purchase was rescinded by the appellee and that appellants acquiesced in such rescission; and substantial evidence to support the findings and decree.

{7} The decree of the district court is affirmed.

{8} It is so ordered.