

**STATE EX REL. LAS VEGAS V. SANDOVAL, 1929-NMSC-031, 34 N.M. 50, 277 P. 31
(S. Ct. 1929)**

**STATE ex rel. CITY OF LAS VEGAS
vs.
SANDOVAL, County Treasurer**

No. 3376

SUPREME COURT OF NEW MEXICO

1929-NMSC-031, 34 N.M. 50, 277 P. 31

April 11, 1929

Appeal from District Court, San Miguel County; Armijo, Judge.

Mandamus by the State, on the relation of the City of Las Vegas, against Francisco Sandoval, Treasurer and Collector of the County of San Miguel. Judgment dismissing an alternative writ, and relator appeals.

SYLLABUS

SYLLABUS BY THE COURT

1. Mandamus, to compel county treasurer to make good a check, given against a sufficient deposit, to city treasurer, for city tax moneys, which check city treasurer had presented for deposit at drawee bank and bank had accepted and credited in passbook, **held:**

(1) Relation of debtor and creditor was established between bank and city treasurer.

(2) The check was in legal effect paid and the original obligation satisfied.

(3) Failure of bank to credit city treasurer's and debit county treasurer's accounts, its insolvency a week later, and subsequent return of check and deposit slip to county treasurer by examiner in charge, did not alter legal relations stated in (1) and (2), nor restore liability of county treasurer.

(4) County treasurer not estopped to deny liability by judgment obtained by county for preferential payment of its deposit without deduction for the check, satisfaction of the judgment not being shown.

COUNSEL

H. E. Blattman and M. E. Noble, both of East Las Vegas, for appellant.

Chester A. Hunker and Tom W. Neal, both of Las Vegas, for appellee.

JUDGES

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

AUTHOR: WATSON

OPINION

{*51} {1} OPINION OF THE COURT The city of Las Vegas appeals from a judgment discharging an alternative writ of mandamus requiring the county treasurer of San Miguel county to pay to it some \$ 1,500, or to show cause.

{2} On August 11, 1925, the then county treasurer of San Miguel county mailed to the city treasurer two checks representing tax moneys of the city in the hands of the county treasurer. The checks were, by the city treasurer, presented on the next day to the People's Bank & Trust Company, upon which they were drawn. The county treasurer had sufficient funds on deposit, and the checks were accepted by the bank and entered in the city treasurer's passbook. For some reason unknown, the bank failed to make the entries on its books, crediting the city treasurer and debiting the county treasurer. On August 20 the bank closed its doors, and, three or four days later, the examiner then in charge returned the checks and the deposit slips to the city treasurer. He made demand upon the county treasurer for payment of the amount and it was refused. He has since made demand upon appellee, the present county treasurer, who has likewise refused. In the meantime the board of county commissioners of San Miguel county commenced suit, which resulted in a judgment directing the receiver of the bank to pay the amount of the treasurer's deposit as a preferred {*52} claim. The claim thus presented, and allowed, contained no deduction on account of the two checks in question.

{3} These facts are all admitted, but many of them were excluded by the court upon objection by one or other of the parties. These several rulings need not be reviewed. As the case stands here, the question is whether the court erred in denying the demanded relief upon these admitted facts.

{4} We cannot doubt that the presentment of the checks for deposit by appellant's treasurer and the credit entered in the passbook by the bank completed a contract which established the relation of debtor and creditor. The checks were in legal effect paid and the original debt satisfied. These established relations could not be avoided by the act of the bank examiner in returning the checks and deposit slips a week or two later.

{5} Appellant urges that, by the act of the county in asking for and obtaining judgment as for preferred claim, appellee is estopped from denying that it is his duty to pay to the

city either the checks or the original obligation represented thereby. We will assume that such an estoppel might be invoked if the case were different, but we think not in this proceeding. The case is mandamus. Appellee is to be held only to his strict legal duty. The mere recovery of judgment would not seem to be sufficient to raise the duty to pay. When appellee has obtained satisfaction of the judgment, it will be soon enough to consider the relative rights of the parties in the sums recovered. We suspect that they will not differ concerning them.

{6} We find no error. The judgment is affirmed, and the cause will be remanded.

{7} It is so ordered.