TOWNSEND *v.* WATER & SEWER DISTRICT NO. 1.

Opinion delivered March 17, 1930.

ATTORNEY AND CLIENT—FEE OF ATTORNEY.—Where an attorney accepted employment under a resolution of an improvement district fixing his fee at $250, and subsequently accepted a warrant for such fee reciting that it was in full payment of his fee, he will be concluded thereby and is not in a position to ask for additional compensation.

Appeal from Clark Chancery Court; *C. E. Johnson*, Chancellor; affirmed.

STATEMENT OF FACTS.

This is a suit for an attorney's fee. The Water and Sewer Improvement District was duly organized by the city council of Gurdon. Appellant prepared the petition, the ordinance, and the other papers looking to its forma-

tion. According to his testimony, the property was, for the most part, in irregular shapes, and it took him a long time to get the boundaries of the lots straightened out, so that a proper assessment of benefits could be made. An issuance of bonds in the sum of $115,000 for the construction of the proposed improvement was arranged for. Two per cent. of that amount would be a reasonable fee for the work done by appellant. An attorney of Little Rock, who had assisted in forming many improvement districts in that city also testified that two per cent. of the bond issue was a reasonable fee where no litigation looking to the formation of the district was had.

According to the evidence for appellee, when the district was formed, the commissioners met and passed a resolution appointing O. A. Graves and J. S. Townsend attorneys for the district for the sum of $250 each for the entire legal work. This resolution was entered of record, and it also contained a clause providing that, should there be litigation, the attorney should be paid extra but in no case should there be a greater charge than $1,000. One of the commissioners testified that he notified Mr. Townsend of this resolution.

Other evidence for appellee tended to show that forms of petitions and ordinances for the formation of local improvement districts were prepared and furnished free of charge by attorneys for prospective purchasers of such bonds. O. A. Graves also testified that $500 was a reasonable compensation for attorneys where there was no litigation.

The record also shows that appellant was paid the sum of $150 on fee for services as attorney for the district on February 7, 1925; on November 28, 1925, he was paid the sum of $100, and the warrant for this amount recites that it was for the balance of his attorney's fee. Appellant admits receiving these amounts, but denies that he accepted them in full for his attorney's fee.

The chancery court found that appellee was not indebted to appellant in any amount, and that he had been

paid a reasonable fee for all services rendered appellee. It was therefore decreed that his complaint should be dismissed for want of equity, and the case is here on appeal.

J. S. Townsend, for appellant.

Millard Alford and *McMillan & McMillan,* for appellee.

HART, C. J., (after stating the facts). Appellant insists that he is entitled to recover for the labor, time, and trouble involved to him in the preparation of the petition, ordinances, and in the performance of the other work done by him in the formation of the improvement district in the sum of two per cent. on the amount of the bond issue, which was $115,000. He testified himself that this was the customary fee in cases of this sort and was the reasonable value of his services. His testimony was corroborated by that of another attorney who had much experience in the formation of local improvement districts. Hence he invokes the rule laid down by this court that, where no compensation is fixed by contract, the attorney is entitled to recover for the reasonable value of the services rendered. *Jacoway* v. *Hall,* 67 Ark. 340, 55 S. W. 12; *Lilly* v. *Robinson Mercantile Co.,* 106 Ark. 571, 153 S. W. 820; and *Bayou Meto Drainage District* v. *Chapline,* 143 Ark. 446, 220 S. W. 807.

We do not think the record brings the case within the principles of law above announced, and we do not deem it necessary to decide whether or not appellant or Graves rendered more valuable services in the formation of the improvement district. The record shows that, when the commissioners organized, they unanimously passed a resolution appointing Graves and Townsend as attorneys for the district, and expressly recited in the resolution that they were to receive $250 each for their entire compensation as attorneys. It is true that there was another clause providing for additional compensation in case of litigation, but there was no litigation in the organization of the district. Hence, under the resolution, which

was accepted by the attorneys, they were only entitled to receive $250 each.

It is true that appellant testified that he did not accept the terms of the contract when he was informed by one of the commissioners of the passage of the resolution. He did, however, accept the fee provided for in the resolution, and this amounted in practical effect to an acceptance of the terms of the contract. The last warrant which was drawn for the payment of his services expressly recited that it was for the balance of his attorney's fee. He accepted this without protest, so far as the record discloses. His acts and conduct amounted at least to a ratification or acceptance of the terms of the contract, and he was not thereafter in a position to ask for additional compensation. Therefore, the decree will be affirmed.