

HARRIS v. THACKERY.

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4-6195

147 S. W. 2d 355

Opinion delivered February 10, 1941.

1. ESTOPPEL.—One cannot, with knowledge of the facts, accept the benefits of a transaction without assuming its burdens, nor can one accept the benefits of a decree without admitting its legality.
2. ESTOPPEL—ACCEPTANCE OF FUNDS DEPOSITED IN COURT.—Appellant, in an action by the state against lands forfeited for taxes, having accepted and receipted for funds deposited by appellee in court for the satisfaction of his claim, could not be heard to say that he did not understand the legal effect of his act.
3. APPEAL AND ERROR.—Appellee had a right to presume that when the money he deposited in court for the satisfaction of appellant's claim against the land was accepted by him, the litigation was at an end.

Appeal from Pulaski Chancery Court; *Frank H. Dodge*, Chancellor; affirmed.

*D. L. Harris*, pro se.

*John E. Coates, Jr.*, and *W. M. Powell*, for appellees.

GRIFFIN SMITH, C. J. Appeal is from an order overruling the motion of *D. L. Harris*<sup>1</sup> to dismiss the intervention of *Reginald H. Thackery* and others in a suit brought by the state against tax-forfeited lands in Pulaski county.<sup>2</sup> After the sale had been set aside on the intervention, *Thackery* and his associates deposited \$109.42 in the court registry as a tender. January 19, 1940, *Harris* receipted for the full amount.<sup>3</sup>

One cannot, with knowledge of the facts, accept the benefits of a transaction without assuming its burdens, nor can one accept the benefits of a decree without admitting its legality. *Morgan v. Morgan*, 171 Ark. 173, 283 S. W. 979; *Coston v. Lee Wilson & Co.*, 109 Ark. 548, 160 S. W. 857.

<sup>1</sup> Although the motion of June 9, 1939, was signed by *D. L. Harris* by his solicitor, the court order includes "Mr. and Mrs. *D. L. Harris*." It also restrains them from prosecuting any claim against the interveners.

<sup>2</sup> Act 119, approved March 19, 1935.

<sup>3</sup> The court found that *Harris* had paid taxes for 1937 and 1938, amounting to \$24.30; that he paid the state \$123 for the lands, a total of \$147.30. The difference of \$37.88 is due from the state.

Although appellant insists he did not understand the legal effect of accepting the deposit, he will be conclusively presumed to have known the money was tendered in payment. Appellees had a right to assume that the litigation was at an end when the receipt was executed.

Affirmed.

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