

BROOKS *v.* YELL COUNTY.

Opinion delivered June 17, 1905.

ESTOPPEL—ACCEPTANCE OF DAMAGES.—Where the county court condemned land for road purposes, and caused the damages to the land to be assessed, and issued a warrant in payment thereof to the landowners, the latter, by accepting the warrant, are estopped from subsequently contesting the right of the county to use the land so condemned, and cannot, without the consent of the county, restore their right to contest by return of the money received on the warrant.

Appeal from Yell Circuit Court.

WILLIAM L. MOOSE, Judge.

Affirmed.

The county court of Yell County, appointed viewers to lay out and designate a public road. They laid out the road across the land of Brooks, Neely & Company, and fixed the compensation at a sum named. Brooks, Neely & Company filed a motion to disapprove the report of the viewers, alleging numerous irregularities. The county court overruled the motion, and approved

the reports of the viewers. Brooks, Neely & Company appealed to the circuit court.

On the trial in circuit court it was admitted that during the pendency of the appeal the agent of Brooks, Neely & Company received from the county court warrants for the amount of the damages awarded by that court to Brooks, Neely & Company for the land taken, but such agent offered at the trial to return same.

The court found the agent of Brooks, Neely & Company had cashed the warrant issued by the county court as damages for the land condemned herein for road purposes, and declared the law to be that, by reason of the collection of said warrants by said agent, Brooks, Neely & Co. were estopped from further recovery or relief herein. Brooks, Neely & Co. filed their motion for a new trial, which was overruled, and they appealed.

*John M. Parker*, for appellant.

The order of the county court locating the road for the viewers was void. Kirby's Dig. § § 3000, 3009. Notice of the location of the road should have been first given. Kirby's Dig. § 2999; 69 Ark. 587; 66 Ark. 292. The viewers must determine the amount to be paid in money for the property sought to be appropriated. Kirby's Dig. § § 2996, 3001, 3009; Const. Art. II, § 22; 28 Ark. 460; 39 Ark. 170. Appellants are entitled to recover the amount of deductions made. 56 Ark. 43; 62 Ark. 139.

No brief for appellee.

BATTLE, J. Yell County was entitled to the condemnation of a portion of the lands of Brooks, Neely & Company for a certain public highway over the same. The land was condemned for that purpose, and the damages caused thereby were assessed, and a county warrant was issued to them therefor, and was received and collected by them. They cannot now contest the right of the county to the land so condemned. The warrant was issued in payment of such damages, and they were not entitled to hold it to satisfy damages that might thereafter be assessed in

another proceeding to condemn other lands of their for the same highway. Having received and collected it, they accepted it for the purpose for which it was issued, and are estopped from claiming the land appropriated for the highway; and cannot, without the consent of the county, restore their rights by the return of the money received on the warrant.

Judgment affirmed.

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