

WELLS V. ROMERO, 1916-NMSC-063, 22 N.M. 191, 159 P. 1001 (S. Ct. 1916)

**WELLS
vs.
ROMERO**

No. 1885

SUPREME COURT OF NEW MEXICO

1916-NMSC-063, 22 N.M. 191, 159 P. 1001

September 05, 1916

Appeal from District Court, Torrance County; Medler, Judge.

Action by N. A. Wells against Cleofas Romero, begun in justice court, and appealed to the district court. From a judgment there in his favor, plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

The receipt and acceptance of the amount of a judgment in full settlement and satisfaction thereof defeats the right to review such judgment on appeal.

COUNSEL

Edward P. Davies of Santa Fe, for appellee.

The appeal must be dismissed because appellant, prior to the perfecting thereof, accepted money in full settlement of the judgment.

3 C. J. 681, sec. 554; Martin v. Bott, 17 Ind. A. 444 (46 N. E. 151); McKelvey v. Burlington R. R. Co., 58 N. W. 1068; Brown v. Vancleave, 86 Ky. 381, 6 S. W. 25; Graham v. Sapery, 44 N. Y. 1109; Portland Constr. Co. v. O'Neil, 24 Ore. 54, 32 Pac. 674; Webster-Glover Lbr., etc., Co. v. St. Croix County, 71 Wis. 317, 36 N. W. 864.

Geo W. Prichard of Santa Fe, for appellant.

JUDGES

Parker, J. Roberts, C.J., and Hanna, J., concur.

AUTHOR: PARKER

OPINION

{*192} {1} OPINION OF THE COURT. Appellant recovered a judgment before a justice of the peace for \$ 9.51 against the appellee. From this judgment the appellant appealed to the district court, where the judgment of the justice of the peace was affirmed and final judgment rendered. Thereafter, and prior to the taking of the appeal to this court, the appellee paid into court the amount of this judgment, which was accepted and received by the appellant in full settlement and satisfaction of the judgment. Thereafter he appealed to this court. Under such circumstances the right to review the judgment had been waived and lost to the appellant. 3 C. J. p. 681, § 554.

{2} It follows that the judgment of the district court should be affirmed; and it is so ordered.