

THOMPSON *v.* GREENE & LAWRENCE COUNTY DRAINAGE
DISTRICT.

Opinion delivered December 20, 1915.

PUBLIC OFFICER—CUSTODIAN OF FUNDS—LIABILITY FOR INTEREST.—Where one T. held funds belonging to a drainage district, believing himself to be the proper custodian, and paid the same over promptly upon an adjudication that he was not the proper custodian, he will not be liable to the district for interest on the money while it was in his possession.

Appeal from Greene Circuit Court; *J. F. Gautney*, Judge; reversed and dismissed.

R. E. L. Johnson and *Burr, Stewart & Burr*, for appellant.

1. Thompson was not liable. He was county treasurer, and held the funds in good faith, under a valid judgment, believing he was the proper and legal custodian of the district funds. As soon as this court, in 106 Ark. 517, decided against him, he promptly paid over the funds. 23 A. & E. Enc. Law (2 ed.) 379; 142 U. S. 293; 137 *Id.* 43; 3 How. (U. S.) 87; 29 Ark. 448; 68 Me. 572; 8 Mo. 41; 11 Enc. Pl. & Pr. 438.

M. P. Huddleston, Robert E. Fuhr and J. M. Futrell,
for appellee.

This suit is not barred by the mandamus proceeding. It was Thompson's duty to turn the funds over to the district treasurer. Failing to do so, he was guilty, at least, of *non-feasance* and liable for interest. 106 Ark. 517; Cooley, Torts (2 ed.) 470; 54 N. Y. 538; 29 Ark. 448.

HART, J. On March 31, 1913, Greene and Lawrence County Drainage District sued W. C. Thompson to recover \$193.13 as interest at 3½ per cent from August 1, 1912, to March 7, 1913, on the daily balance of a fund of \$8,790.09, belonging to said district. This is the same fund which this court in *Snowden v. Thompson*, 106 Ark. 517, ordered Thompson as county treasurer of Greene County to pay over to the drainage district treasurer. It was a mandamus case brought by the Greene and Lawrence County Drainage District against W. C. Thompson as county treasurer to require him to pay over \$8,790.09 to the treasurer of the drainage district. The circuit court held that Thompson was the proper custodian of the fund of the district and from the judgment rendered the drainage district appealed to this court where the judgment of the circuit court was reversed and Thompson as county treasurer was ordered to pay over the money to the treasurer of the drainage district. This Thompson did at once.

The circuit court entered judgment against Thompson and from the judgment rendered Thompson has duly prosecuted an appeal to this court.

The judgment of the circuit court was not correct. Thompson was county treasurer of Greene County and took charge of the funds, believing himself to be the lawful custodian thereof. He did not claim any ownership in the funds, and there was no element of tort connected with his receipt of the money. He turned it over to the treasurer of the drainage district as soon as this court decided adversely to him. It will be remembered that the circuit court held that he was the proper custodian of the fund. There is nothing in the record to impeach the good

faith of Thompson in holding the money, and there was no delay in paying it over after he was adjudged not to be the proper custodian of it. Therefore, there is no lawful ground upon which the claim for interest can be sustained.

The judgment will be reversed and the cause of action against Thompson dismissed here.
