

DUBARD *v.* NEVIN.

Opinion delivered November 26, 1928.

1. SCHOOLS AND SCHOOL DISTRICTS—SCHOOL WARRANTS.—School warrants, which are orders on the county treasurer to pay out of school funds in his hands the amounts specified, though negotiable in form and transferable by delivery, are not negotiable instruments in the sense of the law merchant, and the rule as to presentation of negotiable paper is not applicable.
2. SCHOOLS AND SCHOOL DISTRICTS—FAILURE TO PRESENT SCHOOL WARRANTS.—Since the statute does not require school warrants to be presented for payment within any particular time, the failure of a bank to present them within the three days it held them for collection before it failed is no reason for the county treasurer's

refusal to pay them when presented by the State Bank Commissioner, to whom the affairs of the bank had been turned over for liquidation, though the bank's delay resulted in loss to the county treasurer, who had in the bank a deposit sufficient to pay the warrants.

3. MANDAMUS—PAYMENT OF SCHOOL WARRANTS.—Although the officers of the bank to which school warrants were sent for collection failed to present them to the county treasurer for payment during the three days in which the bank held them before it failed, because they knew that he would pay them out of his deposit in the bank, and that this might result in hastening the insolvency of the bank, which they were trying to prevent, this was no ground for refusal of a mandamus requiring the county treasurer to pay the warrants, since the owners of the warrants were not parties to, or liable for, the misconduct of the bank.

Appeal from Poinsett Circuit Court; *W. W. Bandy*, Judge; affirmed.

STATEMENT OF FACTS.

This was an action by appellees against appellant to compel him to pay certain school warrants out of funds in his hands belonging to Harrisburg Special School District. Appellees were nonresidents of the State of Arkansas and are the owners of certain bonds issued by Harrisburg Special School District. They sent certain interest coupons to the Merchants' & Planters' Bank & Trust Company, doing business at Harrisburg, Arkansas, for collection. The officers of the bank presented these interest coupons to Harrisburg Special School District, and warrants were issued in payment thereof. The warrants were delivered to the bank on Monday, February 20, 1928, and were still in its possession on February 23, 1928, when the bank was taken in charge as an insolvent bank by the State Bank Commissioner. The amount of the warrants was \$1,045. The county treasurer of Poinsett County, Arkansas, had on deposit in the bank, when it became insolvent, the sum of \$1,152. The State Bank Commissioner presented the warrants to the county treasurer for payment, and payment was refused on the ground that due diligence had not been exercised by the bank in presenting said warrants for payment during the

three days in which the bank had had them in possession before it was taken in charge by the State Bank Commissioner as an insolvent bank.

The circuit court found the issues in favor of appellees, and it was adjudged that said county treasurer be directed to pay to appellees the sum of \$1,045 in payment of said warrants. The case is here on appeal.

J. G. Waskom, for appellant.

Ogan & Shaver, for appellee.

HART, C. J., (after stating the facts). The judgment of the circuit court was correct. Payment of the warrants was refused by the county treasurer on the ground that the bank, which had them for collection, held them for three days without presenting them, and that this was an unreasonable time, and resulted in loss to the county treasurer because the bank became insolvent; for, if the warrant had been presented in time, he had on deposit in the bank a sum more than sufficient to pay the warrants. This was no defense. The school warrants were orders upon the county treasurer to pay out of the school funds in his hands the amounts specified; and, although the warrants are negotiable in form and transferable by delivery, they are not negotiable instruments in the sense of the law merchant. *First National Bank of Waldron v. Wisenhunt*, 94 Ark. 583, 127 S. W. 968; and *Vale v. Buchanan*, 98 Ark. 299, 135 S. W. 848. Hence the rule in regard to the presentation of negotiable paper is not applicable. Our statute did not require the warrants to be presented within any particular period of time, and there was no reason why the county treasurer should not have paid them when they were presented by the State Bank Commissioner. The affairs of the insolvent bank had been turned over to him for liquidation under the statute, and he had a right to collect the warrants.

Again, it is insisted that the writ of mandamus should not be issued against the county treasurer in this case because the officers of the bank did not present the warrants to the treasurer for payment during the first three days they were in the hands of the bank for collec-

tion, for the reason that the officers of the bank knew that the treasurer would pay the warrants out of the funds on hand in the bank belonging to him as county treasurer, and that this might result in hastening the insolvency of the bank, which the officers, at the time, were trying to prevent. Even if this were true, it would not defeat this action. The holders of the warrants were not guilty of any improper conduct whatever. In good faith they sent the warrants to the bank for collection, without any qualifications or restrictions of any kind as to the time within which they should be presented for payment. The holders of the warrants could not be held liable in any sense for any misconduct of their collecting agent in withholding the warrants during the three days in question. The holders could in no sense be held parties to any wrongful or illegal act of their agent in the premises.

Therefore the judgment of the circuit court, directing the issuance of the writ of mandamus to the county treasurer to pay the warrants, was correct, and it will be affirmed.
