F. MILTENBERG, Agent for the Bremer Kolonia Handelsgesellschaft, etc., Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

ARGUED APRIL 28, 1915. DECIDED MAY 10, 1915.

Dossen, C. J., Johnson and Witherspoon, JJ.

Agency—Tender—Liquor License—Sub-Treasurers.

1. Where a party holds himself out as the agent of another, and does acts on behalf of his principal which are ratified and confirmed by him, and is in charge of the particular business or enterprise involved in a suit, the law will presume an agency to exist and will hold such person answerable in a suit brought through him against the principal.

2. A tender does not discharge the debt or obligation; a tender made to the Government for liquor license in Government obligations not then acceptable for such license 'is not a good and legal tender.

3. Sub-treasurers are the agents of Government and in the performance of their official duties are bound by the statutes relating to their duties.

Mr. Chief Justice Dossen delivered the opinion of the court:

Violation of Revenue Laws. Trading without License—Appeal from Judgment. This case is before us upon an appeal from the decree of the Circuit Court of the second judicial circuit, Grand Bassa County, made in its admiralty division at its August term, 1914, against the appellant.

The appellant, a mercantile concern doing business at various points in the County of Grand Bassa was on the 12th day of June, 1914, libelled by the Republic of Liberia, libellant for violating the revenue laws by trading at divers places, in said county—that is to say—in the Lower ward of Buchanan, in Hartford and in Harlandsville, in liquor in both wholesale and retail quantities, and in dry goods, from the 30th September, 1913 to the 30th day of May,

1914, without procuring licenses permitting him so to do, in violation of the statutes relating to trading licenses. The appellant, appellee in the court below, in his answer filed in said case admitted substantially the allegations charged in the libel with respect to trading in retail quantities of liquor and in dry goods at the places named in the libel, without licenses so to do, but denied having sold at any of his said business places, liquor in wholesale quantities without license so to do during the period laid in the libel. The defense set up in the answer against the contravention of the revenue laws as aforesaid, rested upon the plea of tender, wherein the appellant alleged that he offered certificates of indebtedness in payment of the tax fixed by statute for the granting of said licenses and that the same were persistently refused by the sub-treasurer, who is the proper officer to receive such monies and to grant receipts warranting the issuance of licenses.

The answer further alleged that the suit had been brought against the wrong agent of the firm, as J. H. Green held power-of attorney to represent said firm in all judicial litigations by or against the firm. These we think are the salient points laid in the answer, to the rulings on which by the lower court and the final decree the appellant excepted and have brought the questions and the rulings thereon before this judicature for review.

Let us examine first the legal efficacy of the contention with respect to the suit having been brought against the wrong agent of the firm.

From the records we find that Fritz Miltenberg against whom, in his capacity as agent of said firm, this suit is brought is the ostensible agent of the firm at Grand Bassa which fact was established by the evidence. The principles governing principal and agent, and the responsibility of the latter in suits against the former, have on previous occasions been settled by the decisions of this court and we deem it unnecessary to advert to them here. The point involved in this controversy which we shall pass upon relates to what will constitute a person the agent of another in the eyes of third parties so as to render him answerable in suits against his principal.

We would remark, that in our opinion, where a person holds out himself as the agent of another, and does acts on behalf of his principal which are ratified

and confirmed by him, and is in charge of the particular business or enterprise of the principal, and in his name and behalf conducts the same in transactions with third parties; the law will imply an agency and will fix a responsibility upon such person, as the agent for his principal in suits growing out of, or arising from the conduct of the particular business or enterprise, in which he has held himself out as the ostensible agent; and such agent would be estopped from denying his agency and throwing off his responsibility as such, in a suit brought against him as agent, and particularly so if the suit originated from failure on his part to do an act on behalf of his principal required by law, the performance of which was not discretionary but positive and binding and necessary to the legitimate conduct of the particular business or enterprise as was so in the case at bar.

The authority of an agent may be created by parol and may be either expressly given or be implied from the acts of the parties. (Story on Contracts, p. 200, sec. 128.) The authority of the agent to bind his principal grows out of the power with which he is expressly or impliedly invested. *(idem.,* sec. 131.) Was the Republic of Liberia, libellee, who brought this suit to recover revenue and to enforce her laws, led by the implication reasonably drawn from the acts of the appellant, to regard him as the agent for the aforesaid firm. Did his overt acts in relation to the business of said firm at Grand Bassa justify such implication, and if so, was the libellant, now appellee, wrong in bringing this suit through him as agent against his principal for the recovery of fines arising from the violation of revenue laws ? We affirm without hesitancy that the suit has been brought against the proper and legitimate agent and that he was bound to answer appellee in this suit, and is further bound to conform to the payment of such fines which may be adjudicated against the said firm through him as its agent.

We come now to consider the other salient point in the case namely the effect of the alleged tender by appellant to appellee of certificates of indebtedness, in payment of liquor license.

The appellee admitted under this plea his indebtedness to appellee for the tax imposed by law for the right to sell liquor in retail quantities and further admitted in his answer that he had sold liquors in retail quantities at the three

places mentioned in the libel without license so to do. He denied having sold liquors in quantities above three gallons within the time set forth in said libel and that therefore he was not indebted to libellee for the tax exacted by statute for the privilege to sell liquor in wholesale quantities.

The fifth count of appellant's answer further admits that appellant had traded at the aforesaid factories within the time mentioned in the libel in dry goods without license so to do. These admissions left but one material allegation in the libel controverted, namely that appellant had also violated the law with respect to wholesale liquor license by selling liquor at the aforesaid dates in quantities of more than three gallons. This allegation was, however, at the trial proven by unimpeachable evidence and therefore beyond a shadow of doubt a conclusive case upon the facts alleged was established.

The plea of tender set up in defense by appellant could not bar the recovery of the appellee, even supposing the plea had been well founded,—which as we shall endeavor to show later, was *not* so in the case under consideration. The principles governing such pleas do not construe them into a set-off, or discharge of the debt or obligation, their effect when well founded being only to put a stop to accruing damages, or interest for delay in payment, and gives the defendant costs. This rule is clearly enunciated in the case *Sherman v. Republic of Liberia* (I Lib. L. R. 145) which we cite in support of our conclusion on this point. But was the offer by appellant to pay liquor license in debt certificates a valid and legal tender, so as to secure to him the legal benefits of such a plea; and, was the sub-treasurer, unto whom all such taxes are made payable authorized by law to accept such obligations in liquidation of such taxes?

It is a general principle of law that an agent is bound to perform the duties of his agency within the scope of the powers conferred by his principal and in strict obedience with his will expressed or implied. The sub-treasurers of this Republic are agents of the Government and in the discharge of their official duties are bound by the enactments of the Legislature referable to same. Where such enactments make a specific claim or debt payable in a certain class of money or obligation only, sub-treasurers are bound to observe the same, and a tender made to them, as agents aforesaid, for the liquidation of

any claim, or obligation accruing unto the Republic, in monies other than those designated by statute for the payment of the specific claim, is *not* a legal tender, although, they may be evidence of a claim against the Republic.

Let us examine briefly the statutes controlling this case. And firstly, we shall ascertain the purposes for which said certificates are made a legal tender by the Act creating them. The statutes approved Jan. 25, 1913, which required the registration of the paper claims against the Republic, provided for the retirement of such claims in exchange of certificates of indebtedness. The Act expressly provides that such certificates shall be acceptable in payment of any tax, license or fine for which the original bills or obligations, which the certificates of indebtedness are evidence of, were a legal tender at the time of the merger.

Now the statutes in force at the time of the passage of the aforesaid Act, made such paper obligations, which the certificates of indebtedness issued under the Act of 1913 substituted, acceptable for certain classes of licenses, but not liquor licenses, which were made payable in gold or silver coin only (vide Act Leg. Lib. Approved, 1898). The sub-treasurer was therefore bound to receive the tax for such licenses in gold or silver coin only.

It was urged by counsel for appellant in his argument that the Act approved Jan. 14, 1914, which permits the general Government portion of all liquor licenses to be paid in said certificates of indebtedness, being in force at the time of the rendition of the decree by the court below, that the lower judge erred in decreeing that appellant shall pay gold or silver coin for the time he traded in liquor, aforesaid; that is to say, from the first day of October, 1913, to the first day of April, 1914, the latter date being the date when the Act approved January 14, 1914, allowing a part of said liquor licenses to be paid in said certificate of indebtedness went into force. We are of opinion that the statutes in force at the time the cause of action accrued, and, which continued in force until the publication of the said Act passed in 1914, repealing or amending same, was the law under which license for the period from Oct. 1, 1913 to April 1, 1914, should have been taken, and therefore the judge of the court below did not err in decreeing accordingly. As to that part of the decree making libellant responsible for trading at a place called Cawdwor in violation

of the revenue laws, we would remark that the court below acted *ultra vires* in this respect, as nowhere in the libel is appellant charged with trading without license at the aforesaid place.

It is also the opinion of this court that the lower court further erred in that part of its decree in which a fine of $50.00 was imposed upon libellant for trading at each of the three places mentioned in the libel without license. It having been established at the trial that the appellant had traded in liquor without license so to do, the penalty for such violation is a fine from $500.00 to $5000.00 (vide Act Leg. Lib., 1883).

Having carefully reviewed the whole case this court is of opinion that the judgment or decree of the lower court should be reversed, in so far as it relates to appellant being condemned for trading at Cawdwor without license, and with respect to the fines imposed for the violation of the statutes by trading at the places laid in the libel.

After careful consideration of all the circumstances surrounding this case, this court decides and decrees that appellant is condemned to pay to the Republic of Liberia, appellee, a fine of $500.00 as penalty for the violation of the revenue laws of the Republic upon which this suit was brought. In all other respects the decree of the lower court should be affirmed. And it is hereby so ordered.

J. H. Green and *A. Barclay,* for appellant. *Attorney General,* for appellee.