

**JOSEPH R. MOORE**, Plaintiff, v. **REPUBLIC OF LIBERIA** and **H. A. PAGE**,  
Judge of the Circuit Court of the Second Judicial Circuit; Grand Bassa County,  
Defendants.

ARGUED DECEMBER 15, 1913. DECIDED JANUARY 9, 1914.

Dossen, C. J., and Johnson, J.

1. Public officers and all other persons who are bound under a penalty to the Republic of Liberia, may be properly and legally held to answer in an action of contract for breach of the conditions of the bond, except in cases otherwise provided by statutes.
2. In such action the Republic may recover the amount of damages sustained by it in consequence of the act or omission complained of and no more.
3. A witness called to prove the signature of a written document may be questioned as to its whole contents.
4. Where a party who has been arrested by a warrant, prays for delay for a day, in order to subpoena a witness for his defense, a refusal by the court is an abuse of the discretion allowed by law, whether such application is supported by an affidavit or not.
5. In an action brought by the Republic, against a public officer on his account, an officer of the Treasury Department conversant with said account should be called to testify to the correctness of the account, and to enable the respondent to cross-examine the witness on the items embraced therein.

Mr. Justice Johnson delivered the opinion of the court:

Foreclosure of Bond—Writ of Error. This case originated in the Circuit Court of the second judicial circuit, Grand Bassa County, and is brought up to this court for review by Joseph R. Moore, plaintiff in error, on the following case.

The said Joseph R. Moore, having been commissioned Sub-Treasurer of Grand Bassa County, entered into a bond of ten thousand dollars, for the faithful discharge of the duties of said office. At the March term of said court, the County Attorney of

Grand Bassa County filed a petition for the foreclosure of said bond, alleging that the said Joseph R. Moore had violated the conditions stipulated in said bond, by being deficient in his account to the amount of two thousand one hundred and twenty-eight dollars and fifty-five cents.

On the trial of the case, in the court below, judgment was rendered against plaintiff in error and his bond was ordered foreclosed, and it is this judgment which is now before this court for review.

The first point raised in the assignment of errors, is to the court below overruling the motion of respondent in the court below now plaintiff in error, to abate the process and dismiss the action for the reason that the allegations contained in the petition of petitioner in the court below, now defendant in error, tend to support an action for the breach of a contract, and not for the foreclosure of a bond.

The language of the statutes, with reference to cases of the nature of the one under consideration, is plain and unequivocal. They provide that "whenever a person is bound under a penalty that himself or any other person shall do , or omit any act, and the obligation is violated; or whenever any person is bound in any sum of money, the obligation to be released or void on omission or doing of any act by himself or any other person, in case of a breach of the contract or condition, an action of contract is the proper remedy. In such action, the plaintiff may recover the amount of the damage sustained by him in consequence of the act or omission complained of and no more; even although the penalty or sum in which such party was bound may exceed such amount of damages." (Lib. Stat., ch. I, sec. 10.)

In the case *Johnson v. Republic of Liberia*, a case analogous to the one at bar, it was held that "all public officers and all other persons who are bound under a penalty to the Republic of Liberia may be properly and legally held to answer in an action of contract for a breach of the conditions- of the bond, except in cases otherwise provided for by statute." (1 Lib. L. R. 75.)

It was held by counsel for defendant in error, that the statute relating to bail bonds (Lib. Stat., ch. III, *see*. 5) should be applied to this case. It is obvious, however, that this .statute is applicable to cases where security is given by a party in a cause that he will comply with the judgment of the court, and not to actions brought against public officers for a violation of the conditions of their bond.

It follows, from what has been said, that the court below erred in denying the motion to abate the process and dismiss the action.

As to the several points raised in the assignment of errors to the court ruling on the objections made by the petitioner in the court below to questions asked witness Cooper, respecting the account current, we are of the opinion that the questions were relevant and should have been allowed. On cross-examination, a witness may be examined on all matters touching the cause or likely to discredit himself. (Lib. Stat., ch. XII, sec. 34.) The ruling of the court below that a witness called to prove a signature to a document, can not be examined as to the contents of the document, is in opposition to the principles enunciated in the case *Washington v. Lloyd* (1 Lib. L. R. 83) where it was held that a witness called to prove the signature of a written document may be questioned as to its whole contents.

On inspecting the records we find that the only evidence offered by petitioner on the trial of the case besides the account current was witness J. W. Cooper who was called to identify the signature of J. A. Howard, Auditor General.

While we admit that a duly certified copy of the account current was properly admitted as evidence, still we are of the opinion that in a case of the nature and magnitude of the one at bar, involving a claim for thousands of dollars, due to the alleged deficit of a public officer, we are of the opinion that an officer of the Treasury Department, conversant with said account should have been called by petitioner to testify to the correctness of the account, and to enable the respondent to cross-examine the witness on the items embraced therein, and that respondent should have been allowed to cross-examine any witness, called by petitioner, as to the manner in which the account was made up. The court therefore erred as we have already said in disallowing said questions.

The next point raised in the assignment of errors is to the court concluding the case on the day on which respondent was arrested and brought into court, without allowing him time in which to secure witnesses although he prayed for such time.

A motion for continuance is addressed to the discretion of the trial court, and where it is made apparent that to proceed with the trial of a cause, substantial justice would not be meted out to all parties concerned, the application should not be refused, provided it is founded upon legal grounds, such as absence of witnesses, illness of counsel, etc. Generally a motion for continuance should be supported by an affidavit. Where however a party who has been arrested on a warrant, prays for delay of a day in order to subpoena witnesses for his defense, a refusal by the court is an abuse of the discretion allowed by law, whether such application is supported by affidavit or not. Even in petty cases triable before a justice of the peace, the law allows the

defendant, three days in which to procure witnesses and to prepare for his defense. In a case of the magnitude of the one at bar, surely an application for a day's delay to allow respondent to secure witnesses, can not be regarded as unreasonable.

The last error assigned, is to the decree of the court, decreeing a foreclosure of the bond.

From what has already been said, there can be no doubt that the decree of the court below was contrary to law and to the evidence in the case and should be reversed.

This, however, being a case affecting the revenue of the Republic, the court will not discharge the plaintiff in error, on account of errors committed on the trial of the case in the court below; but will remand the case to the court from whence it originated for retrial. And the Attorney General is hereby directed to enter the proper proceedings against the respondent in the court below in accordance with the principles of law set out in this judgment, founded upon the statutes of Liberia. The bond of said respondent to be of full force and virtue until after the final determination of the case.

The clerk of this court is hereby ordered to send a mandate to the court below, to the effect of this judgment.

*Arthur Barclay, and L. A. Grimes, for plaintiff in error.*

*Thos. W. Haynes, Attorney General, for defendant in error.*