

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT THE
OCTOBER TERM, 1969.

WELLINGTON K. NEUFVILLE, Appellant, *v.*
JOSEPH H. DIGGS, JOSEPH GIBSON, MOSES
DANDY, and JOSEPH NIMELY, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
MARYLAND COUNTY.

Argued October 27, 1969. Decided January 30, 1970.

1. It is a rule of statutory construction, that when the Legislature has enacted an amendment, it intended thereby to make a change in the law as it was previously, and this presumption controls in the absence of rebuttal thereto.
2. Hence, if there is an irreconcilable conflict between two statutes relating to the same subject matter, it is the latest expression of the Legislature which must prevail.
3. Police officers constitute a part of the executive branch, and may be civilly liable for wrongs committed by them in the course of their employment.

Plaintiff sued for personal injuries, alleging the defendants, who were police officers, had assaulted him on two occasions, as an outgrowth of a case in which he was the attorney. The trial court dismissed the complaint, primarily on the ground that the circuit court was without jurisdiction over the persons of the defendants, whom he characterized as judicial officers, and as such immune from personal liability for civil wrongs committed in their official capacities. An appeal was taken from the judgment of the trial court and the *judgment* was *reversed* and *remanded* to the lower court.

Counsel for parties not indicated.

MR. JUSTICE SIMPSON delivered the opinion of the court.

Wellington K. Neufville, *pro se*, filed an action of damages for injuries to the person against Joseph Gibson, Moses Dandy, and Joseph Nimely, all of the National Police Force, assigned at Harper, in Maryland County. The complaint, noticed for the August 1967 Term of the Fourth Judicial Circuit Court, Maryland County, constituted the culmination of endeavors dating back to November 2, 1965, to obtain redress for certain alleged wrongs committed upon his person by officers of the National Police Force at Harper City.

The then attorney Neufville, now a counsellor of this Court, contended that his initial problems with the police commenced immediately after he had decided to represent Allen Yancy, then Deputy Commissioner of Police, who had been indicted in the same County for the crime of murder.

The appellant complained that after he had sustained various injuries to his person inflicted on November 17, 1965, when he was brutally beaten with clubs and sticks by codefendants Joseph Diggs, and Joseph Nimley, he reported the incident to Judge Stephen B. Dunbar, then presiding by assignment over the Fourth Circuit Court. The judge thereupon instructed the clerk to give the plaintiff a letter to the doctor in charge of the J. J. Dossen Hospital at Harper to determine the existence and extent of any injuries. The report of the doctor, exhibit P2, follows:

"National Public Health Service
J. J. Dossen Memorial Hospital
Harper, Maryland County, R.L.

"Medical Certificate

"To whom It May Concern:

"This is to certify that I have examined Mr. Wellington Neufville. He presents multiple contusions and swelling of all extremities particularly the left forearm and hand and the left foot.

"It is medically advisable that he be granted one week's rest starting today.

"Dated this 20th day of November, 1965."

[Sgd.] "FRITZ LEOMINE, M.D.,
Surgical Doctor."

Further complaining of atrocities committed, plaintiff held that on June 8, 1967, he was again assaulted and detained for over 12 hours upon orders of appellee Joseph H. Diggs, and was permitted his freedom only after he was forcibly made to give them \$25.00 in cash, which they styled as bond, when in fact, they were neither judges nor bail commissioners empowered to receive bail bonds. In relation to this incident, the plaintiff complained that the actions of co-defendant Diggs resulted from his having obtained a writ of habeas corpus for Nimly Koffa on the preceding date in view of the illegal detention of his client by codefendant Diggs. Appellant alleged in the lower court that after the release of the prisoner was ordered by the assigned circuit judge, appellee Diggs then and there stated that he would not abide by the orders of the court, and would instead arrest and detain plaintiff, which he could do with impunity, he claimed.

Plaintiff further complained that subsequently he addressed a letter to the County Attorney for Maryland, the immediate superior of these police officers. The County Attorney informed him that he would institute an investigation, but in this regard nothing was done. Instead the County Attorney thereafter sought to justify and defend the actions of defendants. In closing, the complainant prayed for judgment against defendant, alleging "the acts were not warranted by the law of this Republic and cannot, therefore, be authorized by the Justice Depart-

ment; that your Honor will award unto plaintiff both punitive as well as exemplary damages, ruling defendants to bear all the costs of these proceedings."

To this complaint a formal appearance was filed by the County Attorney for Maryland County on June 15, 1967, and thereafter on the 20th day of the same month, an answer was filed. In count one of the answer, the defendants denied that the plaintiff was either threatened or that force and violence were employed upon his person. They contended instead that the detention grew out of a traffic violation on the night of November 17, 1965, when plaintiff's car driven by him while intoxicated, ran off the road and hit a light pole in Middlesex, Harper City. Since this incident occurred near the common jail compound, the police officers, who are defendants in this case, approached the vehicle and found the plaintiff to be intoxicated and asleep at the steering wheel. Furthermore, the defendants claimed that the plaintiff was taken to the police station "to be safely kept thereat until the next morning to gain consciousness, when he was released upon cash bail of \$25.00." The defendants contended that an action of damages for injuries to the person could not lie against them, for they were functioning within their scope of authority as police officers when the arrest and/or detention occurred, hence they should have been sued as agents of the Republic of Liberia. In count three of the answer, the defendants further contended that police officers have the right to arrest any person who commits a crime in their presence. In the instant case, they claim that the crime was committed in their presence. Strangely enough, the answer contained no prayer for relief. Yet, the judge refused to rule upon this point, although it was raised in the reply.

The plaintiff thereafter served a reply and on August 2, 1967, Judge John A. Dennis heard and ruled on the issues of law. The first issue to be disposed of dealt with the failure of the answer to carry a stamp, as had been raised in the reply by the plaintiff. The court then said

that where instruments which ought to be stamped are not stamped, the court should allow 48 hours for the party to have the said instruments stamped, maintaining that although the Legislature had invalidated the statute providing for admissibility into evidence of unstamped documents, rules of statutory construction permitted the old and new statutes to coexist, and the old statute permitted such unstamped documents to be received in evidence provided a stamp was obtained within 48 hours after the time of ruling.

We find ourselves unable to agree with the legal proposition that where two statutes conflict, the former one takes precedence, for writers have stated:

"It is to be presumed that the Legislature, in enacting an amendment, intended to make a change in the law as it stood previously. If the time when, and the circumstances under which the amendment is enacted indicate that the Legislature intended to be declaratory of the object and intent of the original act, the presumption is rebutted. Amendatory acts are subject to rules and principles of construction applicable to original statutes. As in the case of original acts, the object in construing an amendatory act is to seek out and enforce the actual meaning and intention of the Legislature.

"We are not to regard the canons of construction as a set of arbitrary rules which are to be applied to all statutes indifferently and which may or may not result in giving to the statute meaning and effect consonant to the purpose of those who framed it (BLACK, CONSTRUCTION AND INTERPRETATION OF THE LAWS, 2d ed., p. 46). A meaning suggested by the application of a particular rule of interpretation may be examined and tested by the use of other pertinent permissible sources of assistance. The extent to which it should be done will depend on the facts of the individual case. An interpretive technique frequently employed by the courts is that of considering the effect of a pos-

sible meaning in the focus of the legislative purpose.

If the suggested construction is not the real legislative intent, this method will indicate the fact and will in all probability reveal the real intent."

Additionally, in *City of Cincinnati v. Holmes*, 46 N.E. 514, it was held: "If there is an irreconcilable conflict between two statutes, both relating to the same subject matter, it is the latest expression of the Legislature which must prevail." This proposition is predicated upon the reasoning that the Legislature would not sit to do a useless thing. If a statute already exists relating to a particular subject matter and a subsequent statute is passed relating to the identical subject matter, it follows that the intention of the Legislature was to change the existing law, and the court must give effect to the latter statute.

The judge in further ruling, made mention that the defendants in their answer had contended that they were acting within the scope of their authority, and since judicial officers are not personally liable in damages for wrongs committed by them when acting within their scope of authority, the court lacked jurisdiction over the parties. The court then dismissed the complaint.

But the defendants are police officers, and as such constitute a part of the executive branch of government and not the judicial. Moreover, we cannot determine why the court raised *sua sponte* the issue of jurisdiction, though it is not applicable to these proceedings. We must, therefore, conclude that the ruling of the judge in dismissing the complaint predicated upon the grounds stated in his rulings was completely erroneous.

In view of the foregoing, this Court finds itself duty bound to reverse the ruling of the judge in the court below and to remand this case to the trial court, the issues of law to be first disposed of therein before trial, costs to abide final determination.

And it is hereby so ordered.

Reversed and remanded.