

JOHN SAMUELS, Appellant, v.
REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
GRAND GEDEH COUNTY.

Argued October 21, 1974. Decided November 15, 1974.

1. When the law provides for a procedure to be followed in a matter and a public official deviates from such procedure, the resultant abuse of authority to the injury of a person, amounts to malfeasance in the public officer's official capacity by reason thereof.

In an action of debt, the justice of the peace presiding, in agreeing to the defendant's request for a postponement of the trial, insisted that an appearance bond be posted by a friend of the defendant, who complied with the demand. The justice of the peace was not in court when the defendant in the debt action and the surety next appeared for the trial. The next occasion, when the justice of the peace was present, the defendant was not in court, but the surety was.

The surety offered to produce the party but the justice of the peace insisted he forfeit the appearance bond he had posted, which he apparently refused to do. The justice of the peace then publicly placed the surety in handcuffs, which he was compelled to wear for twenty-four hours.

The surety then, as a private prosecutor, complained of the actions of the justice of the peace who was subsequently indicted for malfeasance in his official conduct. He was tried by a jury and found guilty.

An appeal was taken from the judgment. The Supreme Court found there had been an abuse of the authority of the justice of the peace and held there was sufficient evidence to sustain the verdict. The judgment was modified to permit payment of a fine of \$200.00, in lieu of a jail term, and otherwise *affirmed* the judgment.

David D. Gbala, Sr., for appellant. *Solicitor General Roland Barnes* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of Court.

The appellant has appealed from his conviction of malfeasance in the Circuit Court for the Seventh Judicial Circuit, Grand Gedeh County.

On May 20, 1972, the defendant, a justice of the peace, assigned to the Neesonie Clan, Gbarzon District, Grand Gedeh County, was indicted for acts of official misconduct which, under our penal statutes, constituted the offense of malfeasance. The indictment recited that sometime between April 23 and 29, 1972, the defendant while serving in his official capacity as justice of the peace in the aforementioned Clan, District, and County, did wrongfully and unlawfully handcuff one James Que-Weah, which: (1) was not in keeping with the law and public policy of the Nation, and (2) resulted in injustice to the said James Que-Weah.

An examination of the facts of the case revealed that an action of debt was instituted against Jimmie Tayee in the defendant's court several days prior to the commission of the offense for which he was charged. Tayee, being unable to appear for the trial of the case at the time stipulated by the court, asked the defendant for a reassignment of the case to a later date. The defendant, in agreeing to the request for a postponement of the case, insisted on the filing of an appearance bond to guarantee that Tayee would appear in court at the time the case was to be heard. Thereupon, James Que-Weah, the private prosecutor, was asked and agreed to stand the bond for Tayee, assuring the court that the latter would appear in court within three days. Whether Tayee appeared in court or not on the date promised is uncertain. For our purpose here, however, it is sufficient to state in the face of the

conflicting testimony by Tayee and the private prosecutor on the one hand and the defendant on the other hand, that the jury was the sole judge in deciding which testimony would be given credibility. We cannot say they were wrong in deciding as they did.

When Tayee and the private prosecutor put in an appearance at the court, the defendant was nowhere to be found, since he had gone to his home town for the weekend. Upon his return, the defendant questioned the private prosecutor to ascertain the whereabouts of Tayee. The private prosecutor, after explaining that they had gone to the court but had seen no one, then promised the defendant that Tayee would be in court on the following Monday.

Upon Tayee's failure to appear in court on Monday morning, the defendant went to the home of the private prosecutor who, upon hearing of the failure to appear, promised to bring Tayee to the court at once. The defendant, however, refused the offer and insisted upon the payment of the amount sued for and the costs of court. The private prosecutor refused to comply, asserting that he had posted an appearance bond and not an indemnification bond. Thereupon he was handcuffed by the defendant. In order to have the handcuffs removed from his hands the private prosecutor had to walk all the way to the home of the county attorney in Techien, which took him about twenty-four hours.

It is because of this abuse of the authority vested in him that the present action was instituted against the defendant. There is no doubt that the acts for which the defendant was charged did constitute malfeasance under our penal statutes, and that the evidence was sufficient to sustain a conviction.

Our Penal Law defines the crime of malfeasance.

"Any official or employee of the Government of the Republic of Liberia who, while engaged in the discharge or performance of his duties, does or commits

any act or acts which are not strictly in keeping with law or public policy resulting in injustice to any person or persons, or in prejudice to the service in which he may be engaged at the time, is guilty of a misdemeanor and punishable by a fine of not less than two hundred nor more than one thousand dollars or by imprisonment for not less than six months nor more than one year. He shall be suspended from office pending trial, and dismissed from office upon conviction." 1956 Code 27:111.

We are clearly of the opinion that the defendant, at the time of his misconduct, was acting in his official capacity as justice of the peace, and official of the Government. The private prosecutor testified that he was handcuffed by the defendant upon the failure of a person for whom he had acted as surety to appear in court. This testimony was corroborated by witnesses of the State, who testified that they saw the private prosecutor handcuffed and that he had complained that the defendant had put them on his hands. Moreover, one of the witnesses testified that after seeing the handcuffs on the private prosecutor, he had approached the defendant who acknowledged that he had handcuffed the private prosecutor because of the disrespect which he had shown him. The disrespect to which he referred was the refusal of the private prosecutor to forfeit the bond and pay the costs of court, suggesting, instead, that he immediately seek out the person for whom he had posted the bond and produce him in court.

Evidence was also produced to show that the handcuffs remained on the hands of the private prosecutor for at least twenty-four hours and that he suffered bodily harm. This act occurred in spite of the fact that the private prosecutor had offered to produce in court the person for whom he had posted the bond.

Such acts on the part of the defendant were contrary to and in violation of the statutes and public policy of

this Country. The law clearly provides the procedure to be followed where a person for whom another has posted an appearance bond has failed to appear in court. Where an official deviates from that procedure in abuse of his authority and to the detriment and injury of another, he should be made to bear the consequences of his action.

We are clearly of the opinion that the defendant knew, or should have known, what he was doing and of the illegality and the consequences of his actions. If he did not know, then he was incapable of and did not deserve to hold the position he held. It seems, however, that the defendant, like many other officials of government believed that by virtue of holding a government position, he had the authority to do as he pleased; and, in so believing, he proceeded to commit the acts of which he was charged, in derogation of the laws of the Country, in abuse of the authority and power vested in him, and in violation of the trust and confidence reposed in him. We are not prepared to uphold any violation of the laws of this Country.

In passing, we wish to observe that the defendant took the witness stand and testified in his own behalf but waived the production of witnesses to corroborate his testimony. In *Zaiglor-Or v. Republic*, 2 LLR 624 (1927), this Court held that the uncorroborated testimony of a person accused of crime is insufficient to acquit, especially when the evidence against him is clear and cogent. We hold, therefore, that the handcuffing of the private prosecutor by the defendant as above described was an illegal act for which the defendant was rightly found guilty in accord with the evidence adduced at the trial. The judgment is, therefore, affirmed with the modification that the defendant pay the sum of two hundred dollars as required by the statute or be imprisoned for a period of six months. It is hereby so ordered.

Affirmed as modified.