

In re C. ABAYOMI CASSELL, Attorney General of
LIBERIA, Respondent.

CONTEMPT PROCEEDINGS.

Decided April 30, 1948.

1. One who is not a party to a suit can be held liable for violation of an injunctive order if he is in privity with the defendant.
2. Obedience to a restraining writ commences from the time a party has knowledge that an order is made for the issuance thereof.
3. Any act which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice is contemptuous.

Respondent was cited for contempt of court for advising the Secretary of State to issue a passport to Mrs. Porte in violation of an injunction issued against the Secretary by the circuit court at the instance of Mr. Porte, who had directed the Secretary not to issue a passport to Mrs. Porte while he was taking an appeal from a divorce decree granted to her. The judgment granting the divorce was reversed in *Porte v. Porte*, 9 L.L.R. 279 (1947), a judgment dissolving the injunction was reversed in *Porte v. Dennis*, 9 L.L.R. 213 (1947), and the Secretary was adjudged in contempt in *In re Dennis*, 9 L.L.R. 389 (1947). In connection with the hearing of the contempt proceeding against the Secretary the respondent was cited by this Court and is herein adjudged *guilty of contempt*.

C. Abayomi Cassell, Attorney General, for himself.
T. Gyibli Collins and *Richard F. D. Smallwood*, as *amici curiae*.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

The case of *Porte v. Dennis*, 9 L.L.R. 213, decided by this Court in January 1947, has in its ramifications brought us to these proceedings for contempt of court. In reply to the summons issued by this Court in *In re Dennis*, 9 L.L.R. 389 (1947), for respondent to appear and show cause why he should not be held in contempt, he filed the following returns:

- “1. That your respondent is not exactly aware of what are the circumstances appearing in the record of the proceedings in contempt against Gabriel L. Dennis, Secretary of State of Liberia, which should occasion his being held in Contempt of Court.
- “2. That the opinion given by him as Chief Law Officer of State and referred to in the information of the relator was given before the initiation of the Action of Injunction, being the 17th of April, A.D. 1946, the Action of Injunction having been filed on the 27th Day of April, A.D. 1946, ten days thereafter. Wherefore when your respondent appearing for the Secretary of State in the proceedings of Contempt against him stated during his arguments that the said respondent merely presumed that the Secretary of State had acted upon his advice and opinion given before the institution of the Action of Injunction.
- “3. That if it could be shown affirmatively that he, your said respondent, had in any way caused or occasioned noncompliance with or disobedience of the Writ of Injunction, then he would be liable to be attached for Contempt of Court for such action; to the contrary, your respondent respectfully submits that after he was given the Writ of Injunction by the Sheriff he promptly transmitted the same to the Secretary of State on the same day as it was delivered to him.

- “4. That it was not until after the proceedings in Contempt were in progress that he actually became informed of the exact date of the delivery of the passport in question to the wife of the relator; wherefore your respondent respectfully submits that he ought not to be held to answer for the acts of the Secretary of State, not being aware of or in a position to know of same, since his capacity is purely advisory and his advice given only when sought.
- “5. That your respondent was not aware of any subsequent developments in connection with the issuance of the passport more than that he was requested to appear and defend the injunction action in the Circuit Court, of the position taken by him this Honourable Court being fully aware, which only involved a matter of opinion of the law on the question of service of the process on the Secretary of State then acting for the President of Liberia; which opinion your respondent respectfully submits was his opinion of the law until this Honourable Court determined otherwise; and for which opinion of the law it does not seem right that he should be punished.
- “6. That your respondent respectfully submits that all of his acts in connection with the original action as well as the proceedings in Contempt which have resulted therefrom were done in good faith and as aforesaid based on what is now considered an erroneous opinion of the law for which he respectfully submits he should not be punished.
- “7. That respondent did not in any [way] advise or participate in the acts of the Secretary of State in making the delivery of the passport in question to the wife of relator after the institution of the Action of Injunction, having given his opinion

only of the objections addressed to the Secretary of State by the relator before the institution of the Action of Injunction, for which he ought not to be punished in Contempt of Court.

- “8. That your respondent hereby respectfully submits that there is total absence of any proof of any contempt having been committed by him in the premises hereof, as he cannot be shown nor did he any way disobey or assist in the disobedience of the Writ of Injunction issued in the original action. All that exists as a matter of fact is that prior to the issuance of the Writ of Injunction he gave an opinion to the Secretary of State which this Honourable Court in its opinion in the proceedings against the Secretary of State said that ‘a disregard of such objections, however, would not be embraced in these contempt proceedings, although it would indicate and show a disregard for and violation of the law cited by respondent in vindication of his act.’

“Wherefore, in view of the facts and circumstances, as well as the premises laid herein, respondent respectfully submits that he ought not to be held in Contempt of Court.”

From the returns just quoted it would seem that respondent has done nothing to warrant and justify this Court in instituting contempt proceedings against him. It therefore becomes necessary, in order to present a clear picture of the case, to state succinctly the acts of the Attorney General, respondent herein, which caused us unhesitatingly to institute these proceedings.

(1) His voluntary advice to the Secretary of State advising that the passport be delivered to Mrs. Frances Porte, notwithstanding the protest and objections of her husband, was not upon any legal advice sought by the Secretary of State but rather in response to the following

letter addressed to him by Counsellor H. Lafayette Harmon, private counsel of Mrs. Porte.

“LAW OFFICE, CAREY STREET,
MONROVIA, LIBERIA, W.C.A.,
April 16, 1946.

“THE HONOURABLE,
THE ATTORNEY GENERAL OF LIBERIA,
DEPARTMENT OF JUSTICE, MONROVIA.

“MR. ATTORNEY GENERAL:—

“My client Mrs. Frances Porte, desires making a trip abroad and has applied to the State Department for the necessary passport, but His Excellency the Secretary of State, on account of divorce proceedings which she has pending, has expressed a desire to have the fact from me and the required opinion from you before acting, hence the object of this letter in behalf of Mrs. Porte.

“It is true that Mrs. Porte filed an action of divorce against her husband for desertion, the case was tried at the last March Term of the Civil Law Court, verdict and judgment was rendered in her favour granting the divorce from which verdict and judgment her husband, the defendant, prayed an appeal and is taking the case to the Supreme Court for review.

“It is also true that prior to filing the case of divorce, Mrs. Porte and her husband had been separated quite two years. These are the facts of her case and the present status between herself and her husband, which in my opinion I do not think should prevent her travelling if she wishes to.

“Yours truly,

[Sgd.] H. LAFAYETTE HARMON
H. Lafayette Harmon.

“True copy

[Sgd.] KETURAH MASSAQUOI

Keturah Massaquoi

“Certified true copy of copy received
from the Attorney General.

[Sgd.] K. S. TAMBA.”

In response to this letter the Attorney General forwarded the following letter to the Secretary of State:

“DEPARTMENT OF JUSTICE
MONROVIA, LIBERIA,
17th April 1946.

“1123/77.

“MR. SECRETARY:—

“Today I received the appended from Honourable H. Lafayette Harmon, Counsellor-at-law, the purport of which is explained by the contents of the letter.

“As far as I understand Government’s policy on the score of married women not being granted passports, I am of opinion that the objective was to prevent a woman living in the capacity of a *feme covert*, and not separated from her husband nor supported by him, from suddenly leaving him and making her departure from the Republic without his consent, or without an opportunity for reconciliation being afforded. It does not seem reasonable where a woman has been separated from her husband for more than one [year] and not being supported by him should be subject to his control to such an extent.

“In this case apart from the fact that Mrs. Porte has been apart from and unsupported by her husband, she has obtained a judgment in divorce against him in the Circuit Court, and although the case is pending on appeal her presence is not a requisite to the determination of the appeal; and even where she lost on the appeal, there appears nothing to prevent her travel out of the Republic.

“I am therefore of the opinion that a passport may

be granted her and accordingly advise you to do so.

“Yours faithfully,

[Sgd.] C. ABAYOMI CASSELL,

Attorney General of Liberia.

“THE HONOURABLE

THE SECRETARY OF STATE, R.L.,

DEPARTMENT OF STATE, MONROVIA.

“Certified true copy of original,

KOLLI TAMBA.”

It is to be recalled that it was brought out in the injunction proceeding, *In re Dennis, supra*, that copies of the two letters just quoted were delivered to Mr. Porte by the Secretary himself with the remark that “because of the opinion of the Attorney General he would issue and deliver to Mrs. Porte the passport prayed for.”

(2) Respondent intercepted service on the Secretary of State of the writ of injunction with attached papers, taking them himself through the Department of Justice since in his opinion, as we gather from the subsequent defense set up, Gabriel L. Dennis, Secretary of State, was acting for the President who was out of the city, and consequently it was illegal for any writ of injunction to issue against him. Granting that it was respondent’s considered opinion at that time, did his interception and subsequent forwarding of same to the Secretary of State legalize the service? It has, however, been shown in other opinions handed down by us with reference to the Secretary of State and passports that in such instances the Secretary of State is not immune from the service of writs issuing from the courts of this Republic. *Wiles v. Simpson*, 8 L.L.R. 365 (1944), involving a petition for a writ of mandamus; *Porte v. Dennis*, 9 L.L.R. 213 (1947), involving an injunction.

And note further that in count 4 of the returns prepared and filed by him on behalf of the Secretary of State as counsel representing that officer in the contempt proceeding, *In re Dennis, supra*, Respondent questioned the serv-

ice as illegal, knowing full well that if there were any illegality he was the cause. Said count 4 reads as follows:

“That your respondent was not aware of the issuance of the aforesaid Writ of Injunction at the time of the delivery of said passport to the applicant, and although your respondent admits the receipt thereof as aforesaid on the day following the delivery of the same he has never been served in person with a copy of said Writ of Injunction *in keeping with law.*” *Id.* at 392. (Emphasis added.)

Respondent must surely have overlooked the law that “to render a person amenable to an injunction, it is neither necessary that he be a party to the suit or served with a copy of it, so long as he appears to have had actual notice. . . .” 2 Bouvier, *Law Dictionary Injunction* 1578 (Rawle’s 3d rev. 1914). Injunction: “Moreover, injunction is one of the most commonly used of the extraordinary remedies. It is one of the few cases in which process need not necessarily be served by an officer of the law.”

Count 3 of the returns of Gabriel L. Dennis, Secretary of State, filed by the Attorney General, in the said Secretary’s behalf is as follows:

- (3) “That subsequent to the issuance of said passport at 10 o’clock in the morning of the 28th of April, A.D. 1946, your respondent found among certain mail on his desk enclosed in an envelope the Writ of Injunction together with a copy of the Written Directions and Complaint of your relator [Rufus A. Porte], all of which he referred to the Chief Law Officer of State [the Attorney General] for his legal attention thereto.” *Id.* at 392.

This makes it clear that although we have said, and still say, that the disregard of the objections of relator Porte to the issuance of the passport was not embraced in the contempt proceedings of Gabriel L. Dennis, Secretary of State, nevertheless the record shows that even after the service of the writ of injunction, the chief law officer of

Liberia was approached for his legal advice by the Secretary of State. Hence it is surprising to observe in count 3 of the returns of respondent herein that he states unequivocally, *supra*, "that if it could be shown affirmatively that he . . . had in any way caused or occasioned non-compliance with or disobedience of the Writ of Injunction, then he would be liable to be attached for Contempt of Court. . . ."

(4) Count 4 of the returns of respondent states that he did not actually know the date of the delivery of the passport in question to the wife of relator Porte until after the proceedings for contempt were in progress. It appears to us rather strange that a lawyer should advise delivery of a passport and subsequently when a writ of injunction forbidding delivery is served and the case referred to the source of the legal advice for legal action, that the question of delivery or lack of delivery should be ignored and considered of no importance by the chief law officer of the country.

(5) And lastly, but important, is that it appears hereunder that respondent was actually in court when notice of appeal to this Court was given by plaintiff Porte, yet notwithstanding that and notwithstanding respondent's knowledge of the law, he knowingly ignored the law governing appeals and stuck to his position that the passport in question need not be held up or recalled, as we can see from his letter of April 17, 1946, *supra*, even in the face of the letter addressed to the Secretary of State by Attorney Momolu S. Cooper, representing Rufus A. Porte, the reply to which made nine days later indicated that respondent had been consulted by the said Secretary.

We have seen fit to quote the two letters hereunder:

“MONROVIA, LIBERIA,
May 11, 1946.

“77/6/46

“GABRIEL L. DENNIS

HIS EXCELLENCY, SECRETARY OF STATE,
DEPARTMENT OF STATE,
REPUBLIC OF LIBERIA,
STATE DEPARTMENT, MONROVIA.

“EXCELLENCY:—

“Through the boastings of Mrs. Frances A. Porte, wife of our client Rufus A. Porte, we have learnt with a great deal of surprise, that she has been handed her passport, the subject matter of the Injunction proceedings now before Court, by the Department of State.

“We are unwilling to believe that the information thus gained is correct, because when on the 8th instant His Honour Emmanuel W. Williams, Resident Circuit Judge, dissolved the injunction, Mr. Porte through his legal representative promptly excepted to the judge’s rulings and final judgment and there and then announced appeal to the Honourable the Supreme Court of Liberia at its ensuing October Term of Court.

“Under the statute governing appeals, the moment an appeal is announced in any case, the records thereof made, the law gives appellant certain number of days within which to perfect his said appeal, pending which the judgment appealed from is suspended, the matter allowed to remain in *status quo*, awaiting the final disposition of the matter by the appellate court.

“Our reason for still doubting the correctness of the information is that, the Honourable C. Abayomi Casell, the Attorney General of the Republic of Liberia, who conducted the pleadings on part of the State Department was present in Court when the appeal was announced and recorded.

“We are therefore respectfully requesting you

through this medium, to be gracious enough as to set our minds at rest on this matter by honouring us with a reply.

“Your Excellency’s obedient servant,
[Sgd.] MOMOLU S. COOPER
Attorney-at-law,
Of counsel for Rufus A. Porte.”

Nine days later this reply was received:

“DEPARTMENT OF STATE
MONROVIA, LIBERIA,
20th May 1946.

“786/L.

“DEAR ATTORNEY COOPER:—

“His Excellency the Secretary of State for Foreign Affairs acknowledges the receipt of your letter of May 11, 1946, and instructs me to inform you that acting upon the express advice of the Principal Law Officer of State, the Department has handed Mrs. Frances Porte her passport.

“Very truly yours,
[Sgd.] KOLLII-SELLEH TAMBA,
Passport Officer.

“ATTORNEY MOMOLU S. COOPER,
BEYSOLOW & COOPER,
BROAD STREET,
MONROVIA.”

The Secretary of State having in the letter from the State Department just read above stated in clear and unmistakable language that “*acting upon the express advice of the Principal Law Officer of State*” he delivered to Mrs. Porte her passport, shows conclusively that respondent did cause non-compliance with the writ of injunction and therefore in his own conception of the law he should be adjudged guilty of contempt of court. (Emphasis added.)

“It may be laid down as a general rule that one who is not a party to a suit can be held liable for violation of an injunctive order only on a showing that he oc-

copies a relation of privity with the defendant, as by being his attorney, agent, or servant, or that he has confederated with or has aided and abetted the defendant in the violation of the injunction.”

In *In re Moore*, 2 L.L.R. 97, 1 Semi-Ann. Ser. 15 (1913) involving contempt this Court held:

“[O]bedience to a restraining writ . . . commences from the time a party charged with contempt had knowledge of the fact that an order is made for the issuance thereof.

“To render a person amendable to an injunction, it is . . . [not] necessary that he should have been a party to the suit in which the injunction was issued. . . .” *Id.* at 99.

Any act which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice is contemptuous.

Under the circumstances as outlined above we cannot say that respondent has purged himself of the contempt, and hence we are of the opinion that C. Abayomi Cassell, Attorney General of Liberia, is to be adjudged guilty of contempt and shall pay a fine of one hundred dollars within two weeks from the date of the judgment in this case, with costs; and it is hereby so ordered.

Guilty of contempt.