We having found the verdict to be unsupported by that quality of evidence necessary to establish the charge of forgery for which appellant was indicted, the judgment predicated on said verdict is therefore void and erroneous and should be vacated and it is hereby so ordered.

Arthur Barclay, for appellant.

Attorney General, for appellee.

JOHN J. TISDALL, Petitioner, *v.* J. AZARIAH HOWARD, Respondent.

ARGUED DECEMBER 22, 1915. DECIDED JANUARY 10, 1916.

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

1. A petition in certiorari should embody every point on which it is contended the trial judge erred.
2. Where there has been an omission to lay any exception as a ground for the application for the writ, in the petition, the court will regard such omission as a waiver of any such objection even though it was raised in the court below.
3. The fifth section of the Chapter on Injuries, Liberian statutes, is applicable to those cases where an agent or servant in the discharge of some lawful business or duty, on behalf of his principal or master, performs same in a manner so as to cause an injury to a third party growing out of his carelessness, negligence or unskillfulness in the performance of same.
4. Where the act is unlawful in its nature, and injurious to the rights of third parties, the agent or servant is not absolved from responsibility because the act was done by order of the principal, but on the contrary will be personally held for damages growing out of such torts.
5. An appellate court is only bound to adjudicate such exceptions, as have properly been brought within the purview of said court.

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

Damages for Trespass—Writ of Certiorari. This case was commenced in the City Court of Monrovia on the twenty-third day of November, 1914.

The cause of action as set forth in the complaint in the original case is substantially as follows:—That petitioner on the twenty-first day of November, 1914, and on divers other times unlawfully entered upon a certain lot, to wit: lot number ninety-five located at the intersection of Ashmun and Centre Streets in the City of Monrovia, claimed by the wife of the respondent in certiorari and com-

mitted trespass by pulling down the roof of a certain building which stood thereon whereby the respondent alleged he had been damaged to the amount of fifty dollars.

The action was dismissed on the ground of jurisdiction, to which judgment, plaintiff below, now respondent, excepted and appealed to the Circuit Court of the first judicial circuit.

The appellate court took up the case *de novo* and having disposed of the question of law involved, upon the application of defendant below, now petitioner, submitted to arbitration the issues of facts and the questions of law incident thereto. To this procedure it appears from the records that neither party objected.

The arbitrators after due investigation made the following award, to wit:

"The undersigned having been appointed arbitrators in this case by rule of court and having given notice of the time and place of meeting to the parties and having heard and duly considered the stipulations filed and the evidence adduced to award and determine that judgment be entered in favor of J. Azariah Howard, plaintiff, for thirty dollars and also for seven dollars and fifty cents the costs of this arbitration and all the costs of court."

The court below confirmed the findings of the arbitrators and entered judgment thereupon. Petitioner in certiorari thru his counsel excepted and gave notice of his intention to appeal to the Supreme Court.

The appeal was not taken out, but subsequently, that is to say, on the tenth day of July of the same year petitioner in certiorari, petitioned the justice of this court then presiding in chambers for a writ of certiorari to move the case before this court for review and correction, of alleged errors in the proceedings below.

The points presented for our consideration in the petition are as follows:—(a) "because when the case was called up for hearing petitioner, defendant in the court below submitted a motion to dismiss the action because the said petitioner being an agent he could not be held for damages in an action of trespass, His Honor overruled said motion," etc.

(b) "And also because the complaint in said case was not signed by plaintiff's attorney until after service of the writ upon him, His Honor the judge overruled said objection," etc.

(c) "And also because the arbitrators neglected to determine the cause according to the terms of the stipulations in respect to

the division of the amount of damages against the three defendants in case they were found guilty of trespass."

(d) "And also because a copy of the award had not been served four days upon John J. Tisdall defendant, now petitioner, before the rendition of final judgment," etc.

These embrace the grounds relied upon in the petition and which are properly and legally before us, and to these points only we shall confine ourselves. Whatever other exception the petitioner may have taken to the proceedings below but which he has failed to lay in his petition for the writ of certiorari, will not be considered because not properly before us. A petition in certiorari should embody every point on which it is contended the trial judge erred and which it is sought to be corrected, and where there has been an omission to lay any exception as a ground for the application for the writ in the petition, this court will regard such omission as a waiver of any such objection, even though it was raised in the court below.

We now proceed to consider the exceptions properly before us.

The first exception sets up the contention that the petitioner acting at the time as the agent of another could not be held responsible for the trespass complained of and that the lower court erred in deciding to the contrary.

In support of this contention, petitioner in his brief has cited the statute of Liberia under the head of Injuries, the fifth section of which declares that:

"Every person is liable to an action for all damages which arise from the negligence, carelessness or unskillfulness of himself or his wife at any time, of his agents or servants while employed in his business," etc.

We construe this statute as applicable to those cases where, an agent or servant, in the discharge of some lawful business or duty on behalf of his principal or master, performs same in a manner so as to cause an injury to a third party growing out of his carelessness, negligence or unskillfulness in the performance of same, and for which the principal will be responsible. But we must distinguish between such acts which being lawful in their character are performed in a manner unskillful or careless, and those acts which are unlawful in their nature and injurious to the rights of third parties.

The agent or servant is not absolved from responsibility for

injuries growing out of an unlawful tort because the act was done by the order of the principal, but on the contrary will be personally held for damages growing out of such torts.

We would remark that there is no difference of opinion among authorities upon the proposition that an agent is personally liable for acts or trespass committed at the express or implied command of his master.

In *McNichols v. Nelson* (45 Mo. App. 446, 50 L. R. A. 645) it was held that where a person trespasses upon land at the instance and as the tool of others he is equally liable with them for the trespass.

And again in *Welsh v. Stewart* (31 Mo. App. 376) it was held that all who participate in the commission of a trespass, whether as employer or employed, are liable as principals. It has also been held that, both the master who commands and the servant who commits the trespass may be made liable as principals.

We shall cite only one more case in support of the proposition that an agent or servant is not absolved from responsibility for a trespass committed by him because the act was authorized by the master or principal. The case we now cite is analogous with the one at bar and is therefore pertinent to our determination of this point. It is reported in 87 Me. 233, in a case between *Hazen v. Wight*. Here in this case a servant acting under direction of his master broke the close of plaintiff and committed trespass by cutting wood on the property of plaintiff. The court held that where the master had no power to authorize the act, the servant was personally liable.

There is no evidence in the records to show that Roberts, the employer of petitioner, had any legal right to the property upon which the trespass was committed, or, that he had lawful authority to command the pulling down of the roof of the dwelling, the subject of the trespass. Applying the rule enunciated in the cases above cited to these facts, we must hold that the lower court did not err in refusing to sustain the motion for dismissal on the ground that petitioner had acted in the capacity of an agent in the commission of the alleged trespass.

We come now to consider the second objection which is in essence that the complaint was not signed until after the service of the writ.

Amendments to complaints, whether in a Magistrate's Court or a court of record are allowable, provided made before the trial. The evidence shows that the amendment complained of was made before trial and was allowable under the statute governing amendments of complaints found in the twenty-third section of chapter four on Complaints, as well as the Code for Justices of the Peace, p. 13.

The last point which we deem necessary to our conclusions to consider, objects to the judgment on the ground that petitioner had not been given four days' notice of the award before the judgment was entered.

The statute on Arbitration provides that: "No judgment shall be entered on an award until four days after the party against whom it is rendered had been served with a copy thereof." (Vide Lib. Stat., ch. XV., sec. 8.)

We do not hesitate to affirm that we would have felt ourselves bound to give force to this statute and declare the judgment of the lower court a nullity had the records supported the allegation that the petitioner in certiorari had not been furnished with a copy of the award four days before judgment was entered. The statute is clear and positive and admits of no construction that could defeat the obvious meaning of this section.

But there is nothing in the records to support the exception. The award we find was filed on the twenty-second of June and judgment thereon was not entered until ten days later, that is to say on the second of July.

In the absence of any evidence in the records to the contrary we think it reasonable to assume that the requirement of the statute in that respect was observed, and we are borne out in this assumption by the judgment itself which indicates upon its face that the lower judge did not over-look the statute on this point.

The brief filed by counsellor for petitioner in certiorari contains other points which are thus ingeniously sought to be brought to our consideration, but which are not contained in the petition in certiorari, and consequently are not properly before us.

We reiterate the rule just enunciated, in the case *Stewart v. Republic of Liberia,* that only such exceptions as have properly been brought within the purview of an appellate court is such court bound to adjudicate.

In our opinion the judgment of the court below is not erroneous and should therefore be affirmed and it is so ordered.

A. Karnga, for petitioner in certiorari.

Arthur Barclay, for respondent in certiorari.

A. WOERMANN, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

ARGUED OCTOBER 28, 1915. DECIDED JANUARY 10, 1916.

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

The act of a merchant in supplying his factories with liquor, is not a barter or sale within the meaning of the statutes which forbid the sale of liquor in quantities above three gallons, unless sold under wholesale license.

Mr. Justice Johnson delivered the opinion of the court:

Violation of Revenue Laws—Appeal from Judgment. The appellant in this case was libelled in the Circuit Court of the first judicial circuit, Territory of Grand Cape Mount, for an alleged violation of the revenue laws of the Republic by bartering and selling wholesale liquor, without first obtaining the wholesale liquor license prescribed by the statutes.

The libellee sets up as a defense that he did not, within the time laid in the libel, sell liquor in wholesale quantities. He admits however that he sold retail liquor, averring that he had obtained a retail liquor license from the Government of the Republic.

On the trial of the case, libellant introduced evidence tending to prove that appellant had at sundry times sent wholesale quantities of liquor from his business place at Robertsport to his subfactories in the interior of the Territory; and this is in substance all of the evidence that was given against appellant.

When the action was called for hearing in this court; the Attorney General virtually abandoned the case, averring that the evidence did not support the charge laid in the libel of information.

Under these circumstances, judgment must be entered for appellant, and the judgment of the lower court reversed as a matter of course.

We deem it necessary however, for the future guidance of the courts, to set at rest the question whether the act of a merchant in