

DECISIONS AND OPINIONS  
OF THE  
SUPREME COURT  
OF THE  
REPUBLIC OF LIBERIA.  
NOVEMBER TERM, A. D. 1922.

---

JAMES W. S. BOWENS, Collector of Customs for the Port of  
Monrovia, Appellant, *v.* H. M. STRONG, Appellee.

HEARD DECEMBER 5, 1922. DECIDED JANUARY 29, 1923.

*Dossen, C. J., Johnson and Witherspoon, JJ.*

1. The Collectors of Customs of this Republic are responsible officials of the Government. In the performance of such duties as appertain to their office they are agents of the Government, and for misfeasance in the discharge of their duties they stand in the same relation to third parties as other agents in the absence of some statute to the contrary.
2. Under the Loan Agreement of 1911-12 they are supervised in the performance of the duties of their office by a Customs Receivership to which they are subordinate, which Receivership is empowered to institute rules and regulations appertaining to the collection and administration of the customs revenue which, if approved by the Secretary of the Treasury and not repugnant to some statute, shall have the force of law.
3. But although the statutes creating the Liberian Customs Receivership modified the powers of the Collectors of Customs, they did not alter their character as responsible agents of the Liberian Government, hence they are directly responsible to third persons for any misfeasance committed by them as officials, and may be prosecuted for any tort done unto third persons although done under color of some order or regulation of the General Receiver of Customs, especially when such regulations are devoid of an essential element to impart to them efficacy and force.
4. With regard to the liability of agents to third parties for torts there is a distinction between acts of *misfeasance* or positive wrongs and *non-feasances* or mere omissions of duty, for if the former, the agent is personally liable to third persons although authorized by his principal.

5. Misfeasance is the performance of an act which might lawfully be done in an improper manner by which another person receives an injury; the wrongful or injurious exercise of lawful authority, or the doing of a lawful act in an unlawful manner.
6. 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, but on the contrary will be held personally liable for such torts.
7. Even if goods are lawfully seized their sale without a decree from the proper tribunal is an unwarranted act; hence an order to sell given by the General Receiver of Customs instead of by the court of admiralty which court is vested with the authority to give the necessary decree is an illegal order and an infringement upon the rights of a private individual.
8. The power of legislation is vested in the Legislature of Liberia and, according to the Constitution of Liberia, is not transferable. Hence if an executive officer is granted the power to formulate rules and regulations he is not thereby given the power to enact, amend or repeal a law, but such rule or regulation must be subordinate to, and dependent upon, said law.
9. Nor can any such rule or regulation even if not otherwise valid affect private rights before it shall have been published.
10. The statute laws of Liberia permit trading on board of ships and customs notice No. 2, of 1912 makes it the duty of the master of the ship, whereon steamer purchases are sold, not the purchaser to manifest said goods; a Collector of Customs therefore acts *ultra vires* in seizing such goods from a purchaser and ordering them sold because they were not manifested, and thereby becomes personally liable for the tort.  
*Judgment affirmed.*

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

Action of Damages. This case is before us on appeal from a judgment rendered in the Circuit Court, first judicial circuit, Montserrado County, on the 14th day of March, 1922, against appellant, defendant in the court below.

The records exhibit the following facts constituting the grounds of the action to wit: On the 30th day of November, A. D. 1920, the appellee, plaintiff in the court below, bought and landed at the customs wharf, Port of Monrovia, from a certain steamship named the "Dutch Room" lying in the harbor of said port the following articles of merchandise: one (1) cheese valued at twelve dollars (\$12.00), ten (10) tins condensed milk valued at five dollars (\$5.00), and four (4) tins van Houten's cocoa valued at six dollars and seventy-two cents (\$6.72). The goods were landed and entered at the customs. Subsequently appellee, plaintiff in the court below, applied to pay the import duty and take the goods away when

it was discovered by the customs officials that they had not been manifested. Whereupon appellant, defendant in the court below, acting under color of alleged authority as Collector of Customs for the Port of Monrovia, declared the goods seized and confiscated, on the grounds that they had been landed in violation of the revenue laws and customs regulations of the Republic, in that they had not been manifested. Suit in replevin was brought by appellee, plaintiff in the court below, before Justice of the Peace Stubblefield to recover the said goods. A writ of replevin was issued in the premises to which writ the constable in the case made return on the 6th day of December, A. D. 1920, that the goods could not be found to be replevied, they having been disposed of by J. W. S. BOWENS, the appellant in his capacity as Collector of Customs aforesaid, whereupon the suit in replevin was turned into an action of damages under the provisions of the statute.

The suit thus changed came on for hearing before Davis, City Magistrate, who, on the 18th day of November, 1920, entered judgment against appellant, defendant in the court below, for the sum of forty-five dollars and fifty-five cents (\$45.55) as damages and costs. From this judgment of the court of first instance, an appeal was taken to the Circuit Court, first judicial circuit, Montserrado County, presided over by His Honor Judge R. Emmons Dixon. After hearing and overruling a motion to dismiss, the case was taken up upon the merits and the evidence gone into. On the 14th of March of the same year, the court entered judgment thereupon overruling the demurrers set up by the appellant, and affirming the judgment of the court of first instance. Appellant, defendant in the court below, excepted to the judgment and has brought the case before this appellate judicature upon a bill of exceptions for review.

The first exception laid in the bill of exceptions and upon which we shall decide the issue is taken as follows: "Because on the 10th day of March, A. D. 1922, Your Honor overruled appellant's motion to reverse judgment of the court below, because an action of damages did not lie against the said appellant, but that the said action should have been brought against H. F. Worley, General Receiver of Customs, who through instructions by letter to the Collector of Customs, Port of Monrovia, did order the seizure and sale of said goods to which appellant excepted."

From an inspection of the records we find that the interlocutory ruling made by the trial judge in the progress of the trial, was upon a motion to *dismiss* presented to the court of first instance, and sent up to the Circuit Court before which the case was removed. The records do not show that the judge had before him at the trial a motion for reversal, or, that any such motion was overruled. We would here remark, as we have before observed, that it is the duty of counsel bringing up matters to be reviewed by this court, to see that the records are correctly prepared and that the exceptions laid in their bill of exceptions or other documents shall conform with the rule. This rule has not been followed in taking the exceptions under our consideration, and, we might consistently decline to adjudicate the point raised therein.

But as the law involved in the motion to dismiss and the alleged motion for reversal as stated in the said exception, is substantially the same, we will take the point within our purview. Counsel for appellant in support of the said exception contended before the bar that the suit had been brought against the wrong defendant, that appellee, if at all entitled to relief, should have sought it against H. F. Worley, the General Receiver of Customs, under whose instructions he, the defendant, had acted. There is no denial of the truthfulness of the acts alleged; on the contrary they are admitted and sought to be justified. Let us consider first the official status of the officer styled Collector of Customs; second, the source of his origin; and third, his functions and responsibilities.

And firstly, as to the *status* of this officer: The Collectors of Customs of this Republic are responsible officials of the revenue department of the Government. In this respect they are agents of the Government in the performance of such duties as appertain to their office, and are created by statute. For misfeasance in the discharge of their duties they stand in the same relation to third persons as other agents, in the absence of some statute to the contrary.

Under the Loan Agreement of 1911 and 1912, they are supervised in the performance of the duties of their office by a Customs Receivership to which they are subordinate officials who are invested with the power to institute rules and regulations for the collection and administration of the customs revenue which, if not repugnant to some statute, and duly approved by the Secretary of the Treasury, and duly promulgated, shall have the force of law. (See

Lib. Stat., Book 3, Old Blue Book under Navigation, Commerce and Revenue Laws, arts. 9 and 10; Acts Leg. Lib., approved January 25, 1911 and the amendatory Act thereto approved November 19, 1911; Act Leg. Lib., approved January 22, 1913.) The Acts creating the Liberian Customs Receivership, above cited, modified the powers of the Collectors, but did not alter their character as responsible agents of the Liberian Government, their relation to the Customs Receivership being that of *responsible* subordinates.

We are of the opinion that they are directly responsible to third persons for any misfeasance committed by them in their official capacity as Collectors of Customs, where not protected by some statute, and may be prosecuted for any such tort upon third persons although done under color of some order or regulation of the General Receiver of Customs, and particularly so when, as in the case at bar, such regulations are devoid of an essential element to impart to them efficacy and force. Judge Bouvier observes, that "with regard to the liability of agents to third persons for torts, there is a distinction," he says, "between acts of *misfeasance* or positive wrongs, and nonfeasances or mere omissions of duty. In the former case (i. e. misfeasance of positive wrongs), the agent is personally liable to third persons, although authorized by his principal." The same author defines the term misfeasance to be "the performance of an act which might lawfully be done, in an improper manner, by which another person receives an injury, \* \* \* the wrongful and injurious exercise of lawful authority, or the doing of a lawful act in an unlawful manner." (See Bouv. L. D., vol. 2, Misfeasance; see Id. vol. 2, Principal & Agent, p. 2701.)

This definition is also upheld by Judge Story in his treatise on Bailments, p. 2224 and by Mr. Kent on p. 443 of the 2nd Volume of his Commentaries. In the case *Tisdall v. Howard* decided by this court at its January term, 1916, we held 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," (See Lib. Semi Ann. Series, No. 6, p. 45) but on the contrary will be held personally liable for damages growing out of such torts, and in support of this position, we cited numerous cases as authorities, which we will not here restate. Applying the law as quoted above, we held that even had the regula-

tions under which appellant in this case acted been legitimate and proper, which we, however, contend was not the case, he, the appellant, would have nevertheless been liable in damages to appellee for proceedings to confiscate and sell the goods seized without decree of the proper court of admiralty, which in cases of lawful seizures, before the articles seized can be legally sold by the customs. Independent of such a decree from the proper tribunal, the sale of the articles, the subject of this action, would be unwarranted even had the seizure been lawful. (See Lib. Stat., Book 3, art. 9, p. 109.) The order to sell which emanated from the General Receiver of Customs and under which appellant seeks to justify, is repugnant to existing law and an infringement of a private right. (See Lib. Stat., Book 3, art. 4, p. 102, sec. 15.) It is in the nature of legislation because it aims to amend or repeal what is the law in such cases. The Legislature of the Republic of Liberia is vested with such authority. This power conferred upon this branch of the Government by the organic law is not transferable. (See Const. Lib., art. 2, Legislative Powers.)

The power granted the Liberian Receivership of Customs to formulate rules and regulations for *collection* and *administration* of the customs must be construed in the light of the constitutional provision and in strict subordination thereto.

The statute conferring this authority in no sense contemplates an invasion of the exclusive function reserved to the Legislature to enact, repeal and amend laws; but on the contrary must be understood as subordinate to, and dependent thereon.

Again, the regulation under which appellant seeks to justify his action in the premises does not appear upon its face, nor was there any evidence to show, that it had been duly *promulgated*. This we hold is essential to the validity of any law or regulation bearing upon private rights and designed to effect the same. The paper referred to is in the nature of a circular addressed to the several Collectors of Customs and is in the following language:

“Owing to the great number of contentions relative to ships’ purchases, the opportunity it gives for smuggling, and also the fact that many unauthorized sales have been made of goods from broken packages consigned to other ports, an amended manifest cannot usually be secured in acceptable form. I have written to steamship agents to say that I will be glad if they will cooperate with the customs service to stop all ships’ purchases to the public except refrigerated food-stuffs and then

only to the ships' agents who will declare the goods and pay the duty. The usual courtesies will be granted to foreign consuls through the ships' agency. An amended manifest must be given by the ship's officers on board before the vessel leaves the harbor. If goods are not manifested they will be seized by the customs authority.

Very truly yours,  
H. F. Worley,  
General Receiver of Customs.

Approved:  
J. Jeremiah Harris,  
Secretary of the Treasury."

Here we have a palpable attempt to legislate by officials never clothed with such authority. A circular addressed to the Collectors of Customs designed to deny to private persons an existing right or privilege, and which had not been published for general information, is not enforceable, and he who acts under color of such defective authority may be held responsible to third persons for any tort arising therefrom. Now the purchase of articles from ships anchored in any of our ports by citizens or others, is legally permissible. It is a privilege which could be taken away only by statute. (See Lib. Stat., Book 3, art. 3, sec. 15.) Again, the Customs Notice No. 2, of 1912, recognizes this right and makes provision how such articles shall be brought into the Republic.

"Masters of vessels calling at Liberian ports," it states, "are hereby notified that they are required before clearing from any port of the Republic to submit to the senior customs officers on board, as an amendment of manifest, a complete list of all articles sold on board for transmission ashore," etc. (See Customs Notice, No. 2, 1912.)

It will be seen from this notice that the duty of manifesting such goods is by the terms of the above cited notice, imposed upon the "Master" of vessels from which such articles are bought and not upon the purchaser. The Collector of Customs acted *ultra vires*, and against the plain language of this article which was still in force, when he seized and sold the articles belonging to appellee as stated above, on the ground that they had not been manifested, and, for such *misfeasance* he became personally responsible to appellee for the tort.

But supposing the articles had been seized under legitimate authority, under the statutes of this Republic, could the appellant,

as Collector of Customs, legally confiscate and cause them to be sold independent of a decree of a court of admiralty?

Having previously answered this query in the negative, we will quote the statute upon which our opinion is based which is in the following language: "Said court," referring to the Court of Quarter Sessions and Common Pleas now styled the Circuit Court, "shall have original jurisdiction in all cases of admiralty, and marine jurisdiction, of seizures made under the Navigation, Commerce and Revenue Laws of this Republic, and seizures made under any laws of this Republic." (See Lib. Stat., Book 3, art. 4, p. 121, sec. 1.)

We are of the opinion that the judgment of the court below should be affirmed and it is hereby so ordered.

*County Attorney, Mo. Co.*, for appellant.

*E. J. S. Worrell*, for appellee.

---

S. A. LIBERTY, Petitioner in Certiorari, *v.* JAMES HORRIDGE, Manager for the Anglo Tropical Traders, Limited, of Grand Bassa County, Respondents  
in Certiorari.

*Dossen, C. J., Johnson and Witherspoon, JJ.*

1. Courts of justice will avoid the refusal to hear litigants because of immaterial technicalities.
2. The minutes of any day's session of a court are not approved until the following day so as to give attorneys conducting cases an opportunity to have the facts of a trial correctly recorded. Should they fail to follow up the cases and see to the necessary corrections being made before the minutes are approved, they must suffer the consequences.

Mr. Justice Witherspoon delivered the opinion of the court:

Debt. The records in this case show that respondents, plaintiffs in the court below, sued out an action of debt against petitioner, defendant in the court below, and that at the call of the case plaintiff, now respondent, arose in open court and announced withdrawal of the said case and asked that the same be noted upon the court's records, which was then ordered noted by the judge; without plaintiffs reserving to themselves the right to renew same. That subsequently said respondent, plaintiff in the court below, renewed the action and at the call of this second action defendant offered a mo-