



ANGELINA O'REILLY - - Appellant.

30th June,  
1914.

v.

GEORGE W. PAGE - - Respondent.

*False imprisonment by a District Commissioner—Arrest for selling spirits without a licence, by a District Commissioner's clerk—Subsequent ratification by the District Commissioner of the arrest—Liability of public officer for unlawful acts of subordinate—Effect of provisions as to rewards to informers upon power to prosecute at instance of Government—Functions of clerks to District Commissioners—Non-repudiation by District Commissioner of unlawful arrest by subordinate—Conveyance of person charged by a police officer, at the instance of the District Commissioner, after issue of summons.*

The Commissioner of the Sherbro District of the Colony instructed his clerk to discover if any persons were selling spirits without a licence. In executing this duty the clerk unlawfully arrested the Appellant and brought her before the District Commissioner, who detained her for a short time in his office while he prepared a summons, and then despatched her in the company of a Police Constable to the house of one of her relations.

Held that the District Commissioner had not by his action ratified the unlawful arrest by his clerk, and that the detention in the District Commissioner's office pending the preparation and service of the summons and the subsequent despatch to the town in the company of a Police Constable did not constitute false imprisonment.

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Appeal from judgment of Purcell, C.J., in the Supreme Court of the Colony of Sierra Leone.

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A. J. Shorunkeh-Sawyerr for the Appellant cites:—

The Sherbro District Licences Ordinance, 1906 (No. 8 of 1906), sections 2 and 3<sup>1</sup>.

The Liquor Licence Consolidation Ordinance, 1905, No. 34 of 1905<sup>2</sup>.

The Protectorate Ordinance, 1901 (No. 33 of 1901), sections 64, 65, 66 and 73<sup>3</sup>.

Tobin v. The Queen, 33 L.J., C.P., p. 199.

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<sup>1</sup> Now The Bonthe District Licences Ordinance, 1924, Cap. 18, secs. 2 and 3, Vol. I., p. 114.

<sup>2</sup> Repealed and replaced by the Liquor Licence (Consolidation) Ordinance, 1921. Now the Liquor Licence Ordinance, 1924, Cap. 111, Vol. I., p. 790.

<sup>3</sup> Now the Protectorate Ordinance, 1924, Cap. 167, secs. 25, 26, 27 and 39, Vol. II., pp. 1140, 1141 and 1144.

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*Baxendale v. Bennett*, 47 L.J., Q.B., p. 624.

The Magistrates' Courts Ordinance, 1905 (No. 29 of 1905), section 17<sup>1</sup>.

*Griffin v. Coleman*, 28 L.J., p. 493.

*Marsh v. Joseph*, L.R. (1897), 1 Ch., p. 213.

The Court Messengers Ordinance, 1907 (No. 31 of 1907), section 2<sup>2</sup>.

*Willbraham*, A.G., for the Respondent, was not called upon.

VAN DER MEULEN, J.

This is an appeal brought by Miss Angelina O'Reilly from a decision given by the Chief Justice, sitting in the Supreme Court, in an action brought by the Appellant, Miss O'Reilly, against the Respondent, Mr. G. W. Page, who at the time material to this action was District Commissioner of the Sherbro District in the Colony. In that action Miss O'Reilly claimed damages from Mr. Page in respect of her unlawful arrest by one Turner, a clerk in the District Commissioner's office, for the alleged reason that she was found to be selling spirits without the licence required by law and on the ground that if Mr. Page had not originally authorised the arrest he had by his subsequent actions ratified and made himself responsible in law for Turner's actions. After a hearing lasting some days the Chief Justice delivered a written judgment, in which he held that Mr. Page had not authorised the arrest of Miss O'Reilly by Turner, that Mr. Page had not by his subsequent actions ratified or adopted as his own Turner's actions in this respect, and that what he himself had done did not amount to even a technical arrest of Miss O'Reilly. The Chief Justice further held that Mr. Page and Turner were both members of the same Government Department, and that following the law laid down in *Raleigh v. Goschen* (L.R. (1898), 1 Ch., 73), and *Bainbridge v. Postmaster-General* (L.R. (1906), 1 K.B.D., 102), Mr. Page could not be held liable in law for the unlawful acts of Turner which he had not authorised. From that decision Miss O'Reilly is now appealing to this Court. Mr. Sawyerr, appearing for the Appellant, has urged upon us that the decision in the Court below was wrong, because the protection which is accorded to a Government Officer by reason of the decisions in *Raleigh v. Goschen*, and *Bainbridge v. The Postmaster-General* only arises when the act complained of is one

<sup>1</sup> Now the Magistrates' Court Ordinance, 1924, Cap. 118, sec 17, Vol. II., p. 836.

<sup>2</sup> Repealed and replaced by the Court Messengers Ordinance, 1921 (No. 11 of 1921), sec. 2. Now Cap. 42, sec. 2, Vol. I., p. 222.



arising in the performance of some duty which is imposed by law, and, in support of this contention, he cited the case of *Tobin v. Reg.* (32 L.J., C.P., 199), as showing that the act of Mr. Page, the Respondent in this appeal, in sending Turner on the mission which resulted in the arrest of Miss O'Reilly, was not one which was imposed upon him by law. Mr. Sawyerr referred to section 2 of the Sherbro District Licences Ordinance, 1906 (No. 8 of 1906), sections 4 to 7 and section 39 of the Liquor Licence Consolidation Ordinance, 1905 (No. 34 of 1905), and sections 66 and 73 (1) of the Protectorate Ordinance, 1901 (No. 33 of 1901<sup>1</sup>), which sections in the latter Ordinance have been applied to the Sherbro District by virtue of Ordinances No. 8 of 1906<sup>2</sup> and No. 8 of 1910<sup>3</sup>. It was urged that although these Ordinances imposed upon the District Commissioner of Sherbro certain ministerial and magisterial duties with regard to the issue of liquor licences and the punishment of persons when brought before him and convicted of contravening the liquor licence laws, they imposed upon him no duty to send out persons who may be described as spies—in which capacity it was admitted Turner was acting at the time of the Appellant's arrest—to discover whether or not persons were selling spirits without a licence. Mr. Sawyerr also argued that since the proviso to section 73 of the Protectorate Ordinance, 1901<sup>3</sup>, provided for the reward of informers whose evidence should lead to the conviction of persons selling liquor without a licence, it followed as a necessary inference that such cases should properly be prosecuted on the information of members of the general public.

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I am unable to agree with the proposition put forward by Mr. Sawyerr for the following reasons:—Mr. Page, as District Commissioner of Sherbro, was the representative of the Government in that District for practically all purposes, and as such discharges many different functions, and among other duties placed upon him he is, by virtue of section 8 of the Police Ordinance, 1907 (No. 18 of 1907), placed in charge of the Police Force in that district, and by section 20<sup>4</sup> of this Ordinance the police are charged with the "prevention and detection of crime or other infraction of the law." This being so, I am clearly of opinion that there was a duty cast upon the Respondent by this Ordinance to take all reasonable and proper steps for the prevention and detection of crime or other infractions of the law, and that the sending by him of the clerk Turner and the Court

<sup>1</sup> Now Cap. 167, secs. 27 and 39, Vol. II., pp. 1141 and 1144

<sup>2</sup> Now Cap. 18, Vol. I., p. 114.

<sup>3</sup> Now Cap. 167, sec. 39, Vol. II., p. 1144.

<sup>4</sup> Now Cap. 156, secs. 8 and 19, Vol. II., pp. 1048 and 1050

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Messenger Beah Hai, who accompanied him, to enquire whether or not persons were selling spirits contrary to law, was such a reasonable and proper step. Were it not so it would appear to me that the law might be broken with impunity in the Sherbro District.

It was further argued by Mr. Sawyerr, that, in order for the respondent to divest himself of the responsibility for Turner's illegal action in arresting the Appellant, he must prove that both himself and Turner were in this matter acting as members of the same Government Department; and that since Turner was a sixth Grade Clerk in the District Commissioner's Office at Bonthe, it was clear that he was in no sense a Police or Detective Officer, and was therefore, in relation to this matter, in no sense acting in the same department as the Respondent.

The clerk Turner, in my opinion, is, in common with the other members of the subordinate staff in the District Commissioner's Office, placed there in order that he may be at the disposal of the Respondent to assist him in the performance of such duties as may devolve upon him as District Commissioner, and to be at his disposal for such duties within those limits as he may call upon him to perform. The detection of crime, and of the infractions of the law being, as I have stated above, within the category of such duties, I consider that the respondent was entitled to call upon Turner to assist him in the performance thereof, and that when the Respondent and Turner were engaged in this common object they were both members of the same Government Department.

Although it is clear that the Respondent directed Turner to prosecute enquiries with a view to discovering whether or not persons were selling spirits contrary to law, so far from there being any evidence that he authorised him to arrest persons found to be so breaking the law—which arrests would be clearly illegal—the weight of evidence goes to prove that even if he did not expressly direct Turner not to make such arrests, which the Respondent stated he did, he never, at any time, directly or indirectly instructed or authorised him to make such arrests. After having illegally arrested the Appellant and others, Turner wrote a letter to the Respondent at Bonthe in the custody of a Court Messenger. Mr. Sawyerr contends that even if he did not authorise the original arrest made by Turner, the Respondent, by his subsequent conduct, ratified and adopted as his own the unlawful act of Turner, the grounds for this contention being, firstly, that the Respondent did not in his reply to Turner's



letter expressly condemn his action, but stated that he would issue summonses against any other persons whom Turner might find to be selling spirits without the necessary licence; and, secondly, that the Respondent did not, even although he had the full knowledge of the Appellant's illegal arrest by Turner, immediately direct her release but, on the contrary, detained her in his office for a further period of some ten or fifteen minutes while he caused a summons to be prepared, which he served upon her there and then, and eventually sent her to the house of some relatives in company of a police officer, which facts, it is contended, constituted a fresh restraint of the Appellant by the Respondent himself. I consider that the Respondent would have exercised much greater discretion, and would have shown far more consideration for the Appellant in her then distressed condition—the evidence is that she had travelled for some 25 miles in the rain, and was wet and miserable—if he had not served the summonses upon her at that time; but although I consider that he acted to this extent unwisely, I do not think that anything the Respondent then did amounted to an arrest of the Appellant. According to the evidence, the Respondent seems to have been genuinely sorry for the Appellant, and to have been anxious to find a comfortable dwelling place for her, and I have no doubt that it was with this object that he despatched a police officer with her when she left his office. This being so, I agree with the Chief Justice that the Respondent is not responsible or liable in law for the unlawful arrest of the Appellant by Turner, and that he did nothing himself subsequently which can be held to amount to an arrest of the Appellant by himself.

I am therefore of opinion that this appeal must be dismissed with costs, but as the Attorney-General, who appears for the Respondent, has stated that he does not ask for any costs other than out-of-pocket expenses, the costs allowed to the Respondent will be only the sum so expended on behalf of the defence in the proceedings both in this Court and in the Court below.

HAWTAYNE, J.

I concur.

PURCELL, C.J.

I concur.

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