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Officers-Tort Liability-Ministerial Duty

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OFFICERS—TORT LIABILITY—MINISTERIAL DUTY—Action to recover property damages. The appellants, who were state entomologists and engaged in the eradication of the corn borer, plowed the appellee's oat field to cover over old cornstalks and other refuse, which the appellee had failed to dispose of when so ordered. The plowing was done at a time when the soil was over saturated with moisture, and the crop of oats were eight inches in height, causing injury to the fertility of the soil and destroying the crop of oats. There was no evidence of any traces of the corn borer in the appellee's field, or within the immediate vicinity. The jury found the plowing unwarranted and unreasonable, and held the appellants liable for the damage. The appellants contend that as officers of the state, acting under authority from the conservation department, they are not personally liable for injuries sustained as a result of their acts. *Held*, public officers are personally liable for the wrongful performance of their ministerial duties.¹

The principal case presents the question as to what extent a public office affords protection from personal liability, in the performance of ministerial duties. A ministerial duty is absolute, certain and imperative, involving the mere execution of a designated task, the law prescribing the mode of performance so that very little, if any, discretion remains in the officer.² Duties and acts which the courts have held to be ministerial are: dipping for the eradication of the cattle tick;³ levying of a tax by a board

¹ *Tokas v. State* (1930), 202 Ind. 259, 173 N. E. 453; *Lee v. State* (1929), 90 Ind. App. 43, 167 N. E. 543.

² *Wallace v. Feehan*, Appellate Court of Indiana, June 3, 1932, 181 N. E. 862.

³ *Roberts v. United States* (1899), 176 U. S. 221, 20 Sup. Ct. 376.

⁴ *McOlellan v. Carter* (1923), 30 Ga. App. 150, 117 S. E. 118.

of supervisors after such has been ordered;⁴ committance to jail by the jailor;⁵ docketing a judgment;⁶ signing a license.⁷

A public officer is personally liable in tort for injuries to an individual resulting from non-feasance, misfeasance or malfeasance in the improper performance of a ministerial duty.⁸ The fact that the officer acted honestly and without malice or corrupt motive, believing that his action was proper, is no defense to a tort action.⁹ The officer's powers and duties are set out definitely, and in the case of his ministerial duties his authority is so limited by such that he acts at his peril outside of such. Where the officer acts under an unconstitutional statute, which if valid would have given him authority for the act, he is protected from personal liability for proper action until the statute has been declared unconstitutional.¹⁰ An officer acting under a process that is valid upon its face is not personally liable for his acts if such process proves to be void.¹¹ But where the officer acts under a process which is invalid upon its face he is wholly without his authority and acts at his peril, being liable for any injury to an individual.¹² Where an officer carries out orders of a superior, which are unwarrantable by law and issued without authority, he is liable personally for the injuries sustained by third persons.¹³ It can be said that in any case where a public officer exceeds his authority, then his office affords him no protection, and he is in the same position as any private individual and must answer personally for any wrongful or tortious acts.¹⁴

In the principal case the ministerial duty of covering over refuse was performed in an improper manner. There were no circumstances present that called for the use of such drastic tactics since there was no present danger from the corn borer in the appellee's field. The action was unwarranted and unreasonable and in excess of the appellants' authority in eradicating the corn borer. It is submitted that the principal case is in accord with the majority of the cases, in that it holds an officer personally liable for the improper performance of a ministerial duty. A. C. J.

⁴ *Amy v. Supervisors* (1870), 11 Wall. (U. S.) 136, 30 L. Ed. 101.

⁵ *Clark v. Kelly* (1926), 101 W. Va. 650, 133 S. E. 365.

⁶ *Richard v. Tynes* (1931), 149 Okla. 235, 300 Pac. 297.

⁷ *Grider v. Tally* (1884), 77 Ala. 422, 54 A. R. 65.

⁸ *Johnson v. Lankford* (1918), 245 U. S. 541, 28 Sup. Ct. 203; *Frank v. Eaton* (1928), 221 N. Y. S. 477; *Florio v. Schmolze* (1925), 101 N. J. L. 335, 129 Atl. 470; *Raynsford v. Phelps* (1880), 43 Mich. 342, 5 N. W. 403; *Stevens v. North States Motors* (1928), 161 Minn. 345, 201 N. W. 435; *Richard v. Tynes* (1931), 149 Okla. 235, 300 Pac. 297; *Clark v. Kelly* (1926), 101 W. Va. 650, 133 S. E. 365; *Grider v. Tally* (1884), 77 Ala. 422, 54 A. R. 65; *McClellan v. Carter* (1923), 30 Ga. App. 150, 117 S. E. 118.

⁹ *Amy v. Supervisors* (1870), 11 Wall. (U. S.) 136, 30 L. Ed. 101; *Clark v. Kelly* (1926), 101 W. Va. 650, 133 S. E. 365.

¹⁰ *Henke v. McCord* (1880), 55 Ia. 378, 7 N. W. 623; "Effect of an Unconstitutional Statute," O. P. Field, 1 Ind. L. J. 1 (1926); "Protection of Officers Who Act Under an Unconstitutional Statute," M. P. Rapacz, 11 Minn. Law Rev. 585 (1927).

¹¹ *Curtiss v. Witt* (1896), 110 Mich. 131, 67 N. W. 1106; *Erskins v. Hohnbach* (1871), 14 Wall. (U. S.) 613, 20 L. Ed. 745; *Ingraham v. Booten* (1912), 117 Minn. 105, 134 N. W. 505; *Chegaray v. Jenkins* (1851), 5 N. Y. 376; *Underwood v. Robinson* (1867), 106 Mass. 296; *People v. Zimmer* (1911), 252 Ill. 9, 96 N. E. 529.

¹² *Chegaray v. Jenkins* (1851), 5 N. Y. 376; *Commonwealth v. Martin* (1870), 105 Mass. 178; *Chruscicki v. Hinrichs* (1928), 197 Wis. 78, 221 N. W. 394.

¹³ *Little v. Barreme* (1804), 2 Cranch (U. S.) 170, 2 L. Ed. 243.

¹⁴ *Overmeyer v. Barnett* (1919), 70 Ind. App. 569, 123 N. E. 654; *Warr v. Hodges* (1920), 234 Mass. 279, 125 N. E. 557; *Underwood v. Green* (1870), 42 N. Y. 140; *Downs v. Lazelle* (1926), 102 W. Va. 663, 136 S. E. 195.