

May 13, 1925.

OPINION No. 1217.

STATUTES—CONSTRUCTION:

The reason and intent of the Legislature will control the strict letter of the law when the letter would lead to palpable injustice.

STATUTES—CONSTRUCTION:

The Legislative history of an Act may be consulted to aid in its construction.

STATUTES—CONSTRUCTION:

There is a presumption against a construction which will render a statute ineffective or inefficient.

APPROPRIATIONS — REPAYMENT
OF TAXES “WRONGFULLY COL-
LECTED”:

An appropriation to repay taxes “wrongfully collected” from the Bishop Estate upon lands under lease to the Territory, is proper, when the terms of the lease require the Territory to pay all taxes.

Honorable Thomas Treadway,
Auditor, Territory of Hawaii,
Honolulu, Hawaii.

Dear Sir:

Your letter of May 12th has been turned over to me for reply.

You ask whether you can make payment to the Bishop Estate under Act 108 of the sum appropriated to repay taxes “wrongfully collected.” The only wrongful collection arose by virtue of the fact that the taxes were assessed and collected upon land under

lease to the Territory, the lease obligating the Territory to pay all taxes.

In *Re I. I. S. S. N. Co.*, 21 Haw. 6, the court construed a statute which appropriated money to pay back “moneys wrongfully collected” for merchandise license fees. The Inter-Island money was rightfully collected but was, perhaps, wrongfully retained. The court re-affirms the principle—laid down in *Shillaber v. Waldo*, 1 Haw. 138, that the reason and intent of the legislature will control the strict letter of the law when the letter would lead to palpable injustice, contradiction and absurdity. It then discusses the intent of the legislature and shows that the statute referred to a class within which the Inter-Island Company did not fall, and, further, could not show that the legislature intended that anything outside the specific class should be included. The decision does not control this case although like language was used in the statute, as there was no showing of a legislative intent which would include taxes “wrongfully retained.”

In *Shillaber v. Waldo*, *supra*, the court approves language of the United States Supreme Court to the effect that in construing a statute the intention of the makers is to govern, although such construction may seem contrary to the letter of the statute.

In *Thomas v. Martin*, 8 Haw. 67, 69, the court held that statutes must be interpreted according to the intent and meaning and not always according to the letter.

This was affirmed in *Republic v. Ben*, 10 Haw. 278, 282.

The report of the Senate Committee upon this bill shows that the legislative intent was directed to the curing of a substantial injustice in that, the Territory having breached its agreement under the lease of the Marine Railway property, the Bishop Estate had been compelled to pay taxes which, under the lease,

the Territory itself was obliged to settle. Thus it appears that the intent of the legislature was to deal with this specific case and remedy this specific injustice.

The Committee report may be consulted to aid in determining the legislative intent.

Territory v. Armstrong,
28 Haw. 88, 93.

Holy Trinity Church vs. United States,
143 U. S. 457, 36 L. Ed. 226.

It further appears that in one sense, at least, the tax was wrongfully collected inasmuch as the Territory collected it from the Bishop Estate when the governmental agency had itself promised to pay it.

Furthermore, although the act refers to moneys wrongfully collected, it also refers to the portion “retained” by the Territory, so that a wrongful retention was apparently in mind, as well as a wrongful collection.

The intent of the legislature is clear to remedy a specific injustice, and though the language of the act is not particularly appropriate, it should be construed in the light of that specific intent.

Furthermore, if the act is not construed in accordance with this legislative intent, the act has no effect and can apply to no existing situation. But the obligation rests upon courts and officials to vindicate every act of the legislature, if possible, and to show respect to its wisdom, its integrity and its patriotism, by presuming in favor of the validity of an act.

King v. Lau Kin, 7 Haw. 489.

There is a presumption against a construction which would render a statute ineffective or inefficient.

Bird v. United States, 187 U. S.
118, 47 L. Ed. 100,103.

I therefore advise you that you are justified in issuing your warrant in the amount of \$5,676.95 to the Trustees of the Estate of Bernice Pauahi Bishop, under Act 108, S. L. 1925.

Very truly yours,

MARGUERITE K. ASHFORD,

Special Deputy Attorney General.

APPROVED:

WILLIAM B. LYMER,

Attorney General.