BENJAMIN BAFFOE, Appellant, *v.* SHAMAG CORPORATION, by its Manager, ROBERT A. CROY, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 10, 1964. Decided January 15, 1965.

1. An action for damages for injury to personal property is a statutory action.
2. Where a verified bill of particulars is statutorily required to support a complaint, omission of the title of the officer before whom the affidavit accompanying the complaint was sworn is a ground for dismissal of the action.
3. A bill of sale attached to and forming part of a complaint is deemed to constitute a bill of particulars and must be verified by the plaintiff. 1965 Code, tit. 6, § 272.

On appeal, a judgment dismissing an action for damages for injury to personal property was *affirmed.*

MacDonald Acolatse for appellant. *G. P. Conger-Thompson* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The above-entitled cause of action was instituted by the present appellant as plaintiff in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, whereupon process was duly issued, served and returns thereto made by the proper ministerial officer of court, which returns bear date: 12th of March, 1963.

Pleadings in this cause were conducted up to the rebutter. When the case was assigned for hearing, appellee filed a motion to dismiss the action on the grounds that the jurat which buttressed plaintiff's complaint was legally defective, and enumerated the following as his reasons, to wit:

"1. Because said jurat did not bear the official title of the officer before whom it was purported to have been sworn;

"2. Because it did not carry also the signature of the officiating officer when the case was filed;

"3. Because the affidavit was signed eight days after filing of the complaint; and

"4. Because it was not signed by the plaintiff or his counsel as deponent."

Countering appellee's motion to dismiss the above-entitled cause of action, appellant filed a resistance to said motion which, in its body, reads, and we quote:

"1. That according to statute law of this country now in vogue, it is provided that except when otherwise specifically provided by rule of court, or in equity pleading, or by statute pleading need not be varified or accompanied by affidavits. Plaintiff submits that there is no statute later than that hereinabove referred to, or any rule governing the circuit courts of this Republic which specifically requires affidavits to accompany pleadings filed in actions other than those in equity. Plaintiff therefore prays dismissal of said motion.

"And this plaintiff is ready to prove.

"2. And also because plaintiff says that said motion is legally untenable and hence should be dismissed for the fact that the Supreme Court provides that all motions filed in the said court should be accompanied by an affidavit. This makes filing of motions to be mandatorily accompanied by affidavit in said court whereas the rules governing the circuit courts do not provide for pleadings in action other than in equity to be accompanied by affidavit. The Supreme Court as recently as December 1944, held that affidavits in common law court

pleadings are unnecessary, and if attached and defective should be rejected as mere surplusage. Plaintiff therefore prays dismissal of said motion.

"And this plaintiff is ready to prove.

"3. And also because plaintiff further resisting said motion says that the same is void of any legal merits and not sufficient ground to dismiss his complaint. Plaintiff submits that courts do not exist for sake of discipline and hence a court ought not to correct errors or mistakes which are not fraudulent if it can be done without injustice to the other party. Plaintiff therefore prays dismissal of said motion.

"And this plaintiff is ready to prove.

"4. And also because plaintiff denies all and singular the allegations of facts and law relied upon in said motion not herein made the subject of special traverse.

"Wherefore, and in view of the foregoing, plaintiff prays the dismissal of said motion."

His Honor A. Lorenzo Weeks, presiding by assignment over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, heard and disposed of the motion under review and dismissed plaintiff's action, whereupon plaintiff took exceptions to the said ruling and prayed an appeal to this Court of last resort for final determination which was granted. Accordingly, plaintiff filed a bill of exceptions containing two counts. Count 1 of said bill of exceptions reads:

"1. Because plaintiff-appellant submits that at the hearing of the law issues on the 1st day of July, 1963, defendant, through his counsel, the Simpson Law Firm, filed a motion to dismiss the complaint on the ground that the jurat thereof did not bear the title of the officer before whom it

> was purported to have been sworn (justice of the peace), and hence prayed the dismissal of said cause. Your Honor, in ruling on said motion, sustained said ground as raised in the said motion and dismissed plaintiff's complaint. Plaintiff-appellant submits that although, under the jurat the justice of the peace's title was not stated, notwithstanding, in the body of the affidavit it is stated: 'Personally appeared before me a duly qualified justice of the peace for Montserrado County,' meaning thereby that it was not absolutely necessary to give the title under the jurat. Plaintiff-appellant therefore excepted to Your Honor's ruling and prayed an approval appeal to the Honorable Supreme Court of Liberia which was granted (see Court's ruling)."

In this count of the bill of exceptions, appellant complains of the trial judge sustaining appellee's motion to dismiss the case because of a material defect in the affidavit supporting the complaint, in that the jurat of the affidavit was defective because it did not bear the title of the officer before whom it was purported to have been sworn; and appellant submits that although the justice of the peace's title was not stated in the jurat notwithstanding, in the body of the affidavit it is stated; "personally appeared before me a duly qualified justice of the peace for Montserrado County," which was sufficient in law to cure the legal blunder or defect complained of in the affidavit.

To comprehend the definition of an affidavit we regard it important that we should consult some competent legal authority, common law and/or statutory, so as to be in the position to say whether or not the contention contained in Count 1 of the bill of exceptions now under review has a foundation in law. In outlining the formal parts of an affidavit, Judge Bouvier says:

"An affidavit must intelligibly refer to the cause in

> which it is made. . . . The place where the affidavit is taken must be stated, to show that it was taken within the officer's jurisdiction. . . . The deponent must sign the affidavit at the end. . . . The jurat must be signed by the officer with the addition of his official title." BOUVIER, LAW DICTIONARY *Affidavit* (Rawle's 3rd Rev., 1914).

From the foregoing it is made clear that the jurat must be signed by the justice of the peace with the addition of his official title. We shall now revert to the law of the land and thereby observe what has been the mind of this Court on the question under consideration.

This Court, as far back as the year 1882, made clear the definition of an "affidavit." Among many things, the Court said:

> "Upon a careful examination of the law we find no conflict as to what is an affidavit. It being a statement or declaration reduced to writing, sworn or affirmed to before an officer authorized to administer such an oath, it must intelligibly refer to the cause in which it is made. The strict rule of the common law is that it must contain the exact title of the cause, and the place wherein the affidavit is taken must be stated, so as to show that it was taken within the officer's jurisdiction. The deponent *must* sign the affidavit at the end, and the jurat must be signed by the officer, with the addition of his official title. In general, an affidavit must describe the deponent sufficiently to show that he is a party, or an agent or an attorney of the party, to the proceedings, and this matter must be stated not by way of recital, or a mere description." *Horace* v. *Johnson,* 1 L.L.R. 516 (1882).

It is to be observed that the law of the land in defining an affidavit is strictly in harmony with the common law.

Appellant having conceded the point that, under the jurat, the justice of the peace's title was not stated, admits an incurable legal blunder, as it is mandatorily required

that the jurat must be signed by the officer, with the addition of his official title.

In view of the foregoing, Count 1 of the bill of exceptions is hereby overruled.

Count 2 of the bill of exceptions complains of the trial judge, to wit:

> "Plaintiff-appellant submits that an action of damages for injury to personal property being a common-law action, an affidavit to it is merely a surplusage, and because the title of a justice of the peace did not appear under the jurat of said affidavit, even though it is carried in the body of the affidavit, the plaintiff-appellant maintains is not sufficient for the dismissal of his action."

We come now to consider the issue raised by appellant to the effect that an action of damages to personal property is a common-law action. It is astonishing to observe that appellant's counsel in these proceedings has not taken the time to make the necessary research on this issue before placing himself on record as not being able, as a member of this bar, to determine whether or not an action of damages for personal injuries is statutory. Our statute on injuries provides as follows:

> "Injuries are divided generally into personal injuries and injuries to property. Personal injuries are further subdivided into injuries to person, injuries to domestic relations and injuries to the reputation. Injuries to property are divided into breaches of contract and other injuries to property." 1956 Code, tit. 17, § 8.

It is obvious from the above that an action of damages for injury to personal property is a statutory provision, enacted by the lawmakers of this Republic in common with other laws for the promotion of the ends of justice. Therefore the theory advanced by appellant that "an action of damages for injury to personal property being a common-law action, an affidavit to it is merely a surplus-

age," is unmeritorious and untenable in law. Count 2 of appellant's bill of exceptions is hereby overruled.

The issue raised by appellant in his brief, and argued before this Court, was to the following effect:

> "Since the law in vogue in our jurisdiction unequivocally provides that, except when otherwise specifically provided by rule of court, or in equity pleading, or by statute, meaning that at present there is no such statute or rule of court, pleadings need not be accompanied by affidavit."

Comparing the above quotation with the applicable statute, as set forth in the 1956 Code, tit. 6, § 257, we find it provided that, except where otherwise specificially provided by rule of court, or in equity pleading, or by statute, pleadings need not be verified or accompanied by an affidavit. The contention of appellant based on this statute would seem, at first blush, to have a foundation in law. But going a step further, we discover that this provision of the statute is conditional in that it is by law a mandatory requirement that "a bill of particulars shall accompany every complaint which does not inform the defendant with a sufficient particularity of the facts which the plaintiff intends to prove. The bill must be verified by the plaintiff." (1956 Code, tit. 6, § 272.)

Aside from there being certain facts laid out in the body of the complaint in these proceedings to which, in compliance with the statute, a bill of particulars should have been attached, thereby forming a cogent part of plaintiff's complaint, we observe a bill of sale attached to and forming a part of the complaint in these proceedings, which bill of sale is legally a component part of a bill of particulars. Although the bill of sale is of an evidential nature, yet its function in these proceedings is to inform the defendant of some particular fact therein presented, which should have been verified by plaintiff as the law provides and directs.

It is regrettable that counsel for plaintiff did not employ more diligence in the prosecution of his client's interest in these proceedings. We are persuaded to believe that he was fully cognizant of the fact that he should have followed the law when he attached the affidavit in question to his complaint, notwithstanding same was later discovered defective. We are also strongly impressed that he fully understood the difference between a common law action and a statutory one, but persisted in prosecuting the appeal in this case so as to test or mislead this Court, which act on his part could reasonably be construed as being contemptuous. However, we deem it expedient to define "statutory action," as also the word "statute," for the benefit of this opinion.

A statutory action is the outgrowth of a legislative enactment of a particular statute and is defined as follows by law writers:

> "Statutory action is an action which can be brought by authority of some statute." 1 C.J. 933 *Actions* § 22.
>
> "Statutory actions are such as can only be based upon the particular statutes creating them." BLACK, LAW DICTIONARY 42 *sub verb. Action* (3rd ed., 1944).

Although the legal construction or definition of the word "statute" is a comprehensive term and should well be understood, even by the layman, yet we deem it necessary to quote the legally-accepted definition placed on it by a recognized writer who declares *inter alia:*

> *"Statute.* An act of the legislature; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state. [Citations.]
>
> "This word is used to designate the written law in contradistinction to the unwritten law. See Common

Law." BLACK, LAW DICTIONARY 1655 (3rd ed., 1944).

Again, we have, *inter alia,* the definition of "statute," and it is recorded in these words as follows:

> "A statute may be defined as the written will of the legislature, rendered authentic by certain prescribed forms and solemnities, prescribing rules of action or civil conducts, in respect to either persons or things, or both." 36 CYC. 940 *Statutes.*

In passing, we would like to observe that lawyers representing the legal interests of their clients should not take for granted the fundamental principles of law, the vital and material elements underlying the cause which they apparently so earnestly espouse. We take this opportunity, however, to sound a note of warning to the members of the bar, to prove themselves more diligent, painstaking and unreservedly devoted to the interest of their clients; otherwise this Court shall not spare applying the provision of law in such cases made and provided.

In view of the foregoing it is our considered opinion that the ruling of the trial judge should not be disturbed. Therefore same is hereby affirmed with costs against appellant. And it is hereby so ordered.

Affirmed.