

MARY C. BLACKLIDGE, Plaintiff in Error, vs. **ABRAM BLACKLIDGE, MARY BLACKLIDGE, WILLIAM A. BLACKLIDGE, FRED-ERICK CLOCK** and **MARIA CLOCK**, Defendants in Error.

[January Term, A. D. 1901.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Injunction.

Writ of summons—Fifteen days' notice—Actions of injunction—Formal requisites to affidavits.

1. It was held that the statute requiring fifteen days' notice to be given to defendants in civil suits was general in its application and applied to suits in injunction as well as other suits. The Statute of 1870 permits the issuing of the writ and the hearing of the case at any time, whether in or out of term time, provided the defendant has had notice of the filing of the case at least fifteen days prior to the day the case is put down for hearing.

2. It was also held that where several persons have joined in an action of injunction as plaintiffs, and the affidavit required by statute to be attached to the application for the writ is signed by only one of the co-plaintiffs in his individual capacity and not as the agent of his co-plaintiffs, the affidavit is materially defective and will vitiate the entire action.

This is a 'cause of momentous importance, involving principles and interests of a far-reaching nature; and for the satisfaction of the general public these principles should be clearly defined and the complications which grow out of them settled for all time, thereby establishing a precedent that would put an end to unpleasant litigations of the kind and thereby give rest to the public mind. The court would be happy to improve the occasion to offer such a boon to the public; but, unhappily, the nature and circumstances of the case are such that the court finds it difficult to do so without violating vital and fundamental principles of the statute laws of the country.

It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to the securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves.

This case was tried and determined against defendant below, now plaintiff in error, at the September term of the Court of Quarter Sessions and Common Pleas, Montserrado County, sitting in equity, A. D. 1899, but she, the defendant below, believing that manifest wrong had been done her, brought the case to this final judicatory, upon a writ of error, for review. In the assignment of errors by the defendant below, now plaintiff in error, the said plaintiff in error sets up or complains in the first count in her answer to the complaint of plaintiffs below, now defendants in error, that she had not been legally summoned; that is, she had not been summoned fifteen days before the day of the meeting of the court, the writ of injunction having been served on the 6th day of June, A. D. 1898, and the first day of the meeting of the court took place on the 13th day of June, A. D. 1898; and therefore she prayed the judge to dismiss the case and rule the plaintiffs below, now defendants in error, to pay costs; and that the judge below refused to sustain the said plea raised upon the ground, as he, the said judge, alleged, that the serving of a writ on a defendant fifteen days before the first day of the meeting of the court to which the return is to be made does not apply to cases of injunction.

On inspection of the record in the case the court finds the assignment to be correct; but before giving its opinion on the subject it will first quote the law bearing on that point: "Defendants or defendant who shall have been summoned fifteen days before the first day of the meeting of the court to which a return is to be made, shall be deemed to have been legally summoned, and be compelled to answer plaintiff; provided the plaintiff shall have filed his complaint in the clerk's office at least fifteen days before the session of the court. Nevertheless, when the peculiar circumstances of the case render it necessary, the court may in its discretion grant further time to the defendant." (Lib. Stat. 1st Bk. p. 123, sec. I.) Again, "An action of injunction is an action in which the plaintiff seeks to compel defendant to

permit matters to remain in the present state, either in pursuance of a contract, or because of a right growing out of the general principles of law. It is classed with actions founded on contract, as a matter of convenience, although it is capable of being applied in cases where the wrong is not precisely a breach of any contract." (Lib. Stat. 1st Bk. chap. 1, sec. 8.) Again, the Statute of 1870 provides that the judge may assign a day, either in or out of the term, for the hearing of the case.

Now, then, this court, after carefully considering and digesting the laws just quoted, fails to see wherein the law referring to the time of fifteen days' notice given to the defendant does not apply in cases of injunction. In the first quotation no distinction of actions is given or defined, but defendants or defendant is referred to, who must have the benefit of the time specified. In the second quotation it is shown that an action of injunction is an action, and certainly if it be an action, there must be two parties to the action and one of them must be the defendant. In the quotation there is nothing set forth that would debar the defendant from the benefit of the fifteen days' notice for preparation to answer his adversary as the law contemplates he has a right to do.

And the court further says that the writ of injunction may be issued and served at any time, which, however, is not to be so construed as to deprive the defendant of the benefit of the fifteen days' notice; and the court may at any time appoint a day in or out of the term for the hearing of the case, provided the fifteen days are allowed after summoning the defendant. The court, therefore, in view of its conception of the law as given, says that the judge below erred in ruling out defendant's (now plaintiff in error) plea as aforesaid.

And further, in the third count of the assignment the plaintiff in error complains of the action of the judge below in ruling out the fourth plea in her answer to the complaint in reference to the insufficiency of the affidavit to the plaintiffs' (now defendants in error) complaint.

Mr. Bouvier defines affidavit as follows: "A statement or declaration reduced to writing and sworn or affirmed to before some officer who has the authority to administer the oath or affirmation." He goes on further to give the essentials thus: "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." In general, "an affidavit must describe the deponent sufficiently to show he is entitled to offer it; that he is a party or agent or attorney of a party to the proceedings," etc. (1st Bouv. Law Dict. "Affidavit.")

The statute laws of Liberia require that "an action of injunction must be commenced by a writ of injunction, to obtain which the plaintiff must file his complaint, verified by his own oath and such other evidence as the judge may think proper." (Lib. Stat. 1st Bk. chap. 2, sec. 37.) Now, upon examination of the record in the case before the court, the court finds that the affidavit in question is most seriously defective, in that it is not signed by all of the plaintiffs as deponents, nor for any one acting for them, as the agent, but simply by Abram Blacklidge, one of the deponents. It not being signed by all of the plaintiffs as deponents, or one of them acting for the others, or an attorney as their agent, the neglect constitutes a non-joinder of interest and hence the affidavit is rendered void. This court fails to see, from its conception of the law governing the points raised in the answer of defendant below, now plaintiff in error, how the judge below could have proceeded to hear the merits of the case then pending before him and finally sustain the injunction.

This court, therefore, in view of the fact that there existed sufficient legal ground for the dismissal of the case on the pleadings before entering upon the merits, adjudges that the various rulings of the judge below are erroneous and illegal, and also reverses the final judgment, dissolves the injunction, and rules the defendants in error to pay costs. The clerk of this court is hereby ordered to issue a mandate, informing the judge below of this judgment.