SAMUEL A. WAHAB, Appellant, *v.* ZARIAH J. ADORKOR, by and through her Husband, K. J. ADORKOR, Appellee.

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

Argued March 16, 17, 1954. Decided December 10, 1954.

1. A complaint in an action of injunction must be personally verified by the plaintiff.
2. An action of injunction may be dismissed by the trial court without motion of the defendant.

On appeal from a judgment of the court below dismissing an injunction action, judgment *affirmed.*

William N. Witherspoon for appellant. *Momolu S. Cooper* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

Appellant, plaintiff below, leased a parcel of land in Monrovia from appellee, defendant below, for a period of ten years. Appellant was never in default in the payment of the rent, but had paid six to seven years' rents in advance. Nevertheless, appellee sought to evict him from the premises. Appellant then instituted an action of injunction to restrain and enjoin appellee from evicting him.

In answering the complaint in injunction, appellee did not deny having leased the premises in question to appellant for ten years, neither did she deny having received the rent payments in advance for about seven years; but she pleaded, as a reason for evicting appellant, that she, as well as other persons, had observed that appellant was

seeking to burn down the premises, and that, on one occasion, appellant had matches, kerosene and old rags in readiness to set said premises on fire. The answer also alleged that appellant was losing his mind.

We are unable to pass upon these factual submissions. They were never gone into by the court below because the trial court sustained Count "4" of defendant-appellee's answer wherein she attacked the sufficiency of plaintiff-appellant's complaint on the ground that the supporting affidavit was defective in that it was sworn to upon the oath of counsel for plaintiff, whereas, defendant contended, it should have been sworn to by the plaintiff himself. We deem it necessary to quote the said plea of the defendant:

> "And also because defendant says that the complaint is further defective for the want of a supporting affidavit as provided for in the 37th section, Chapter 11, of the Old Blue Book which mandatorily states that a complaint in an action of Injunction must be supported or verified by *the oath of the plaintiff himself* . . . said complaint not being supported by plaintiff's own oath, but that of William N. Witherspoon, Counsellor at Law, renders the complaint fatally defective. Wherefore defendant prays the dismissal of this case with costs against the plaintiff."

Replying to this plea of the defendant, plaintiff countered by submitting that said plea is not sufficient in law to warrant the dismissal of the action in that the statute laws of Liberia do not make it mandatory or imperative for the plaintiff himself to make the affidavit or sign the oath to his complaint; but same can be legally done by the attorney of said plaintiff, or by an authorized agent, as can be seen from the language of said statute.

Plaintiff further attacked the answer on the ground that it was not backed by a motion for the dissolution of the injunction, which alone would have warranted the trial judge in taking any action in respect thereto; and, plain-

tiff having failed so to move, the court was without authority to dissolve said injunction. Concerning the allegedly defective affidavit our statute says:

> "An action of injunction shall be commenced by a writ of injunction, to obtain which the plaintiff must file his complaint *verified by his own oath,* and file such other evidence as the Court or Judge may require; . . ." Rev. Stat., sec. 339. (Emphasis supplied.)

Whilst it is true generally that, where a party is required under the law to make an affidavit to any pleading, his attorney or agent may do so for him, yet this is not the case where there is an express and mandatory statutory provision that the party must make the oath himself; and this finds support in common law as follows:

> "The verification of a bill for injunction, when required, is usually, in the case of an individual plaintiff, made by the party himself." 28 AM. JUR. 782 *Injunctions* § 272.

And where, in face of such mandatory provision of the statute a person other than the plaintiff takes the oath, such an affidavit is considered defective and insufficient.

The provisions of the statutes in this respect are both forceful and mandatory, not in the least to be considered discretionary, and should therefore have been followed, since it is crystal clear that it was never intended for an attorney to take the affidavit to a bill or complaint in injunction instead of the party himself, *with his own oath;* and this has been expressly decided in *Blacklidge* v. *Blacklidge,* 1 L.L.R. 371, 374 (1901). In that case the same issue was raised, and even though the affiant was one of the plaintiffs, just because he did not sign for "himself and the other plaintiffs," the plea of insufficiency was sustained, the action dismissed and the injunction dissolved. *A fortiori* such a plea is to be sustained where the affiant is not a party. The trial Judge, therefore, correctly ruled on this point and his ruling is sustained.

As to the ruling of the Judge in dissolving the injunction in the absence of a motion for dissolution, we are of the opinion that, although there are provisions in our statutes, both in the Old Blue Book and the Revised Statutes, for the filing of a motion for dissolution after having previously filed an answer, yet these provisions are discretionary and not mandatory.

The obvious purpose of the filing of a motion for dissolution of injunction is to curtail a lengthy campaign of filing pleadings and, injunction being an extraordinary proceeding, to bring same to a close without undue delay. We do not agree that, although an answer is filed and verified, duly praying the dissolution of an injunction, the trial Judge would be powerless to enter the pleadings, dispose of them, and eventually dissolve the injunction, merely because no formal and independent motion to that effect was made. To entertain this view would simply mean that the said Judge would not be able to pass upon the pleadings at any time simply for lack of a motion for dissolution; hence the discretionary and not mandatory aspect of the provisions of the statutes respecting same.

We quote from the Old Blue Book:

> "An injunction shall not be dissolved, unless the defendant appear and file a sufficient answer to the complaint, verified by oath, it shall not be dissolved merely because he denies knowledge of the facts alleged in the complaint and puts the plaintiff upon the proof thereof." 1841 Digest, pt. 2, tit. II, ch. 1, sec. 41; 2 Hub. 1534.

We are of the opinion that the filing of a motion to dissolve an injunction is surely an *expeditious* means of bringing the case to a judicial termination upon the issues raised in the answer, but its absence will not prevent the dissolution of said injunction upon defendant's "sufficient answer to the complaint verified by oath." In the instant case the answer is verified by oath. Hence the trial

Judge was right, after the resting of pleadings, to hear same and dissolve the injunction if sufficient grounds are shown in said verified answer to support same.

The decree of the trial Judge dissolving the injunction is affirmed with costs against appellant and it is hereby so ordered.

Affirmed.