CHIEFS ZOGAI and GIJEY of Ghbli Town, Appellants, *v.* GEMAYEL BROTHERS, represented by HENRY GEMAYEL, Agent for GEMAYEL BROTHERS in Liberia, Appellee.

APPEAL FROM JUDGMENT IN ACTION OF TRESPASS.

Argued April 5, 6, 1938. Decided April 22, 1938.

1. In common law cases as the subject of this case, affidavit to the complaint is unnecessary, and if attached and defective, should be rejected as mere surplusage.
2. All persons who have a joint interest in the result of a suit must join in an action to protect their interest, but where they have a separate interest and sustain a separate damage they may and must sue separately.
3. In section 23, page 44, of Chapter IV, *Old Blue Book,* the word "bar" is a typographical error and should be "bail."

Plaintiff-appellants brought an action for trespass against defendant-appellees, which was dismissed on the law by the trial judge. On appeal to this Court, *reversed and remanded for trial.*

Anthony Barclay and *S. David Coleman* for appellants. *L. Garwo Freeman* and *A. B. Ricks* for appellees.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

The plaintiffs in this case complain substantially that 1) they are the lawful owners of a certain tract of land in their complaint described, same being part of a five hundred eighty-five acre reserve granted them by a deed from the Republic of Liberia dated the 20th day of July, 1928; that some time previous to the 2nd day of November, 1934, Gemayel Brothers, defendants, unlawfully and forcibly entered upon and took possession of the premises which, on said 2nd day of November, 1934, the plaintiffs had demised unto Elias Brothers and, in

spite of notice from said plaintiffs to said defendants to vacate the premises so demised as aforesaid, remained in possession, thus depriving plaintiffs of the rents that would otherwise have accrued to them from the agreement of lease duly executed to Elias Brothers as aforesaid.

2) That by reason of the premises they, said plaintiffs, had been compelled to engage lawyers to file an action of ejectment against defendants, which action terminated by two pleas in the answer of defendants filed on September 3, 1936, averring that said defendants had vacated said premises which pleas, the complaint further alleges, were filed one year, ten months and one day after the illegal and forcible entry of defendants thereon.

3) That said defendants carried on mercantile business in a house on said premises which, when vacating same, they, the said defendants, left in a dilapidated condition.

The defendants filed an answer which contained nine pleas, most of them dilatory, and to three of which we shall soon give very careful attention, after which the pleadings continued up to the rebutter before issue was finally joined.

During the reading of the records at the bar of this Court it was discovered that when the case was on trial in the court below His Honor Judge David, the trial Judge, considered and passed upon three only of the many questions raised in the voluminous pleadings; hence not only are said three points the only ones legitimately before us for consideration, but also the respective parties have mutually agreed that upon the decision of said three questions they are content to stand or fall. To these three points we shall now therefore proceed to give our attention.

In the second plea of the answer it is submitted that the affidavit to the complaint is defective since affiants in subscribing the jurat signed: "Chiefs Zogai and Gijey,

plaintiffs" instead of "Chiefs Zogai and town, plaintiffs."

In the sixth and seventh pleas of the answer the contention is made that plaintiffs twice withdrew the suit of ejectment, and after the second withdrawal filed this action of damages for trespass; that inasmuch as section 23 on page 44 of chapter IV of the *Old Blue Book* provides that

> "The plaintiff may once amend his complaint or withdraw it, and file a new one at any time before the case is ready for trial, but he must pay the whole costs of the action, incurred by both parties, up to the time of such amendment, and if he change his form of action, he shall lose the benefit of bar, if any has been given."

Therefore plaintiffs were barred from bringing this suit.

These were the three points upon which the trial Judge dismissed the case, and to which exceptions having been taken the cause was regularly appealed to us for review.

Dealing with these points *seriatim* the Court here desires to reiterate what has repeatedly been expressed in a less formal manner, that according to the rules in vogue in courts of equity an affidavit to the complaint (more correctly termed "bill" in equity pleadings) always had a special use that it would not have in the course of common law. Nor was it customary to attach affidavits to pleadings in common law cases in this country until after the adoption of the Revised Statutes, which merely gives forms of affidavits in sundry cases, unless the plaintiff was applying for writ of attachment or writs of attachment and arrest, in which cases, and in but a very few others in our common law courts, the statutes provide that the complaint must be verified by affidavit, and the gist of what such affidavit must contain. Carefully examining the question during the two days that the case was pending at this bar and since, we have not been able to discover any statute which prescribes as a general rule that an affidavit must necessarily be attached to a com-

plaint or other pleadings in *common law* cases as is necessary to be done in proceedings in the equity and perhaps admiralty courts.

That the construction we now put upon the question submitted is not our mere *ipse dixit* seems to be borne out by the following statement from 31 *Cyclopedia of Law and Procedure,* page 526, paragraphs B (1) and (2) which read:

> "A verification as used in this title is a statement under oath, that a pleading is true.
>
> "In actions at law pleadings need not in general be verified by oath, where no verification is required by statute. But statutes or rules in many states have made it necessary to verify certain pleadings or pleadings setting up certain causes of action or defenses. Under some statutes all pleadings must be verified; in others, if any pleading is verified, all subsequent pleadings of fact must be verified, which implies that, where a pleading is unverified, each subsequent pleading may be verified. . . . The chancery rule requiring verification applies to pleadings in an equity suit, and not to statutory equitable pleadings in a law action."

Hence, it is our opinion that in the common law case, as in the one now under review, an affidavit to the complaint was unnecessary, and if attached and defective as alleged by defendants, should have been rejected as mere surplusage. But was it really defective as defendants contended here?

According to the law providing for the government of the aboriginal districts under which the land in question was granted to plaintiff, the land was granted to the Chiefs Zogai and Gijey as trustees for the people of Gleeta. Every family, it is true, had a right to have up to twenty-five acres assigned it for agricultural purposes, but such possession in common as the law provides does not entitle any owner to vote or to exercise such other

acts of dominion as are a concomitant of fee simple ownership, unless upon petition to the Executive Government for a division of the land in severalty, which the Executive may grant following certain conditions stated in the enactment, viz.: being satisfied that the people are sufficiently intelligent and civilized. Acts 1904–05, page 25, section 2. According to the deed it would appear that the Chiefs Zogai and Gijey were the *cestuis que trust*. They both signed the jurat as affiants, hence if the affidavit had been necessary, and we have just held that it wasn't, two signatures would have been sufficient in consonance with the provision that:

> "Where several parties join in a pleading, it is held as a rule, in the absence of any statutory provision to the contrary, that a verification thereof by one of them is sufficient. Some of the codes, however, provide that the verification by one of the parties shall be sufficient only when they are united in interest, and this is held to apply even where the parties joining in the pleading are husband and wife. Where husband and wife are sued for a debt of the wife when sole, her oath and not that of her husband is required to support the pleadings." 31 Cyc. 538, ¶ VIII, B, 3b.

This opinion of ours does not conflict with that in the case *Blacklidge* v. *Blacklidge,* 1 L.L.R. 371 (1901), which, it will be observed, was a suit in equity, and moreover an action of injunction controlled by a specific statute, that found on page 38, section 37 of Chapter 2, of the *Old Blue Book.*

Coming to the second point, we must first inquire what is meant by the legal term "non-joinder."

The general principle of law is that all persons who have a joint interest in the result of a suit must join in an action to protect their interests. Limiting our consideration, at this time, to actions *ex delicto* we find in Bouvier the following:

"Joint owners must, in general, join in an action for a tortious injury to their property. . . .

"The grantor and grantee of land cannot join in a counter-claim for continuing trespasses on the land sold, since their rights of action are not joint. . . ." 2 B.L.D. 1701, "Joinder."

Also in 15 *Encyclopædia of Pleading & Practice,* page 541, paragraphs (a)–(c), we have the following:

"Where two or more persons have a separate interest and sustain a separate damage they may and must sue separately, and cannot join even though their several injuries were caused by the same act. Thus, owners of property in severalty may not join as plaintiffs in an action for an injury to such property. This rule is but an application of the principle already stated that persons with and without interest cannot join as plaintiffs.

"Persons who have a separate interest, but who sustain a joint damage by reason of the defendant's tort, may sue either jointly or separately at their option.

"Persons who have a joint interest must sue jointly for an injury to such interest. Joint owners of property must unite as plaintiffs in one action for an injury thereto or for a conversion thereof."

Applying the above test, could Elias Brothers have legally been made joint plaintiffs without violating another rule, that of misjoinder of plaintiffs? Plaintiffs, according to the allegations contained in the complaint filed, are suing: First, for a forceable entry by defendants, now appellees, upon premises which were appellants', and which appellees attempted to occupy by adverse possession, while the relation between appellants and Elias Brothers was that of landlord and tenant. In the second count appellants based their claim to damages upon appellees' having forcibly ejected their tenants, which deprived appellants of the rents they would have been entitled to receive from their tenants Elias Brothers had

their tenancy not been thus forcibly invaded and determined. In the third count they sue for their vacating the premises, leaving the building thereon out of repair. Only on the first one of these counts might Elias Brothers have been entitled to an action against appellees, which action, it would seem, would be separate and not in conjunction with that of appellants. Hence, in our opinion the trial judge incorrectly decided that there was a nonjoinder of parties plaintiff.

The arguments advanced on the third point that claimed the attention of the trial judge were very interesting, and the research necessary to arrive at a correct decision was not only illuminating but profitable to us, and we hope will be of benefit to the practice at large.

Section 1 of Art. V of the Constitution of Liberia provides that:

> "All laws now in force in the Commonwealth of Liberia and not repugnant to this constitution, shall be in force as the laws of the Republic of Liberia, until they shall be repealed by the Legislature."

Among those laws thus ordered incorporated into our old statutes commonly called the *Old Blue Book* were the legal forms and principles printed on pages 22 to 82 of said book. The one of these which was the subject of attack in the sixth count of defendants' answer is section 23 on page 44 of Chapter IV which reads:

> "The plaintiff may once amend his complaint or withdraw it, and file a new one at any time before the case is ready for trial, but he must pay the whole costs of the action, incurred by both parties, up to the time of such amendment, and if he change his form of action, he shall lose the benefit of bar, if any has been given."

But going back to the old statutes of the days of the Commonwealth, said provision which is also section 23 of Chapter IV, reads:

> "The plaintiff may once amend his complaint or withdraw it, and file a new one at any time before the case

> is ready for trial, but he must pay the whole costs of the action, incurred by both parties, up to the time of such amendment, and if he change his form of action, he shall lose the benefit of bail, if any has been given."

Hence the two are identical in every respect save that in transcribing copyist obviously changed the word "bail" to "bar." Making that one correction, the whole section becomes clear and eliminates all the ambiguities, suppositions, and sophistries that were advanced. For other reasons it had become clear to us that that section was inapplicable to the case at bar, and this discovery has made what was already plain still clearer. It follows then that his honor the trial judge having, in our opinion, erred in each one of the points upon which his decision is placed, we have no alternative but to reverse said judgment, and remand said case so that plaintiffs may have an opportunity of establishing by evidence the allegations of fact contained in their complaint. Costs of these proceedings to be paid by appellees; and it is hereby so ordered.

Reversed.