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Civil Practice—Counterclaim in Suit by Partnership

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The Court of Appeals reversed the ruling of the Appellate Division, stating the court's liberal view toward the sufficiency of complaints, particularly in negligence actions, in at least permitting the parties to go to trial where the plaintiffs, under other allegations in the complaint, *may* be able to submit evidence entitling them to recover,[12] and no bill of particulars is involved.

Counterclaim in Suit by Partnership

Action was brought by a partnership composed of two general and two limited partners against its former attorney, who had been discharged for cause. Defendant attorney set up a counterclaim against one general and one limited partner, as individuals, for damages resulting from their conspiracy to destroy his professional standing. The counterclaim was held improper because under C. P. A. § 266 the claim and counterclaim must be between the same parties.[13]

The interesting aspect of the case is the statement of the court that for the purposes of pleading, the partnership is to be regarded as a legal entity.[14] The court strengthens its position by referring to C. P. A. § 222-a (two or more persons carrying on business as partners may sue or be sued in their partnership name), and the commentary of the Judicial Council in proposing the enactment of this section, which stated that the old common law concept of the partnership as simply a group of individuals, for purposes of pleading, is undesirable.[15]

Although C. P. A. § 266 liberalized the practice relating to counterclaims, defining a counterclaim as any cause of action in favor of the defendants against the plaintiffs, or *some of them,* the section did not change the rule that the counterclaim must be by and against the same party in the *same capacity.*[16]

The court, in the instant case, combines the above two tenets to conclude that the partnership sues as an entity and the counterclaim must be against that entity, not the individual partners. It would seem that the court, by its reasoning, has deftly evaded the plain meaning of C. P. A. § 266.

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12. *Higgins v. Mason,* 255 N. Y. 104, 174 N. E. 77 (1930); *Faber v. Meiler,* 278 App. Div. 849, 104 N. Y. S. 2d 485 (2d Dep't 1951).
13. *Ruzicka v. Rager,* 305 N. Y. 191, 111 N. E. 2d 878 (1953).
14. *Id.* at 197, 111 N. E. 2d 881.
15. Eleventh Annual Report of N. Y. Judicial Council, pp. 221, 224-225 (1945).
16. *U. S. Trust Co. of N. Y. v. Stanton,* 139 N. Y. 531, 34 N. E. 1098 (1893); *Binon v. Boel,* 297 N. Y. 528, 74 N. E. 2d 466 (1947); *Select Theatres Corp. v. Harms, Inc.,* 273 App. Div. 505, 78 N. Y. S. 2d 159 (1st Dep't 1948).