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Procedure -- Counterclaim Compulsory in Representative Suit Although Claim Against Plaintiff Representative is Personal in Nature

again.[20] Here, divestiture was found to be necessary, rather than to intrust an already monopolistic industry with the management of a competitive bidding system or burden the court with its detailed and extensive supervision.[21]

The success of the Government in the recent maze of anti-trust actions gives rise to a belief that the next decade will witness a tremendous growth of this type of litigation.[22] The Paramount cases should and will form an important basis for future actions against allied industries such as radio, television, professional athletics, and other entertainment fields. These industries are inherently monopolistic because they are based on the development of individual talent to a point at which it becomes irreplaceable. Should divestiture prove successful as a remedy against the motion picture industry there may be a more extensive use of this remedy in dealing with other anti-trust violations in the entertainment industries.

PROCEDURE—COUNTERCLAIM COMPULSORY IN REPRESENTATIVE SUIT ALTHOUGH CLAIM AGAINST PLAINTIFF REPRESENTATIVE IS PERSONAL IN NATURE

Plaintiff, employer of the deceased, brought a wrongful death action against the defendant as assignee of the decedent's widow. The action was brought in a representative capacity under the Florida Workmen's Compensation Act which permits a widow to assign her right of action for her husband's wrongful death.[1] From a judgment for the plaintiff, the defendant, who had failed to counterclaim in the initial suit, brought a separate action against the employer as such for damages. The employer's motion to dismiss was sustained on the ground that the issues had been fully adjudicated in the former action. On appeal from the order dismissing the action, *held;* order affirmed, since the Florida statute[2] requires the defendant to file counterclaim in the original action for any damages sustained from the same transaction. *Newton v. Mitchell,* 42 So.2d 53 (Florida 1949).

The defendant, upon appeal, contended that the statute requiring one to counterclaim for damages arising out of the occurrence sued upon in the initial suit should only apply to defeat his action had he subsequently sued the plaintiff in the latter capacity as the assignee of the widow's right, that

20. United States v. Crescent Amusement Co., 323 U.S. 173 (1944).
21. United States v. Paramount Pictures, Inc., 334 U.S. 131, 163 (1948); United States v. Paramount Pictures, Inc., 85 F. Supp. 881, 895 (S.D.N.Y. 1949).
22. The baseball industry has already been attacked by private individuals for violations of the anti-trust laws. Martin v. Chandler, 85 F. Supp. 131 (S.D.N.Y. 1949); Gardella v. Chandler, 79 F. Supp. 260 (S.D.N.Y. 1948). It is not inconceivable that the government may also take some interest in the competitive conditions in that industry.

1. FLA. STAT. § 440.39 (1941).
2. FLA. STAT. § 52.11 (1941).

is in the same capacity in which the plaintiff had sued him. Since the subsequent suit was brought against the plaintiff in his capacity as employer for the negligence of his employee, a different capacity from that in which the plaintiff had brought the initial suit, the statute should not apply. While recognizing this distinction in capacities, the court took the view that the employer was in court, in the initial suit, in a dual capacity as (1) assignee of the widow's right, a representative capacity, and (2) as employer of the deceased. *A fortiori*, had the defendant validly counterclaimed, a verdict could have been entered against the plaintiff and it would have been no defense to the plaintiff that he was bringing the action in a representative capacity. The court had previously distinguished the representative capacity from the personal capacity and had held that the element of mutuality of parties was essential to a counterclaim.[3] Thus when the husband had sued as representative of his wife and defendant counterclaimed against the husband personally, counterclaim was not allowed as the essential element of mutuality was lacking.[4] Demands, to be subject of a counterclaim, must be "mutual" which means that claims must be due to and from the *same* parties acting in the *same* capacity.[5] The term "counterclaim" implies a reciprocal demand existing between the same persons at the same time.[6] This view is currently followed by the federal district courts[7] when applying Federal Rule 13 after which the Florida statute is patterned.[8]

By requiring the filing of a counterclaim in the initial suit the court in the instant case was influenced by its awareness of the tremendous volume of litigation growing out of motor vehicle collisions. To have held otherwise would have increased the burden of the court by permitting circuity of actions. It is submitted that failure of a defendant to file counterclaim in the initial action for damages sustained in the same occurrence will constitute a waiver of that right regardless of the fact that the plaintiff is liable to the defendant in a different capacity from that in which plaintiff has brought his action.

TAXATION—PUERTO RICAN PARTNERSHIPS PLACED AT DISADVANTAGE BY ABANDONMENT OF CIVIL LAW CONCEPT

Defendant, member of a partnership ("Sociedad") duly formed and registered in accordance with the Puerto Rican Code of Commerce, was

3. Proodian v. Plymouth Citrus Growers Association, 149 Fla. 507, 6 So.2d 531 (1942).
4. *Ibid.*
5. Southern Ry. v. Elliott, 86 F.2d 294, 269 (4th Cir. 1936).
6. Tidewater Coal Exchange v. New Amsterdam Casualty Co., 31 F.2d 446 (D.C. Del. 1929); Sheffield v. Preacher, 175 Ga. 719, 165 S.E. 742 (1932).
7. Dunham v. Bunn, 85 F. Supp. 530 (D.C. Pa. 1949).
8. Symonds v. Browning, 156 Fla. 808, 24 So.2d 526 (1946).