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Recommendation No. 7 of the Procedural Rules Committee

RECOMMENDATION NO. 7 OF THE PROCEDURAL RULES COMMITTEE

PROPOSED FINAL RULES OF PROCEDURE AS TO PARTNERSHIPS AS PARTIES UNINCORPORATED ASSOCIATIONS AS PARTIES

Drafted by the Procedural Rules Committee appointed by the Supreme Court of Pennsylvania, under the Provisions of the Act of June 21, 1937, P. L. 1982.

These drafts are hereby submitted to the Judges of the various courts of Pennsylvania and to members of the bar for comments, suggestions and constructive criticism prior to the submission of the final drafts to the Supreme Court. All communications in reference to these proposed rules should be sent promptly to Albert Smith Faught, Esquire, Secretary, 456 City Hall, Philadelphia, in time to be received by March 3, 1939.

The Committee is working on other rules which may from time to time be distributed in similar manner among the judges and lawyers of the State.

The explanatory notes which appear in connection with the Rules stated in this pamphlet have been inserted by the Committee for the convenience of the Bench and Bar; they will not constitute part of the Rules nor will they be officially adopted or promulgated by the Supreme Court.

The chapters within this pamphlet are arranged in the order in which they have been considered and recommended. The rules are numbered in accordance with the plan proposed by the Procedural Rules Committee. As the various chapters or groups of rules are proposed they will be assigned specific numbers which have been reserved for them under this plan.

RECOMMENDATION NO. 7 OF THE PROCEDURAL RULES COMMITTEE RULES OF PROCEDURE

PARTNERSHIPS AS PARTIES.

RULE 2126. DEFINITIONS.

As used in this chapter

"action" means any civil action or proceeding at law or in equity brought in or appealed to any court which is subject to these rules;

"firm name" means any name, fictitious or otherwise, by which a partnership conducts business or is commonly known whether or not such name has been filed or registered;

"liquidator" means any person legally engaged in winding up the affairs of a dissolved partnership;

Note: Under the Uniform Partnership Act of March 26, 1915, P. L. 18, sec. 37, 59 P. S. 99, the right to wind up the affairs of a partnership upon dissolution is vested, unless otherwise agreed upon by the partners, in the partners who have not wrongfully dissolved the partnership, or the legal representative of the last surviving partner, not bankrupt, provided however that any partner, his legal representative or his assignee upon cause shown may obtain a winding up of the partnership affairs by order of court. Under present practice, a partner engaged in the liquidation of a dissolved partnership is customarily referred to as a surviving or liquidating partner. See Eisenlohr's Estate, (No. 1), 258 Pa. 431 (1917); Leary v. Kelly, 277 Pa. 217 (1923); Froess v. Froess, 284 Pa. 369 (1925); Marmaduke v. Brown, 254 Pa. 18 (1916).

"partner" means only a general partner or a limited partner who has become subject to the liability of a general partner;

Note: The above definition of "partner," in accord with present practice, prevents a limited partner from being a party to an action unless as a matter of substantive law he has become subject to the liability of a general partner. Act of April 12, 1917, P. L. 55, sec. 26, 59 P. S. 224; Act of March 21, 1836, P. L. (1835-36) 143, sec. 14; Morse v. Chase, 4 Watts 456 (1835); Carey v. Bright, 58 Pa. 70 (1868).

"partnership" means only a general or limited partnership and does not mean a partnership association, registered partnership, joint stock company or similar association.

Note: The word partnership as thus defined applies to those partnerships subject to the Uniform Partnership Act of March 26, 1915, P. L. 18, 59 P. S. 1 et seq.; the Uniform Limited Partnership Act of April 12, 1917, P. L. 55, 59 P. S. 171 et seq.; and the Limited Partnership Act of March 21, 1836, P. L. (1835-36) 143. The Uniform Partnership Act of 1915 is applicable to general partnerships and also to limited partnerships to the extent that there are no contrary statutes applicable to limited partnerships. Sec. 6 (2), 59 P. S. 11. The Uniform Limited Partnership Act repeals the Limited Partnership Act of 1836 except that existing limited partnerships created under the earlier Act which do not conform with the Act of 1917 are to continue to be governed by the Act of 1836, subject only to the restriction that such partnerships may not be renewed unless it was so provided in the original agreement. Act of April 12, 1917, P. L. 55, sec. 30, 59 P. S. 228.

The limitation clause of the definition excludes partnership associations formed under the Act of June 2, 1874, P. L. 271, as amended, 59 P. S. 341 et seq. and registered partnerships formed under the Act of May 9, 1899, P. L. 261, as amended, 59 P. S. 241 et seq. Joint stock companies are also excluded from the above definition although it should be noted that there is no statute in Pennsylvania authorizing the creation of such companies.

RULE 2127. ACTIONS BY PARTNERSHIPS AND LIQUIDATORS.

(a) A partnership having a right of action shall prosecute such right in the names of the then partners trading in the firm name, in the following manner: "A B and C trading as X & Co."

Note: This rule continues present practice in requiring the partners to be individually named of record. Wilson v. Wallace, 8 S. & R. 53 (1822); Morse v. Chase, 4 Watts 456 (1835); M'Kinney v. Mehaffey, 7 W. & S. 276 (1844).

It is proposed to retain the present practice as to suits by partnerships although in Rule 2128, *infra,* suit against the partnership in the firm name, as well as against the members trading as the firm, is permitted. A judgment rendered against a partnership in its firm name is subject to certain disadvantages as regards indexing and execution against the property of individual partners. Where a partnership is plaintiff it should be required to name its individual members, in order that the defendant, if he seeks to set up a counterclaim, may obtain a judgment against the plaintiff firm which may be properly indexed and will support execution against the property of the partners individually.

The rule makes mandatory the prosecution of a partnership suit in the name of the individual members trading as the firm and a suit brought in any other manner is defective although the defect may be cured by amendment to the extent now allowed in the amendment of parties. Bold v. Harrison, 1 W. N. C. 154 (D. C. 1875); Mangan v. Schuylkill County, 273 Pa. 310 (1922). The bringing of the partnership action in the firm name, although defective, will be cured by verdict [Porter v. Cresson, 10 S. & R. 257 (1823); Morse v. Chase, 4 Watts 456 (1835); Brown & Co. v. Eicholzer, 12 Luz. L. R. 170 (1904)]while an attack upon the failure to join all partners as individuals trading as the firm will probably have to be made by statutory demurrer or its equivalent. See Frisbie v. McFarlane, (No. 2), 196 Pa. 116 (1900).

The provision of the rule that suit be brought in the names of the "then partners" eliminates the necessity of indicating in the caption whether the partners be incoming or succeeding partners. The object of the rule is to extend the principle of the real party in interest rule: the partnership in existence at the time of suit is the real party in interest and it should therefore be unnecessary to state in the caption that the plaintiffs are the surviving members of the original firm or that the original partners are suing to the use of the new firm. In this respect the proposed rule is contrary to present practice. See Mangan v. Schuylkill County, 273 Pa. 310 (1922).
The rule will include local actions prosecuted by a foreign partnership even though the procedure under the rule is different from that authorized by the law of the state of the partnership's formation. See the *Restatement of the Conflict of Laws* (1934) Sec. 588 and illustration 2 thereto and Sec. 86.

(b) An action prosecuted by the liquidator of a dissolved partnership shall be prosecuted in the name of the liquidator in the following manner: "A, Liquidator of A, B, and C, late trading as X & Co."

Note: This rule is a substantial codification of present practice. See the style of the caption in Wainwright v. Marine National Bank, 72 Pa. Superior Ct. 221 (1919).

(c) The failure of a partnership to comply with sub-division (a) of this rule shall not affect the right of the defendant to recover costs from both the partnership and the individual partners.

RULE 2128. ACTIONS AGAINST PARTNERSHIPS AND LIQUIDATORS.

(a) An action against a partnership may be prosecuted against one or more partners as individuals trading as the partnership in the manner designated by Rule 2127 (a), or against the partnership in its firm name.

Note: Under present practice a partnership cannot be sued in its firm name because of the theory that a partnership is not a legal entity. McConnell v. Apollo Savings Bank, 146 Pa. 79 (1892); Brightman Mfg. Co. v. Taylor & Co., 3 D. & C. 392 (1922); Johnson & Co. v. Motor Supplies Co., 7 Berks 278 (1915). Yet after verdict or judgment no objection can be made to the fact that the partnership had been sued in its firm name and execution upon the assets of the firm properly issues. Seitz & Co. v. Buffum & Co., 14 Pa. 69 (1850); Moore v. Moore, 153 Pa. 495 (1893); Justice v. Meeker, 30 Pa. Superior Ct. 180 (1923); MacDonald v. Simcox, 98 Pa. 619

(1881); Zwick v. West Park Cleaners & Dyers, 98 Pa. Superior Ct. 498 (1930). See also Nichol v. Dolan, 23 D. & C. 88 (1935). The rule as drawn will include actions brought against a foreign partnership even though the procedure to be followed differs from that authorized by the law of the state of the partnership's formation. See Note to Rule 2127 (a), *supra.*

(b) An action prosecuted against the liquidator of a dissolved partnership shall be prosecuted in the following manner: "A, Liquidator of A, B, and C, late trading as X & Co."

Note: This rule is a substantial codification of present practice. See the style of the captions in Marmaduke v. Brown, 254 Pa. 18 (1916); Thomas v. Dickerson, 52 Pa. Superior Ct. 507 (1913).

(c) Whenever an action is prosecuted against a partnership in the names of the partners trading in the firm name and the partners or partnership shall have failed to file in the office of the prothonotary of the county or counties in which the partnership business is conducted a statement of membership as required by law, such partners shall not be permitted to plead a misnomer or the omission of the name of a partner of the partnership or the inclusion of the names of persons not partners of said partnership.

Note: This rule is intended to preserve the Act of April 14, 1851, P. L. 612, secs. 13, 14, 54 P. S. 121, 122, requiring general partnerships conducting a domestic business to file the names of their members and of the firm with the prothonotary of the county in which the partnership business is conducted. Failure to do so bars the partnership from pleading misnomer, or the omission of its members or inclusion of non-members in any action brought against it as stated in the above rule.

RULE 2129. ACTIONS BETWEEN PARTNERSHIPS AND PARTNERS.

An action may be prosecuted at law by a partnership against one or more of the partners thereof, or against such partners together with persons not partners, or by one or more partners, or by such partners together with other persons not partners, against the partnership. No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a partnership and one or more partners.

Note: This rule retains the substance of the Act of April 14, 1838, P. L. 457, sec. 1, 12 P. S. 150, permitting joint plaintiffs to sue a partnership even though one of such plaintiffs is a member of the defendant firm. The rule also permits actions at law between the

partners and the partnership. Such actions are prohibited under local common law upon the theory that the rights of the partners between themselves and with the partnership cannot be adequately determined and enforced in an action at law. Hall v. Logan, 34 Pa. 331 (1859); M'Fadden v. Hunt, 5 W. & S. 468 (1843); Schnatterly v. Crow, 2 Lanc. L. R. 127 (1876); see also Laughlin v. Lorenz's Adm'r, 48 Pa. 275 (1864); Price v. Spencer, 7 Phila. 179 (1870). Under present practice, the reason for such a rule would seem to have ceased to exist since a plaintiff may ask for an accounting at law, under Section 11 of the Practice Act of 1915, and the equitable principles under which setoffs are permitted will enable the relative rights of partners to be worked out in an action at law.

RULE 2130. VENUE.

(a) Except as otherwise provided by subdivision (b) of this rule, an action against a partnership may be brought in and only in a county where the partnership regularly conducts business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose.

Note: While a partnership may be regarded as merely a group of individuals, the extended recognition of the entity theory of partnerships given by the legislature and the courts of Pennsylvania warrant treating a partnership as an entity for the purpose of determining where suit should be brought against the firm upon firm liabilities. This localization of the venue of actions against partnerships is an adaptation of the law relating to the venue of actions against corporations and is believed to protect the rights of plaintiffs and to prevent the unreasonable interference with the conduct of partnership affairs which now results from the present state-wide suability of partnerships. For service by deputization in a county other than that in which suit is brought, see Rule 2131 (c), *infra*. The rule makes the necessary distinction between the county in which the cause of action arose and the county in which a transaction or occurrence took place which gave rise to the cause. This distinction is essential because a transaction may be completed within the state yet the cause of action may arise elsewhere. For example, a contract may be completed in Pennsylvania by which a partnership promises to deliver goods in New Jersey. Upon failure to deliver the goods a cause of action arises in New Jersey although a transaction upon which the cause of action is based occurred in Pennsylvania. Similarly, a partnership may execute and deliver a promis-

sory note in Pennsylvania payable solely at a bank in Ohio. Here again, upon breach a cause of action would arise outside of Pennsylvania although a transaction giving rise to the cause of action had occurred in Pennsylvania. In such instances it is the belief of the Committee that an action should be permitted against the defaulting vendor or obligor partnership in the county in Pennsylvania where a transaction giving rise to the cause of action occurred.

These limitations upon the venue of actions against partnerships will prevent a plaintiff from commencing an action in equity against a partnership and another defendant in a county in which the partnership can not be sued, serving the other defendant within the county and then obtaining extra-county service upon the partnership under the Act of April 6, 1859, P. L. 387, 12 P. S. 1254.

(b) Subdivision (a) of this rule does not restrict or affect the venue of an action against a partnership commenced by or for the attachment, seizure, garnishment or sequestration of real or personal property or an action for the recovery of the possession of or the determination of the title to real or personal property.

Note: The actions referred to in the above subdivision are ones which by their nature must be permitted to be brought in the county in which the property in question is located; e. g. foreign attachment, fraudulent debtor's attachment, replevin, ejectment. The limitations imposed by Subdivision (a) upon the venue of actions against partnerships are therefore inapplicable.

If an action affecting property is brought in equity against a partnership in the county in which the property is located, the above venue rule will not prevent the plaintiff from obtaining extra-county service upon the defendant partnership under the provisions of the Act of 1859, *supra*.

RULE 2131. SERVICE OF PROCESS.

(a) Service of process upon a partner or a registered agent of a partnership, or upon the manager, clerk or other person for the time being in charge of any regular place of business of a partnership shall be deemed service upon the partnership and upon each partner individually named in the action, provided the person served is not a plaintiff in the action.

Note: The Service of Process Act of 1901 does not expressly specify the manner of serving partnerships. The expression "partnership limited" as used in the section providing for service upon "a corporation, a partnership limited, or a joint stock company" [Act of July 9, 1901, P. L. 614, sec. 1 (2), amended by the Act of April 3,

1903, P. L. 139, sec. 1, 12 P. S. 293, 294] does not appear to apply to partnerships as that term is used by these rules.

The provision of the above rule as to the effect of service upon a partner is in accord with present practice. Walsh v. Kirby, 228 Pa. 194 (1910); Zwick v. West Park Cleaners & Dyers, 98 Pa. Superior Ct. 498 (1930). Under present practice, service upon the manager or clerk in charge of the partnership's place of business is generally not effective as service upon the partnership. Thomas v. Scotch Woolen Mills Co., 11 Luz. L. R. 80 (1901). See also Walsh v. Kirby, 228 Pa. 194 (1910). In certain instances, however, service upon such manager or clerk will be valid service upon a partner and, in consequence, upon the partnership. See the Acts of July 9, 1901, P. L. 614, sec. 1 (1), 12 P. S. 291; May 4, 1852, P. L. 574, sec. 1, 12 P. S. 291 (a); April 2, 1856, P. L. 219, sec. 1, as amended April 21, 1858, P. L. 403, sec. 1, 12 P. S. 296.

It should be noted that the rule departs from the plan of the provisions of the Act of 1901 above referred to in that service at the place of business of a partnership is authorized without first requiring an inquiry to be made as to the residence of any partner within the county or an attempt to serve a partner at his residence within the county.

(b) Except as otherwise provided by subdivision (c) of this rule, all original process shall be served in the manner provided for the service of process upon individuals or registered agents, respectively.

Note: Subdivision (a) of this rule does not prescribe the method in which service is to be made but merely designates the persons upon whom service shall be made. By the above subdivision, the present method of serving original process is retained until such time as the law relating to the method of serving process may be revised by the Legislature or rules of procedure promulgated by the Supreme Court.

(c) If an action against a partnership is instituted in the county where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose, the plaintiff shall have the right of service in any other county by having the sheriff of the county wherein the action was instituted deputize the sheriff of any other county wherein service may be had.

Note: This rule is the complement of Rule 2130, *supra,* which limits the venue of actions against a partnership. If suit is started against a partnership within the county where the cause of action

arose or in the county in which a transaction or occurrence took place which gave rise to the cause of action, it may frequently happen that service within such county will not be possible and that unless the right of extra-territorial service is conferred, the right to sue the partnership in such county will be made nugatory. A similar right of extra-county service has been conferred by Rule 2254, [*Joinder of Additional Parties*], upon a person seeking to bring a third person upon the record.

RULE 2132. EFFECT OF JUDGMENTS.

(a) A judgment entered against a defendant partnership sued in its firm name only shall support execution upon the partnership property only.

(b) A judgment entered against a defendant partnership sued in the name or names of the partners as individuals trading in the firm name shall support execution upon the partnership property and upon the individual property of any partner named as a party if jurisdiction has been validly obtained as provided by Rule 2131 and the requirements of clause (c) of this rule have been satisfied.

Note: The reason for limiting a judgment against the firm *eo nomine* to execution upon the firm assets is that such a judgment gives no indication as to who are the members of the firm and a sheriff would be fully justified in refusing to execute upon the property of a person not named as a judgment debtor. In thus restricting the effect of a judgment rendered against a partnership in its firm name, the rules modify present practice under which such a judgment will support execution upon the assets of the firm and upon the assets of any partner actually served. Zwick v. West Park Cleaners & Dyers, 98 Pa. Superior Ct. 498 (1930); Harr v. Dyer, Hudson & Co., 30 Luz. 473 (1936).

While a plaintiff obtaining a judgment against the partnership sued as an association of individuals will hold a position more favorable than one having a judgment against the partnership as a firm, no hardship will result from this disparity. The right, not found in present practice, to sue the partnership in its firm name is conferred by these rules to cover the situations in which the plaintiff is unable to ascertain the identity of the members of the firm or recognizes that an execution upon the partnership assets will be sufficient to satisfy his claim. If a judgment which will bind the individual partners is desired, it is proper to place upon the plaintiff the burden of ascertaining the identity of the partners and of naming them upon the record.

Under subdivision (b), a judgment obtained against a partnership sued in the name or names of any of the partners trading as the firm supports execution upon the firm assets and upon the assets of every partner named as a party if jurisdiction has been obtained over the firm. It should be noted that under this rule the individual partners who are named on the record are individually bound by the judgment obtained against the firm although they have not been individually served. This departs from present practice under which a judgment obtained against a partnership supports execution upon the assets of the firm and of any partner served [Walsh v. Kirby, 228 Pa. 194 (1910); Smoder v. Siglin, 17 D. R. 653 (1908)] but a partner not served with process is not individually bound by the judgment recovered against the firm and a judgment entered against him as an individual will be stricken off [Walsh v. Kirby, *supra;* Hirsch v. Samulan, 93 Pa. Superior Ct. 49 (1927); Cover v. Brown, 7 D. R. 19 (1897). See also Tonge v. Item Publishing Co., 244 Pa. 417 (1914)].

The propriety of this provision binding the individual partners by merely naming them upon the record must be considered in the light of Rule 2130 limiting the venue of actions against a partnership to the county in which the cause of action arose or a transaction or occurrence took place out of which the cause of action arose or in which the partnership regularly conducts business. While the binding of an individual partner merely because he has been named upon the record is a procedural innovation, it seems to the Committee that when persons associate as a partnership there is nothing unreasonable in holding each person individually liable for a judgment obtained against the firm in a suit brought in the county where the cause of action arose or where the partnership regularly conducts business or a transaction or occurrence took place out of which the cause of action arose. In these cases the naming of the partners upon the record, without their being personally served, should be sufficient to enforce their individual liability.

The constitutionality of this provision may be sustained as a reasonable police power regulation designed to protect local residents from non-residents conducting a local business under the authority of Doherty & Co. v. Goodman, 294 U. S. 623 (1935); Stoner v. Higginson, 316 Pa. 481 (1934); Davidson v. Doherty & Co., 214 Iowa 839, 241 N. W. 700 (1932); and Bobe v. Lloyds, 10 F. (2d) 730 (C. C. A. 2d, 1926), which cases limit the earlier rule of Flexner v. Farson, 284 U. S. 289 (1919), and upon the theory of the existence

of an agency relationship between the partners *inter se* and between the partners and the firm.

Subdivision (b) is only applicable to a suit in which a "defendant partnership (is) sued in the name or names of any of the partners as individuals trading as the firm." If suit is brought against the liquidator of a dissolved partnership, a judgment rendered against him in his capacity of liquidator will not bind the individual partners regardless of the fact that they have been named in the caption of the action. In order to obtain judgments individually binding the partners, the plaintiff must join the individual partners as separate parties to the action against the liquidator and individually serve them with process or must institute independent actions against the individual partners in which they will of course be individually served.

(c) No judgment shall be entered against a partner individually named in the action who has not been served or who has not appeared as a party or as a witness in the action until the plaintiff has given such partner such notice of the pendency of the action as the court by general rule or special order shall direct.

Note: Under subdivision (b) a plaintiff is permitted to obtain a judgment against any partner individually named provided he has validly served the partnership. The abandonment of the requirement that each partner be individually served creates the danger that a person who is not a partner may be named as a partner and an individual judgment obtained against him without his knowing of the pendency of the action within time to defend himself. The giving of notice as required by the proposed rule eliminates this danger. Compare the Act of April 2, 1856, P. L. 219, sec. 1, 12 P. S. 296, from which this rule has been adapted.

RULE 2133. INDEXING OF JUDGMENTS.

(a) A judgment against a partnership shall be indexed against the partnership in its firm name.

(b) A judgment against the liquidator of a dissolved partnership shall be indexed against the liquidator as liquidator of the partnership and against the partnership in its firm name.

(c) A judgment against an individual partner shall be indexed against him as an individual.

Note: Subdivision (a) of this rule is intended to eliminate the difficulty of indexing a judgment against a partnership in its firm name

which arises from the requirement that a judgment against a partnership be indexed against each individual partner in his full name. See Ridgeway, Budd & Co.'s Appeal, 15 Pa. 177 (1850); York Bank's Appeal, 36 Pa. 458 (1860); Hamilton's Appeal, 103 Pa. 368 (1883); Smith's Appeal, 47 Pa. 128 (1864). A judgment against the firm is indexed under this rule against the firm in its firm name. Local practice will determine whether the judgments against partnerships will be placed in a separate judgment index, in the same index as judgments against persons, or in an index devoted to corporations, partnerships and other associations. A judgment against the liquidator of a partnership is indexed only against the liquidator in his capacity as liquidator and against the partnership in the firm name. This form of indexing indicates that the liquidator is liable upon the judgment in his official capacity to the extent that he holds assets of the partnership and that the partnership, as distinguished from the individual members, is liable upon the judgment. See Note to Rule 2132 (b), *supra.*

RULE 2134. SUBSEQUENT ACTIONS AGAINST PARTNERS NOT NAMED IN PRIOR ACTION.

(a) Whenever a judgment is entered against a partnership such judgment shall not bar a subsequent action upon the same cause of action against any partner who was not individually named as a defendant in the action.

Note: This rule applies only to the entry of judgments within the courts of this Commonwealth to which these rules are applicable. This rule is an adaptation of present statutory provisions under which a partner not personally liable for a judgment entered against the partnership because he was not served with the process in the action or was not named as a party may be subsequently sued upon the same cause of action. Act of April 6, 1830, P. L. 277, 12 P. S. 801, 802; Act of April 11, 1848, P. L. 536, sec. 5, 12 P. S. 806. See also MacFarlane v. Kipp, 206 Pa. 317 (1903); Browstein v. Hinerfeld, 29 D. R. 1090 (1920); Frisbiehumber Co. v. Kratzer, 6 D. & C. 295 (1924).

(b) In a subsequent action instituted under the authority of subdivision (a) of this rule, a partner against whom a judgment was entered in the original action shall not be joined as a party.

RULE 2135. FICTITIOUS NAME STATUTE SAVED.

These rules shall not be deemed to suspend or affect the operation of any statute relating to the registration of fictitious names.

RULE 2149. EFFECTIVE DATE. PENDING ACTIONS.

These rules shall become effective on the day of 193 and shall apply to actions pending at that time.

RULE 2150. SUSPENSION OF ACTS OF ASSEMBLY.

From and after the effective date of these rules and so long as these rules shall be operative, the following Acts of Assembly shall be suspended, to the extent hereinafter set forth, in accordance with the provisions of Section 1 of the Act of June 21, 1937, P. L. 1982, No. 392:

1. All Acts and parts of Acts inconsistent with these rules to the extent of such inconsistency.

RECOMMENDATION NO. 8 OF THE PROCEDURAL RULES COMMITTEE RULES OF PROCEDURE.

UNINCORPORATED ASSOCIATIONS AS PARTIES.

RULE 2151. DEFINITIONS.

As used in this chapter

"action" means any civil action or proceeding at law or in equity brought in or appealed to any court which is subject to these rules;

"association" means an unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name, but does not mean an incorporated association, general partnership, limited partnership, registered partnership, partnership association, joint stock company or similar association.

RULE 2152. ACTIONS BY ASSOCIATIONS.

An action prosecuted by an association shall be prosecuted in the name of a member or members thereof as trustees ad litem for such association. An action so prosecuted shall be entitled "X Association by A and B, Trustees ad Litem," against the party defendant.

Note: This rule continues the present Pennsylvania law in a modified form. Under present practice, an unincorporated association may not bring an action at law in its own name but only in the names of certain of the members on behalf of themselves and all others interested in the association or in the name of the association by certain of its members. Liederkranz Singing Society v. Germania Turn-Verein, 163 Pa. 265 (1894); Hasinger v. N. Y. Central Mutual Fire Ins. Co., 117 Pa. Superior Ct. 475 (1935); Klein v. Rand, 35 Pa. Superior Ct. 263 (1908). It may not file a bill in

equity in its own name. Chester Pros. Football Team v. Clifton, 26 Del. 332 (1936).

The requirement that suit be brought in such representative form has the advantage of placing upon the record persons who may be held responsible for costs. Liederkranz Singing Society v. Germania Turn-Verein, Klein v. Rand, both *supra.*

RULE 2153. ACTIONS AGAINST ASSOCIATIONS.

(a) In an action prosecuted against an association it shall be sufficient to name as defendant either the association by its name, whether the same is registered, filed or not, or any officer of the association as trustee ad litem for such association in the manner prescribed by Rule 2152.

(b) In addition to the parties defendant permitted by subdivision (a) of this rule, the plaintiff may join as parties defendant one or more members of such association in their individual capacity, including members already named as trustees ad litem, for the purpose of enforcing any individual liability of such members upon the cause of action sued upon.

Note: Under present practice an action may not be maintained at law or equity against an unincorporated association *eo nomine* regardless of the nature of the action. The only remedy is to bring a bill in equity against some of the members as representing themselves and all others having the same interest and after final decree to compel the defendants to see that the treasury of the association satisfies the claim. Maisch v. Order of Americus, 223 Pa. 199 (1909); Oster v. Brotherhood of Locomotive Firemen, 271 Pa. 419 (1921); Grant v. Carpenter's District Council, 322 Pa. 62 (1936); Taylor v. Order of Sparta, 254 Pa. 556 (1916). The application of this rule is not affected by the fact that the plaintiff is not a member of the association. Gottselig v. Cigarmakers' Int. Union, 37 Lanc. 244 (1920), affirmed 76 Pa. Superior Ct. 273 (1921); Sharrow v. Yohoghany Lodge, 8 D. R. 616 (1899).

RULE 2154. ACTIONS BETWEEN ASSOCIATIONS AND MEMBERS.

An action may be prosecuted at law by an association against one or more of the members thereof, or against such members together with persons not members; or by one or more members, or by such members together with other persons not members, against the association. No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between an association and one or more members.

RULE 2155. LIABILITY FOR COSTS.

No trustee ad litem and no individual member of an association shall be liable for the payment of a money judgment entered against the association as such; but a trustee ad litem representing a plaintiff association shall be liable for any costs which may be taxed against the association and a trustee ad litem representing a defendant association asserting any counterclaim or setoff shall be liable for any costs which may be taxed against the association.

Note: This rule does not attempt to determine when, by the applicable rules of substantive law, the individual members of an unincorporated association will be held to be liable for the acts of the association. The rule merely provides that, assuming a liability of individual members in a given case, a plaintiff cannot obtain a judgment which will bind the individual members unless he joins and serves them as co-defendants in the action against the association or prosecutes separate actions against them.

The liability for costs imposed by the proposed rule upon persons suing on behalf of an unincorporated association exists under present law. See Note to Rule 2152, *supra.*

RULE 2156. VENUE.

(a) Except as otherwise provided by subdivision (b) of this rule, an action against an association may be brought in and only in a county where the association regularly conducts business or any association activity, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose.

Note: The venue of actions against associations has been localized in the above manner to eliminate the unreasonable burden placed upon them by subjecting them to the state-wide suability which the decisions apparently permit. See also Rule 2130 imposing a similar limitation upon the venue of actions against partnerships. See also Rule 2157 (c), *infra,* authorizing service of process against associations to be made by deputization when suit is brought in the county where the cause of action arose or in which a transaction or occurrence took place out of which the cause of action arose.

(b) Subdivision (a) of this rule shall not restrict or affect the venue of an action against an association commenced by or for the attachment, seizure, garnishment or sequestration of real or personal property or an action for the recovery of the possession of or the determination of the title to real or personal property.

Note: See Note to Rule 2130 (b), [*Partnerships as Parties*].

RULE 2157. SERVICE OF PROCESS.

(a) Service of process upon an officer or a registered agent of an association, or upon the manager, clerk or other person for the time being in charge of any place where such association regularly conducts any business or association activity shall be deemed service upon the association, provided that the person served is not a plaintiff in the action.

Note: This rule is an adaptation of the early statutes regulating service upon partnership associations. Acts of May 1, 1876, P. L. 89, sec. 3, and June 10, 1881, P. L. 115, sec. 1, 59 P. S. 361, 364. See also *Partnerships as Parties*, Rule 2131 (a).

(b) Except as otherwise provided by subdivision (c) of this rule, all original process shall be served in the manner provided for the service of process upon individuals or registered agents, respectively.

(c) If an action against an association is instituted in the county where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose, the plaintiff shall have the right of service in any other county by having the sheriff of the county wherein the action was instituted deputize the sheriff of any other county wherein service may be had.

Note: See also Rule 2131 (c), [*Partnerships as Parties*], and Rule 2254, [*Joinder of Additional Parties*].

RULE 2158. EFFECT OF JUDGMENT AGAINST ASSOCIATION.

A judgment entered against an association sued in the name of the association or in the name of a trustee ad litem or sued alone or together with a member of the association or other person shall support execution upon the property of the association.

Note: If a judgment entered against a partnership will support an execution against the firm property [see Rule 2132 (a), (b)] it is difficult to see what would prevent a judgment entered against an unincorporated association from supporting an execution upon association assets.

RULE 2159. FICTITIOUS NAME STATUTE SAVED.

These rules shall not be deemed to suspend or affect the operation of any statute relating to the registration of fictitious names.

RULE 2174. EFFECTIVE DATE. PENDING ACTIONS.

These rules shall become effective on the day of 193 and shall apply to actions pending at that time.

RULE 2175. SUSPENSION OF ACTS OF ASSEMBLY.

From and after the effective date of these rules and so long as these rules shall be operative, the following Acts of Assembly shall be suspended, to the extent hereinafter set forth, in accordance with the provisions of Section 1 of the Act of June 21, 1937, P. L. 1982, No. 392:

1. All Acts and parts of Acts inconsistent with these rules to the extent of such inconsistency.