Coram:
AMES-
HOFF, J.
JORIS-
SEN, J.
ESSER, J.

COHEN *v.* BERMAN.

PARTNERSHIP—EXCEPTION—*ACTIO PRO SOCIO.*

A partner can institute an action for damages against his co-partner by reason of the latter's dealings, and for payment of his share of the debts of the partnership, without at the same time suing for a dissolution of the partnership.

1897
20 *September.*
9 *November.*

THIS was an argument on exceptions. The plaintiff, Cohen, sued the defendant on the following grounds. He alleged that there existed a deed of partnership between him and the defendant for the purpose of purchasing stands together, constructing buildings thereon, and letting them for mutual benefit. This deed was subsequently somewhat altered verbally, with the view of constructing larger buildings than originally agreed upon, and the raising of money on first mortgage for the purpose, and also that the plaintiff should get an undivided half share in the stands. The agreement was to continue for five years, and the plaintiff was to have the exclusive right of letting the buildings, to receive the rents and give receipts for the same. The defendant was to perform certain services in connection with the construction of the buildings, but on 29th July, 1896, he wrongfully ceased to do so. The plaintiff thereupon himself proceeded with the work on 7th August, 1896, but the defendant wrongfully compelled him to desist. The plaintiff thereupon endeavoured to settle their difference by means of arbitration, but the defendant only wished to go to arbitration on the basis that the partnership was dissolved. On 27th October, 1896, the defendant gave notice to the tenants of the buildings, which had already been completed, that they were not to pay any rent to the plaintiff, and the defendant himself hired out several chambers. The partnership owed different persons the sum of 504*l.* 17*s.* 5*d.*, but the defendant refused to contribute towards this, as he was bound to do. The plaintiff had obtained an interdict restraining the defendant from interfering with the buildings, and had suffered damage through the acts of the defendant to the amount of 500*l.* He, therefore, prayed that

the defendant should be definitely restrained from interfering with the letting of the buildings or the collecting of the rents, and that he should be condemned in the payment of 500*l.* by way of damages and of 265*l.* 8*s.* 8½*d.*, being the half share of the debts of the partnership. The defendant excepted to this claim as being bad in law and not showing any cause of action, for according to the facts set out therein, the plaintiff was not entitled to claim any damages or contribution towards the debts, as no damage has in law been caused him, and that while the partnership continues (the plaintiff not having asked for a dissolution) he is not entitled to institute an action against the defendant for the debts of the partnership.

De Korte, for the defendant (excipient), in support of the exception, relied on *Pothier on Partnership, ch. vii. sect.* 9, *p.* 121; *Voet*, 17. 2. 9.; *Story on Partnership*, § 230; *Lindley, 4th ed., p.* 1029. The plaintiff should have claimed a dissolution of the partnership in his summons.

Wessels, for the plaintiff: The English law, relied on by counsel for the defendant, no longer exists; nor is it applicable here. (*Pothier ed. van der Linden, p.* 122.) We do not ask for a dissolution, but sue in accordance with clauses 9 and 10 of the deed of partnership.

Cur. ad. vult.

Postea. 9th November, 1897.

The Court unanimously dismissed the exception, with costs.

Attorney for the defendant: *C. M. De Korte.*

Attorneys for the plaintiffs: *Rooth* and *Wessels.*