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RULES OF PLEADING APPLIED TO REPRESENTATIVE CAPACITY

Few instances will be found in the law where there is greater confusion in application of the rules of pleading than there is among the cases dealing with the representative capacity of a party who sues or is sued as executor or administrator. The manner of indicating that the party is sued or is being sued in the representative capacity; the necessity of alleging that he has such capacity; the manner of alleging it; whether a contest of the capacity amounts to a defense in abatement or one in bar; whether a plea contesting the capacity is a special plea or a traverse, and, if a traverse, whether it may be the general issue or must be a specific traverse — all these and minor problems are involved in the confusion.

The primary purpose of this note is to call attention to some of