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# West Virginia Law Quarterly

## and THE BAR

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**NECESSITY OF PLEADING NONJOINER OR MISJOINER OF PARTIES IN ABATEMENT.**—In a recent West Virginia case,<sup>1</sup> involving the question of misjoinder of plaintiffs in an action of ejectment, the first paragraph of the syllabus contains the following statement:

“Such a defect as nonjoinder or misjoinder of parties must be made the subject of a plea in abatement. If a party goes to trial without filing such plea, he thereby waives the defect.”

So far as this statement is based on common-law principles, it would seem difficult to reconcile it with the authorities. Independently of statutes, only two instances are recalled where either a nonjoinder or a misjoinder of parties must be pleaded in abatement in order to save to any party or parties to the litigation rights that they would

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<sup>1</sup> Hunt v. Mounts, 133 S. E. 323 (W. Va. 1926).