

JOINER OF PLAINTIFFS—SEPARATE CAUSES OF ACTION—PRACTICE—
STRIKING OUT STATEMENT OF CLAIM AS EMBARRASSING, ORD. XVI. R. I—(ONT.
RULE 185).

In *Stroud v. Lawson* (1898) 2 Q.B. 44, a motion was made to strike out the statement of claim as embarrassing. The statement of claim alleged as a cause of action that the plaintiff had been fraudulently induced to take shares in a company of which the defendants were directors, and claimed damages against them in consequence. It also alleged that the defendants had paid a dividend on the shares so subscribed for by the plaintiff when there were no profits, and he claimed on behalf of himself and all other shareholders, a declaration that such payments were ultra vires and illegal, and judgment for repayment by defendants of the amount of such dividend to the company. Darling, J., had affirmed the order of a master refusing the application, but the Court of Appeal (Smith, Chitty and Williams, L.JJ.) were of opinion that notwithstanding the alteration made in the Rule, ord. xvi., r. 1 (Ont. Rule 185) consequent on *Somurthwaite v. Hannay* (1894) A. C. 494, a plaintiff could not join two causes of action in different capacities, unless he could show that they both arise out of the same transaction. In this case the right which the plaintiff claimed in his representative capacity was held to be quite independent of any fraud on the part of the defendants in inducing him to subscribe for the stock, and therefore the two causes of action did not arise out of the same transaction within the meaning of the Rule. The order of Darling J., was therefore reversed, and the statement of claim was ordered to be struck out unless the plaintiff elected as to which of the two causes of action he would proceed for.

LIBEL—NEWSPAPER—PLEADING—PAYMENT INTO COURT—LIBEL ACT, 1843 (6 & 7
VICT., c. 96), s. 2—(R.S.O., c. 68, ss. 6, 7).

Oxley v. Wilkes (1898) 2 Q.B. 56, was a libel case against a newspaper. The defendant pleaded under s. 2 of the Libel Act, 1843 (see R.S.O., c. 68, ss. 6 and 7), that the libel was published without actual malice and without gross negligence, and payment into Court of £5. At the trial the jury found the publication was without actual malice, but not