to secure defendant's claim against Cockerill. No assignment having been made by Cockerill under the Assignments Act, R.S.M., 1902, c. 8, plaintiff alleged that they brought this action "on behalf of themselves and all other creditors of Cockerill who are willing to join in and contribute towards the payment of the expenses thereof; but under s. 48 of the Act where there has been no assignment, such an action must be brought "for the benefit of creditors generally or for the benefit of such creditors as have been injured, delayed or prejudiced." On 4th Dec. plaintiff amended the statement of claim by adding, after the words above quoted, the words "and the same is brought for the benefit of the creditors generally of the said debtor." Sec. 40 requires that such an action should be brought within 60 days from the time the transaction impeached took place.

Held, that there was no suit brought for the benefit of the creditors generally, or of such as had been injured, delayed or prejudiced, to impeach the transaction in question until the amendment of 4th December was made, which was more than sixty days after the date of the impeached transaction; and that this objection was fatal notwithstanding the provision in in s. 48 (b) that "in case any amendment of the statement of claim be made, the same shall relate back to the commencement of the action for the purpose of the time limited by the 40th s. hereof."

The right to sue and the relief to be given are created by the statute and must be construed strictly. The amendments referred to in that provision must, in strict construction, be confined to allegations of law or fact upon which the relief is to be founded, and that provision presupposes an action to have been commenced in the form provided within sixty days.

If the suit had been instituted in the name of the plaintiffs simply, without any statement as to the capacity in which they were suing, the objection would have had less force; but here they stated specifically that they were suing, not on behalf of creditors generally or on behalf of the class of creditors mentioned in the statute, but on behalf of those only who should be willing to join in and contribute towards the payment of the expense of the suit.

Cases such as *Byron* v. *Cooper*, 11 Cl. & Fin. 556; *Dedford* v. *Boulton*, 25 Gr. 561; *Weldon* v. *Neal*, 19 Q.B.D. 394, and *Hudson* v. *Fernylaugh*, 61 L.T.N.S. 722, deciding that when defendants are added by amendment the suit must as regards statutes of limitation be taken as commenced against them only when they are so added, are analogous and so are cases in our own courts, as *Irwin* v. *Beynon*, 3 M.R. 14, and *Davidson* v. *Campbell*, 5 M.R. 250, decided under the former Mechanics' Lien Act as to material amendments made in plaintiff's bill after the expiration of the time limited by the statute.

On the merits, also, the findings of fact were in favour of the defendant, and that the impeached assignment was not a fraudulent preference within the meaning of the Act. Action dismissed with costs.