

to no more than this, that other persons were interested in the funds; but those other persons were persons whom the defendants were ordered to represent in the action. It is difficult to understand why the order to represent absent parties was sufficient to warrant the defendants in representing the absent parties for the purpose of enabling a final judgment to be recovered which would be binding on the absent members of the class and yet not equally sufficient to enable them also to represent the absent parties for the purpose of the application to pay over the money in which it was not pretended that they had any special or different interest other than that of all other members of the union ordered to be represented by the actual defendants before the court.

The plaintiff had recovered a judgment for costs against parties who represented those whose property was sought to be attached. The only defence to that motion which appears to us to have been properly open to the defendants was whether or not the parties interested in the money sought to be attached, were members of the class represented by the defendants ordered to pay the costs in question. And the answer to what appeared to the learned Chief Justice an incomprehensible situation appears to be self-evident. The judgment for costs was against A., B. and C., representing also D. D., therefore, was liable for the judgment as well as A., B. and C., and a debt owing to D. was, therefore, properly attachable to answer the judgment on notice to A., B. and C., who represented D. If A., B. and C. could have shewn that D. was not a member of the class, A., B. and C. were authorized to represent, that would clearly have been an answer. But the answer which the court held to be good, viz., that he was not actually named as a party ordered to pay, appears in the circumstances wholly insufficient in law if a representative action for tort is to be of any practical value whatever. Such an action certainly seems to fail of its purpose, if, after judgment has been recovered for damages and costs, the plaintiff is to be told you cannot recover your damages or your costs against any one who is not actually named as a party, or made a party by some further proceeding.