

HON. MR. JUSTICE KELLY.

OCTOBER 1ST, 1913.

COOPER v. JACK CANUCK PUBLISHING CO.

5 O. W. N. 66.

Pleading—Motion to Strike out Statement of Claim—Action for Libel—Plaintiff Member of Class—Right to Sue—Alleged Misjoinder—Time to Plead—Costs.

KELLY, J., refused to strike out a statement of claim in a libel action, holding that a member of a class can sue on behalf of the class, if defamed.

Le Fanu v. Malcomson, 1 H. L. C. 637, and *Albrecht v. Burkholder*, 18 O. R. 287, followed.

Motion by defendants for an order that the statement of claim be struck out, on two grounds (1) that it discloses no cause of action, and (2) misjoinder of parties.

A. R. Hassard, for the defendants.

J. G. Farmer, K.C., for the plaintiffs.

HON. MR. JUSTICE KELLY:—On neither ground do I think defendants are entitled to succeed.

Without reviewing the authorities or discussing fully their effect or application here, the first ground of the present application is met by such cases as *Le Fanu v. Malcomson* (1848), 1 H. L. C. 637, and *Albrecht v. Burkholder* (1889), 18 O. R. 287. In the former of these Lord Campbell (at pp. 667 and 668) says:

“The first objection is that this libel applies to a class of persons and that therefore an individual cannot apply it to himself. Now, I am of opinion that that is contrary to all reason, and is not supported by any authority. It may well happen that the singular number is used; and where a class is described, it may very well be that the slander refers to a particular individual. That is a matter of which evidence is to be laid before the jury, and the jurors are to determine whether when a class is referred to, the individual who complains that the slander applied to him is, in point of fact, justified in making such complaints. That is clearly a reasonable principle, because whether a man is called by one name, or whether he is called by another, or whether he is described by a pretended description of a class to