

and keeping it, as they also did, then, when sued upon this contract by Barnes, set up that they had no power to make it, but did not pay back the money or offer to do so. This can scarcely be considered in accord with a high ethical standard, and in this particular instance it cannot be said that the remark of the trial Judge is wholly without justification. Whether the sum paid by Barnes may be recovered back by him we need not here consider; no claim is made and no amendment asked.

As to clause 5, this is, with a trifling amendment, unexceptionable, if the proper parties are before the Court to enable such a declaration to be made. The township is not such a party; and in the style of cause no plaintiff is set out as suing in a representative capacity. It is true that the plaintiff Cowell, "on behalf of herself and all other residents of the township of Barton along the lines and pipes of the defendants' waterworks in the township of Barton, alleges that she is a resident of the township of Barton residing on Ottawa street . . . and is entitled to water under the agreement" of 6th March, 1903, &c. But she claims no rights for any other than herself. "A statement buried somewhere in the statement of claim that the plaintiff is suing on behalf of all the creditors of the testatrix would be of no use. The statement ought to appear in the title of the action . . .:" per North, J., in *In re Tottenham*, [1896] 1 Ch. 628, at p. 629. This is the practice that has been, I believe, uniformly followed in Ontario, and in one of the *Bedell* actions it was held by Mr. Winchester, when Master in Chambers, that the practice is compulsory. I agree with that conclusion, and hold that a class action should so appear on the style of cause. This, however, is a mere matter of amendment; and the proceedings may be amended accordingly, in the style of cause, and by setting out that Cowell claims for the residents of Barton along the mains and pipes of the waterworks of the city of Hamilton, or within a reasonable distance thereof, the rights she claims for herself. The amendment being made, the clause under consideration should be amended by striking out all reference to the agreement of 6th March, 1903, for the reason already given, namely, that this document has no validity as an agreement, and restricting the residents as above set out.

Upon the substantial matter in controversy, the proclamation having the effect of a statute, it is of no importance