

The amended statement of claim adheres to the allegation that Eckardt at the sale was bidding for the city. As against the city and Eckardt, plaintiff has only one claim, viz., to have the sale, as he understood it, carried out. But he is in doubt as to whether the city or Eckardt is liable (or whether perhaps they are both liable). He is therefore in a position similar to that of the plaintiff in *Tate v. Natural Gas Co.*, 18 P. R. 82. There the whole question is discussed by Meredith, C.J., and his opinion was approved by the Court of Appeal as being a proper application of Rule 192.

I think therefore that the motion fails and should be dismissed on three grounds:—

- (1) Because it is made too late.
- (2) Because defendants found no difficulty in pleading to the original statement of claim.
- (3) Because the amended statement of claim does not set up any new or different cause of action, and the joinder of the city and Eckardt seems right under the Rule and the authorities.

The costs will be to plaintiff as against the moving defendants in any event.

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ANGLIN, J.

OCTOBER 30TH, 1906.

CHAMBERS.

WAGAR v. CARSCALLEN.

*Pleading—Statement of Claim—Striking out—Embarrassment—Fraud—Setting out Facts and Circumstances—Anticipating Defence—Leave to Amend.*

Appeal by defendants from order of Master in Chambers, ante 426, refusing to strike out part of the statement of claim.

C. A. Moss, for defendants.

J. H. Spence, for plaintiff.