

amount of his claim. The defendant had been examined on his affidavit and showed no defence as to that sum, and no clear defence at all to any portion of the plaintiff's claim. He desired, however, to defend for the whole, and had filed an affidavit that he had a good defence to the action on the merits.

Held, that the Referee had jurisdiction to make the leave to defend conditional upon payment into court of the part of the plaintiff's claim practically admitted as security, and that his discretion should not be interfered with in this case.

Rotheram v. Priest, 49 L. J. N. S. 104, and *Oriental Bank v. Fitzgerald*, W.N. [1880] 118, followed. *Law v. Neary*. . . 592

SUNDAY.

See TIME.

SURETY'S RIGHTS.

See PRINCIPAL AND SURETY.

TAX SALES.

1. *Assessment* — *Injunction to restrain conveyance after tax sale—Offer to refund tax purchaser his money—Application to municipality to cancel sale—Demurrer for want of equity.*—The plaintiff's bill alleged that the defendant, the city of Winnipeg, had sold the plaintiff's land to the defendant Alloway for arrears of taxes, but that the assessments had been defective and did not prop-

erly or sufficiently describe the plaintiff's land, and that the description in the assessment notices included other property not claimed by the plaintiff and did not include all of her property sold; also that, in consequence, there were no taxes legally in arrear and unpaid at the time of the sale, and that such sale was a wholly void proceeding; and an injunction was claimed to prevent the city of Winnipeg from carrying out the sale by giving a conveyance of the land to the purchaser.

Held, on demurrer *ore tenus* for want of equity,

1. That although the bill alleged that there were no taxes in arrear and that the sale was a wholly void proceeding, the plaintiff might still be entitled to relief by injunction because the issue of a deed would, under the statute 55 Vic., c. 26, s. 6, be evidence that there were taxes in arrear and the plaintiff might, therefore, be prejudiced thereby. *Archibald v. Youville*, 7 M. R. 473, distinguished.

2. That it was not necessary that the bill should contain an offer to pay the purchaser the amount paid by him at the sale, and subsequently for taxes and otherwise, notwithstanding s. 186 of the Assessment Act, R. S. M. c. 101, because that section does not apply where there are no legal arrears of taxes as the bill in this case alleged.

3. That the plaintiff ought to have applied to the city council to cancel the sale before the filing of the bill, to give the city an opportunity of considering whether