

THE MASTER:—It would seem that the motion is in any case too late now that the action is ready for trial, notice of which has been given by the Sovereign Bank.

Waiving that objection, it seems no less evident that the motion cannot succeed unless the amended statement of claim differs materially from the original.

In that the allegation was that the city corporation alleged that Eckardt was their agent at the sale which is in question. The city corporation were not otherwise mentioned.

To this their statement of defence was delivered as above. It denied that the city corporation authorized Eckardt to bid for them at the sale. The amended statement of claim alleges as to the city corporation that they were represented at the sale by one or more persons authorized to bid on their behalf, and that such persons arranged with Eckardt to bid in their stead, which he did, "and on each occasion when his bidding procured the said property to be knocked down to him he bid for the City of Toronto;" that the city corporation before action refused to disclaim; and that defendant Eckardt now denies that he bid for or purchased on behalf of the city corporation.

So far as the city corporation are concerned, it does not appear how they are being attacked on a different ground in the amended statement of claim from that set up in the original. The same relief is asked as against Eckardt and the city corporation, viz., specific performance of the contract for purchase, as plaintiff alleges it to have been made.

In any case I think that the decision in *Evans v. Jaffray*, 1 O. L. R. 614, applies. There the Chancellor said: "Despite the form of pleading, there is such unity in the matters complained of as between all parties as justifies the retention of the defendants who appeared."

Here it would almost seem as if the city corporation wished to deny the agency of Eckardt, and yet keep any other claim they may have. It is not easy to understand, otherwise, why at first they did not wholly disclaim, and then, no doubt, the action would have been discontinued as against them. They did not deliver any amended statement of defence.