the day: *Totten* v. *Douglas*, 15 Gr. 128, 133. If the objection is not taken by the answer, the court will usually give no costs of the day to either side, although it may order the cause to stand over, that the parties may be added.

By the 49th and 50th sections, no formal objection is to defeat any proceeding, but the court is to make such amendments as shall secure the giving of judgment, according to the very right and justice of the case. The court may also, of its own motion, direct all such amendments to be made as may seem necessary for the advancement of justice, the prevention and redress of fraud, the determining of the rights and interests of the parties, and of the real question in controversy between them.

Next in regard to equitable pleadings. The amendments of the law are mainly two-fold:—In enlarging the scope of equitable defences in personal actions; and in extending the right to plead equitably to actions of ejectment. We may here draw attention to some observations on the subject of equitable pleading in the last volume of this journal (vol. viii. p. 131), copied from the *Law Magazine*. The case of *Shier* v. *Shier*, 22 C.P. 147, is also instructive upon the point as to the limits within which it was allowed to plead equitably at that time. In that case, Mr. Justice Gwynne, in a very able judgment, in which he dissented from the majority of the court, observed, "It is, I think, much to be regretted, that the courts of law have, as I think they have, taken too limited a view of what the intention of the Legislature was in allowing equitable defences to be pleaded to actions at Common law." In the present Act, the Legislature have interposed to relieve the courts from their self-imposed limitations in regard to equitable pleading. It is now expressly provided, by section 3, that the pleader at Common law may set up facts which entitle him to relief upon equitable grounds, although such facts may not entitle the party to an absolute, perpetual and unconditional injunction in a court of equity, and although the opposite party may be entitled to some substantive relief as against the party setting up such facts.

The provisions of the Act with respect to equitable defences in ejectment are a step in the right direction. The Judicature Commissioners of 1871 in England recommended that there should be an extension of the right to plead equitably to actions of ejectment. Soon after the passage of the Common Law Procedure Act of 1854, whereby equitable pleas at law were first introduced, the question arose as to how this affected actions of ejectment. In *Neave* v. *Avery*, 16 C. B. 328, the defendant set up a defence on equitable grounds, to which the plaintiff demurred, for that equitable pleas were altogether inadmissible in such actions. The Court held that an equitable defence was not available in an action of ejectment, and this was put mainly upon the ground that there could be no "*plea*" in ejectment; and as no legal defence could be *pleaded*, *à fortiori* no equitable defence could be spread upon the record. They held also that the proper way of getting rid of such defence was not by demurrer, but by a summary application to strike it out.

It is noticeable that in the report of *Neave* v. *Avery*, in 3 Com. L. Rep., p. 914, Mr. Justice Crowder is reported as saying, during the argument, in reference to section 83 of the Act allowing defences on equitable grounds: "The expression in the clause is '*any cause;*' that is as general as possible, and my present impression is, that the action of ejectment comes within it."

However, the decision of the court in this case defined the rule of practice upon the statute, and has been