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BILL.

**An Act to abolish Special Demurrers,
and otherwise to amend the practice
of the Law in Upper Canada.**

Received and read a first time, Thursday, 3rd
July, 1851.

Second reading, Monday, 7th July, 1851.

Mr. SMITH (of Durham.)

BILL.

An Act to abolish Special Demurrers, and otherwise amend to the practice of the Law in Upper Canada.

WHEREAS it is desirable that the practice with regard to special demurrers and irregularities in proceedings in Courts of Law in Upper Canada should be amended, so as to reduce costs; and whereas the same may be so amended without impairing the efficacy of such proceedings: Be it therefore enacted, &c. Preamble.

That no special demurrer, or demurrer for matter of form only, shall be hereafter allowed in any of the said Courts, but it shall and may be lawful for either party in any action, upon being served with a pleading formally defective, and which but for the passing of this Act would have been open to objection upon special demurrer, at any time within days after being served therewith, to give notice in writing to the opposite party, setting forth the particulars in which such pleading is defective, and requiring him to amend the same; and unless the party shall amend his said defective pleading within days after being served with such notice, (which he is hereby authorised to do with leave of the Court or Judge, and without any order for that purpose) and pay the sum of five shillings for such notice to the party by whom the same was given, it shall and may be lawful for such last mentioned party within days thereafter, until the expiration of which time it shall not be lawful for the opposite party to take further proceedings in the cause, to apply to the Court in which such action may be depending, or to a Judge thereof, for an order to compel the opposite party to amend his said defective pleading; and in case such order shall be granted, the costs thereof and attending such amendment, shall be paid by the attorney by whom such defective pleading shall have been filed; but in case such order shall be refused, then the costs of opposing the application shall be paid by the attorney, by whom such application shall have been made. Special demurrers abolished: what course shall be pursued in case any pleading shall be defective.

II. And be it enacted, That no attorney for either party in any cause now or hereafter depending in any of the said Courts, shall be at liberty to make any application to set aside any proceeding in any of the said Courts for irregularity, nor shall the Court or Judge receive or What course shall be taken in case any proceeding shall be irregular.

entertain any such application, unless the party applying shall have given at least five days previous notice in writing to the opposite party, setting forth the irregularity complained of, and requiring the party to amend the same, or to abandon such irregular proceeding; and in case the party shall neglect or refuse to amend his irregular proceeding or abandon the same, and pay the sum of *five shillings* for such notice to the party by whom the same was given, within four days after the service thereof, then if the Court or Judge shall afterwards make an order to set aside such proceeding for irregularity, the attorney by whom such irregular proceeding shall have been taken shall pay all costs incurred thereby, and in setting the same aside; but if the Court or Judge shall refuse to make such order, then the attorney by whom the application to set the proceeding aside shall have been made, shall pay all costs incurred by such application and in opposing the same.