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No. 87.

5th Session, 8th Parliament, 29th Victoria, 1866.

BILL.

An Act to amend the practice of the Court
of Chancery for Upper Canada.

Received and read, first time, Friday, 22nd
June, 1866.

Second reading, Monday, 25th June, 1866.

Mr Wood.

OTTAWA :

**PRINTED BY HUNTER, ROSE & CO.,
SALLY STREET.**

An Act to amend the practice of Court of Chancery for Upper Canada.

WHEREAS it is expedient further to facilitate proceedings, and Preamble.
to prevent unnecessary delays and expenses, in Her Majesty's
Court of Chancery for Upper Canada; Therefore, Her Majesty, by and
5 with the advice and consent of the Legislative Council and Assembly
of Canada, enacts as follows:—

1. Whenever a defendant cannot, after due diligence, be found, to Defendant
be served with the Bill of Complaint, the Court shall order such person may be served
to be served by publication, according to the present practice of the by publication
10 Court; and an application to the defendant's nearest relatives, or those in certain
with whom he last resided before he disappeared, for information as to cases.
his present residence or place of abode, shall be deemed due diligence,
without examining any party under oath.

2. A married woman shall, in all cases, sue by her next friend, save Suits by mar-
15 that, in a suit against her husband, the Court may allow her to sue ried women.
alone, upon being satisfied that she is rightly entitled so to do. But Interim ali-
in no case shall any order be made, directing the husband to pay mony, &c.
interim alimony or any costs of suit to the wife, before decree, unless
the Court shall be satisfied by the evidence given, that the application
is just and reasonable, under the circumstances.

3. In the case of infant defendants, it shall not be necessary to Service in the
20 serve a copy of the Bill of Complaint on any of them; and it shall be case of infant
sufficient, before applying for an order to appoint a guardian *ad litem*, defendants.
to serve a copy of the Bill and the notice required by the practice of
the Court, upon the party with whom the infants or some of them
25 reside. After a guardian *ad litem* has been appointed, a copy of the
Bill shall be served on him, along with the order appointing him
guardian; and this shall be deemed good service on the infant.

4. It shall not be necessary, before making an application for the Sale or lease
30 sale or leasing of land in which an infant is interested, that the infant of land of
consent to such application; but the Court shall decide as to the infant;
propriety of such sale or leasing, and the second clause of the fifty-
second section of the Consolidated Statutes for Upper Canada, chapter Con. Stat. U.
twelve, requiring such consent, is hereby repealed. C., cap. 12,
sec. 52, sub-
section 2, re-
pealed.

5. Whenever the answer of the defendant sets forth matter to which Replication
35 the plaintiff may desire to reply, he shall do so by a Replication, as at instead of
the Common Law, and not by amending his Bill of Complaint. The amendment
defendant may also set forth any defence which he may have to the of Bill.
Replication by a Rejoinder; and so on, each party having the right to
answer the last preceding pleading of his opponent, by a new pleading,
40 according to the practice at the Common Law. But this section shall

Saving in certain cases. not affect the right of any party to amend or re-amend his Bill of Complaint, or file a supplemental answer, in order to rectify any error or defect therein, according to the present practice of the Court.

Amendment of pleadings by order of Court. **6.** The Court shall, at any time, upon a proper application for that purpose, direct such amendments of any pleading as the furtherance of justice or the due conduct of the suit or matter may require, upon such terms as the Court shall deem meet; but any error or defect of pleading which has not misled or injured the adverse party, shall be amended without costs. 5

All evidence pertinent to question at issue, receivable. **7.** Upon every examination of witnesses, all the evidence of either party, pertinent to the real subject at issue, shall be received, although, owing to some error or defect of pleading, the same, or some portion thereof, may be inadmissible by the present practice of this Court; the erroneous or defective pleading shall be amended accordingly, as directed by the last preceding section of this Act. But nothing herein contained shall authorize the admission of any evidence irrelevant to the real question intended to be raised for decision, and wherever, in the opinion of the Court, the adverse party has been surprised, or his rights might otherwise be injuriously affected by the admission of any evidence of which, owing to the said defect or error in the pleading, he may not have been duly forewarned, he shall be allowed to give further evidence, at such time and place, and on such terms, as the Court may think fit. 15 20

Time for arguing causes. **8.** After the parties have closed their respective cases upon an examination of witnesses, if the evidence involve difficult questions of fact or law, the Court shall defer hearing the argument thereon till the witnesses in all the other causes have been examined: and the cause shall be argued at such time and place as the Court may direct. 25

Orders under this Act. **9.** The Court of Chancery is hereby empowered to make such orders as they may deem expedient for the purpose of carrying this Act into effect. 30

Appeal. **10.** The decisions of the Court, under this Act, shall be subject to appeal as in other cases.

Powers of the Court in appeals from Chancery. **11.** Upon the hearing of any appeal from the Court of Chancery, the Court of Error and Appeal shall have and exercise the same powers relative to amendments of pleadings and future proceedings in suits, as shall be possessed by the Court of Chancery, either under this Act or otherwise. 35

Commencement of Act. Proviso. **12.** This Act shall take effect from the time of the passing thereof; but it shall not affect the validity of anything done previously to that time. 40