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No. 16.

3d Session, 3d Parliament, 13 Victoria, 1850.

BILL.

An Act to confirm decrees and orders,
and other proceeding of the Court
of Chancery of Upper Canada, in
certain cases.

Received and Read a first time, Wednesday, 29th
May, 1850.

Second Reading, Wednesday, 12th June, 1850.

Mr. PRINCE.

TORONTO: PRINTED BY LOVELL AND GIBSON.

BILL.

An Act to confirm decrees and orders and other proceedings of the Court of Chancery of Upper Canada, in certain cases.

- W**HEREAS by a certain Act of the Parliament of that part of this Province, heretofore constituting the Province of Upper Canada, intituled, "*An Act to establish a Court of Chancery in this Province,*" it was amongst other things enacted, That the Vice Chancellor of the said Court thereby constituted and established should have full power and authority, from time to time, to settle and declare the form of process and to define the practice and proceedings to be observed in the said Court of Chancery in prosecuting or defending suits therein; And whereas in pursuance of the said authority, the Vice Chancellor of the said Court made and passed the several orders mentioned, and set forth in the Schedule marked A. hereunto annexed: And whereas under or by virtue of the said orders, divers decrees and orders of the said Court have been made as well for the foreclosure of divers mortgages of lands as for the sale of mortgaged premises, for the revision of contracts, for the sale and purchase of lands, and for other purposes relating to or affecting Real Estate in that part of this Province, heretofore constituting the Province of Upper Canada, in cases in which the Defendants in the said suits, or some or one of them, have been absent from the part of this Province aforesaid and resident without the Jurisdiction of the said Court; And whereas in order to obviate all doubts which have arisen or may arise as to the titles of the Lands affected by such decrees or orders of the said Court, it is expedient that the same decrees or orders should be ratified and confirmed: Be it therefore, &c.
- And it is hereby enacted by the authority of the same, That all and every the decrees, orders, and all other proceedings of the said Court, made under or in pursuance of the said orders of the said Court of Chancery, in the said Schedule set forth, which have been respectively pronounced, enforced and perfected, shall be and the same and each and every of them is and are hereby ratified and confirmed, and shall be and be deemed and taken to be as valid and effectual in all respects and to all intents and purposes, as if the Defendants in the several suits wherein such decrees or orders have been respectively pronounced or made, had been resident in the part

Preamble.

Act of U. C.
7 W. 4, c. 2,
recited.All Decrees,
&c. made under
the old
Orders as to
absent Defendants,
confirmed.

of this Province aforesaid, and within the Jurisdiction of the said Court of Chancery and had respectively appeared in the said Court of Chancery in the said suits, and the proceedings in the same had been prosecuted to judgment or decree, and all other proceedings had been had and taken therein, and the Defendants had been respectively served therewith, according to the usual course and practice of the said Court of Chancery, in suits wherein the Defendants have appeared. 5

Suits commenced but not ended may be completed as if no doubts existed as to such old Orders.

II. And be it enacted, That it shall and may be lawful to and for the said Court of Chancery, in all suits commenced in the said Court against absent Defendants and some proceeding had therein under or by virtue of the said orders in the said Schedule set forth, as well to make all necessary orders and decrees for the purpose of enabling the parties to prosecute the same suits, as for enforcing, perfecting and carrying out all such decrees and orders of the said Court, and for confirming all such Reports as have at any time or times on or before the first day of January last, been made or pronounced under the said orders in the said Schedule mentioned, and as have not hitherto respectively been enforced or perfected or confirmed, in such and the same manner as the same would have been respectively prosecuted, enforced or perfected or confirmed by any order or orders of the said Court of Chancery, in case no doubts had arisen or could arise touching the validity of the said orders in the said Schedule mentioned; and such decrees, orders and reports respectively shall, when the same respectively shall be so pronounced, enforced, perfected, or confirmed, be as valid, and effectual in all respects and to all intents and purposes, as if the Defendants in the several suits, had been respectively resident in the part of this Province aforesaid, and within the Jurisdiction of the said Court of Chancery, and had respectively appeared therein, and the proceedings in the same suits had been prosecuted, and all proceedings had and taken therein, and the Defendants had respectively been served therewith, according to the usual course and practice of the said Court in suits wherein the Defendants have appeared. 10
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Right of Appeal saved.

III. Provided always, and be it enacted, That nothing herein contained shall affect the right of any party in or to the said suits or any of them, to appeal against the said decrees or orders of the said Court enforced or to be enforced as aforesaid, in such and the same manner as such parties would have been entitled to appeal, in case such decrees or orders had been made or pronounced in suits wherein the Defendants had appeared, on any question touching such decrees or orders other than a question relating to or affecting the said Orders in the said Schedule to this Act. 45
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and regulations which shall be prescribed by the Council of Public Instruction for Upper Canada.

VII. And be it enacted, That the Council of Public Instruction for Upper Canada, (of which the Principal of the Royal Grammar School of Upper Canada College shall be a Member for the purposes of this Act,) shall prepare and prescribe a list of text-books, programme of studies, and general rules and regulations for the organization and government of the County Grammar Schools; and to appoint, from time to time, and fix the remuneration of a Special Inspector or Inspectors of said County Grammar Schools.

Council of Public Instruction to select text Books prescribe programme of studies and general rules and regulations.

To appoint special Inspector of Grammar Schools.

VIII. And be it enacted, That it shall be the duty of the Chief Superintendent of Schools to see that the County Grammar School Fund apportioned by him, is, in all cases, applied to the purposes hereinbefore prescribed; and that each County Grammar School is conducted according to the rules and regulations provided according to law; and to prepare suitable forms, and to give such instructions as he shall judge necessary and proper for making all reports and conducting all proceedings under this Act, and cause the same with a sufficient number of copies of this Act, and such general rules and regulations as shall be approved of by the Council of Public Instruction for the better organization and government of Grammar Schools, to be printed in a convenient form and transmitted to the parties required to execute the provisions of this Act: Provided always, that no such School shall receive any part of the County Grammar School Fund which shall not be conducted according to the provisions of this Act.

Duty of the Chief Superintendent of Schools.

Proviso.

IX. And be it enacted, That it may and shall be lawful for the Municipal Council of each County and City to appoint not less than six or more than eight fit and proper persons (three of whom shall be a Quorum for the transaction of business) as a Board of Trustees for each County Grammar School in such County: Provided always that two persons thus appointed (to be determined by such Council) shall retire from office annually (but may be re-appointed) and their places, as also any occasional vacancy, shall be filled up by such Council: Provided also, that the person appointed to fill such vacancy shall hold office only for the unexpired part of the term for which the person whose place shall have become vacant, was appointed to serve: Provided likewise, that the present Boards of Trustees of Grammar Schools shall continue in office until their successors shall have been appointed according to the provisions of this Act.

Trustees to be appointed by the County Councils.

First proviso.

Second proviso

Third proviso.

X. And be it enacted, That it shall be the duty of the Board of Trustees of each County Grammar School (the first meeting of whom may be called by any member:

Duties of each Board of Trustees.

To determine modes of proceeding.

First, To appoint annually, or oftener, a Chairman, Secretary and Treasurer, the times and places of their meetings, the mode of calling and conducting such meetings, and of keeping a full and correct account of their proceedings : 5

To take charge of the Grammar School, appoint Masters, &c.

Secondly, To take the charge of each County Grammar School and the buildings and lands appertaining to it ; to appoint or remove the Master and other Teacher or Teachers in such School : to fix their salaries and prescribe their duties ; to appoint any other officers or servants in such School as they may judge expedient, and fix their remuneration ; to do whatever may be expedient with regard to erecting, repairing, warming, furnishing or keeping in order the building or buildings of such School and its appendages, lands and enclosures and to apply (if necessary) for the requisite sum or sums to be raised by municipal authority for such purpose or purposes : 10 15

To levy rate-bills, etc.

Thirdly, To cause, in their discretion, to be levied by rate bill upon the parents and guardians of pupils attending such School, such additional sum or sums as they shall judge expedient towards making up the salaries of Teachers, providing the proper apparatus, text-books, and registers, and for any other necessary expenses of such School, and they shall have the same authority, and proceed in the same manner as Common School Trustees in the levying and collecting of rate bills for Common Schools : 20 25

May unite Common Schools with the Grammar School.

Fourthly, To employ any lawful means which they may judge expedient in concurrence with the Board of Trustees of Common Schools in the Township, Village, Town or City in which such County Grammar School may be situated, for uniting one or more of the Common Schools of such Township, Village, Town or City, or departments of them, with such County Grammar School : 30

Conditions of such union.

Provided always, that no such union shall take place without ample provision being made for giving instruction to the pupils in the elementary English branches, by a duly qualified English Teacher or Teachers : Provided also, that under such circumstances such County Grammar School may be regarded as a County Model School also, and perform the functions of other Model Schools as far as the Trustees shall deem it advisable : 35 40

To see that pupils are provided with proper text-books, &c.

Fifthly, To see that the pupils of such County Grammar School are supplied with proper text-books ; that public half-yearly examinations of the pupils are held, and due notice given of them ; and that such School is conducted in accordance with the regulations which shall be provided according to law : Provided always, that the Master and other Teachers of such School shall observe the same regulations in respect to teaching, discipline, 45 50

Duties of Master and Teachers.

are not within the Deponent's knowledge, then the affidavit must proceed thus) and he, this Deponent, was informed by (here state the name of the informer and his connection with the absent Defendant, that the Court may judge how far the information given may be relied on,) that he knew the Defendant C. D., and that he formerly resided at _____ in this Province, but has since left the same and now resides at _____ in the Province of Lower Canada, or at _____ in the United States of America, (if the Deponent can so depose upon the information given, or generally if he be unable to state the particular place in the United States of America,) or at _____ in England, Scotland or Ireland or elsewhere, or as the case may be.) If the Defendant have never resided in this Province the affidavit must be varied accordingly.

66. That in order to remove doubts which have arisen upon the construction of the order of the 25th of August 1837, where the same applies to proceedings on the Common Law side of the Court, His Honour doth order that the same course of proceedings shall be adopted on the Common Law side of the Court, with respect to Defendants out of the jurisdiction thereof, as by the said order is prescribed with reference to proceedings on the Equity side, *mutatis mutandis*.

68. That in all cases within the order of the 25th August, 1837, relative to Defendants out of the jurisdiction, after any state of facts shall have been carried into the Master's office, pursuant to the reference directed by the Decree, the warrant on leaving such state of facts, henceforth shall be discontinued, and the Plaintiff shall be at liberty immediately to apply for and obtain a warrant to proceed on the state of facts.

178. Whereas in the case of Defendants residing without the jurisdiction of this Court, but whose place of residence is known and who may therefore be served personally with the process of this Court to compel such Defendants to appear to and answer the Plaintiff's Bill, it is deemed advisable to allow Plaintiffs to proceed against such absent Defendants, by personal service of such process in cases where the same can be effected, instead of according to the present mode of proceeding against absent Defendants, It is therefore ordered that upon motion in open Court, founded upon affidavit or affidavits and such other documents of evidence, if required or proper, as may be applicable for the purpose of ascertaining the residence of any Defendant or Defendants residing without the jurisdiction of the Court, and the facts material to identify such Defendant or Defendants and his or their place or places of residence; it shall be competent for the Court to order and direct, that service of a subpoena to appear and answer, upon such terms and in such manner, and at such times, as to the said Court shall seem reasonable (or in cases where the Court shall deem fit, upon the Receiver, Steward, Bailiff, Agent, or other person receiving or remitting rents of lands and premises, if any, in the suit mentioned, or otherwise acting on behalf of such Defendant or Defendants in relation to the matter or matters which are the subject of such suit, returnable at such time as the Court shall direct) together with a

copy of such order and of the prayer of the Plaintiff's Bill, shall be deemed good service upon such Defendant or Defendants, such order to direct also in what mode such service may be authenticated, in cases where such service may be effected without the jurisdiction of this Court; and in case such Defendant or Defendants shall, after such service make default in appearance by the time limited by such order and process aforesaid, the Plaintiff shall be at liberty to enter an appearance for such Defendant or Defendants, upon filing with the Registrar an affidavit of such service sworn as in such order directed; and if the Defendant shall not answer the Plaintiff's Bill within the time limited by such order, the Plaintiff shall be entitled to an order to set down the cause for hearing, in order that the Bill may be taken *pro confesso* against such Defendant or Defendants, upon filing with the Registrar his praecipe for that purpose; and thereupon a decree may be made and enforced against such Defendant or Defendants accordingly, unless the Court on special circumstances disclosed by affidavit, shall allow further time to such Defendant or Defendants to answer the Plaintiff's Bill; provided nevertheless that the following notice or such other notice as the Court may in any case direct, shall in such cases be endorsed on the said writ of subpœna and signed by the Solicitor for the Plaintiff,

ORDINARY NOTICE to be endorsed *ad respondendum* in Absent Defendant Cases :

“ You are served with this process to the intent that you may, “ either in person or by your Solicitor, appear in Her Majesty's “ Court of Chancery at Toronto, by filing your appearance with the “ Registrar of the said Court within—————after the service “ hereof upon you exclusive of the day of such service, and that “ you may answer a Bill of complaint filed against you by————— “ a copy of the prayer of which said Bill is served upon you here- “ with; and you will take notice, that unless you enter such appear- “ ance an appearance will be entered for you by the Plaintiff at “ the expiration of the said—————and unless you answer the “ said Bill at or before the expiration of—————after such ap- “ pearance shall have been entered by you or for you, you will be “ considered as confessing the truth of the several matters alleged “ in the said Bill of complaint, and a Decree will thereupon be “ made and enforced against you.”

Ordered that in case the Court shall think fit so to direct, it shall be competent for the Court to order that the Plaintiff be at liberty either to proceed against such absent Defendant by such personal service of process, or by publication of order by advertisement, according to the previous practice of the Court in that behalf; and in such case the Plaintiff shall be at liberty, for the purposes of such advertisement, to take the usual order in absent Defendant cases under the previous practice as aforesaid, without any further application to the Court in respect thereof.