

Hayes in support of the demurrer.—The Judge had power, notwithstanding his prior decision, to alter his judgment and grant a new trial at the subsequent court. 9 & 10 Vic., ch. 95, sec. 89, enacts, "that every judgment of any court holden under that Act, except as therein provided, shall be final and conclusive between the parties; but the Judge shall in every case whatever have the power, if he think fit, to order a new trial to be had upon such terms as he shall think reasonable." Then the 141st rule of practice made by the Judges in pursuance of 12 & 13 Vic., ch. 101, sec. 12, says: "An application for a new trial may be made and determined on the day of hearing, if both parties are present, or may be made at the first court held next after the expiration of twelve clear days from such day of hearing." That rule being only a directory rule of practice, does not interfere with the discretion of the Judge, as has been held in the case of *Carter v. Smith*, 24 L. J. Q. B. 141. It was there decided that, notwithstanding the omission to give seven days' notice of the intended application for a new trial, as required by that rule, the Judge had a discretionary power to grant a new trial. This is like this court dispensing with the rule that a motion for a new trial must be made within four days. Can a Judge alter his mind at the same court? If he can, can he not do so afterwards? Is it to be said that he is to be taken to be infallible? He is under great difficulties, both from the press of business and the absence of a bar to call his attention to the authorities, and it is reasonable that he should be allowed to say he was mistaken: (*Jones v. Jones*, 5 Dowl. and Lownd. 698, was also cited.)

Byles, Serjt. contra.—A statutory power is required to enable an inferior court to grant a new trial. Here, the application having been once refused, it was *res-judicata*. The same party comes a second time upon the same grounds. The statutory power was gone, and the Judge was *functus officio*. I may ask, can a Judge alter his judgment after ten years? Can his successor alter it? Could he again alter his mind back to his original judgment? *Carter v. Smith* is quite a different case from this. The Judge doubtless must be allowed a discretion in some particulars, but not such an extensive discretion as this. Where the Judge is to have the power of altering his decision the power is expressly given, as in sec. 100. Is the Judge bound to hear the application again?

Hayes in reply.—The Judge is clearly not bound to hear it over again. He might say, "I have decided, and I will not dispense with the ordinary rule of practice." He might dispense with it if he liked.

Jervis, C.J.—I confess I thought the court had determined this question when the case was first brought to the notice of the court. My brothers Maule and Creswell were of opinion that this, being a statutory power, the Judge, having refused the application at the first court, was *functus officio*. I am of that opinion. In some cases there may be a new trial. Well, application is made for a new trial. It is refused, and the damages and costs are paid. The thing is at an end: it is out of court and gone. I apprehend the jurisdiction of the Judge is exhausted, and he has no right to revise his judgment, and the present plaintiff is entitled to prohibit him.

V. Williams, J.—I have arrived at the same conclusion, not without difficulty. The Judge has power to grant a new trial after execution as before. The difficulty which occurred to me is, whether the exercise of that power is not a mere matter of practice, and whether we ought not to assume that that would be done properly. My brothers Maule and Creswell having entertained a different opinion, and the rest of the court agreeing with them, I have acceded to their view.

Crowder, J.—I am of opinion that this matter was wholly decided upon the first application. It is a matter of importance that we should know when a cause is at an end. A discretion is doubtless to be allowed to the Judge; and *Carter v. Smith* is an authority for that. But it is not an authority for such an extensive discretion as that the Judge may

always grant a new trial. That would be a very dangerous thing.

WILLES, J.—The object of having a court of justice is, that all litigation should be determined, and that finally. It is a long time since a reason was given why judgments should be considered final, and not opened up again, *ne lites sint immortales dum litantes mortales*. A court of justice must be suited to the lives of the persons concerned. Life is not long enough for opening up again matters that are already *res-judicatae*. Then, when the Legislature gave this power to the Judges of Co. Courts, it must be taken to have intended that those courts should have those accidents which belong to other courts. The judgment, therefore, of those courts is to be final, except where the power of granting a new trial is given. That power is to be exercised with reference to recognised principles. The judgment, therefore, is to be final, unless it comes within the power given; and therefore, when the Judge has determined that there shall not be a new trial, then the judgment must stand final.

Judgment for the plaintiff.

APPOINTMENTS TO OFFICE, &c.

QUEEN'S COUNCIL.

OLIVER MOWAT, of Osgoode Hall, Esquire, Barrister-at-Law, to be a Queen's Counsel in Upper Canada.—[Gazetted 6th January, 1856.]

NOTARIES PUBLIC IN U.C.

JOHN LEYS, of Toronto, Esquire, Attorney-at-Law, and JOSHUA ADAMS, the younger, of Port Sarnia, Esquire, Attorney-at-Law, to be Notaries Public in Upper Canada.—[Gazetted 12th January, 1856.]

ARTHUR JOHNSON KINGSTON, of Bayfield, Gentleman, to be a Notary Public in Upper Canada.—[Gazetted 19th January, 1856.]

ASSOCIATE CORONERS.

MORGAN HAMILTON, Esquire, M.D., to be an Associate Coroner for the United Counties of Huron and Bruce.

ELIAS VERNON, Esquire, M.D., to be an Associate Coroner for the County of Ontario.

JOHN STEWART, Esquire, Surgeon, to be an Associate Coroner for the City of Kingston and the United Counties of Frontenac, Lennox and Addington.

BENJAMIN SEYMOUR WILSON, Esquire, M.D., to be an Associate Coroner for the County of Hastings.—[Gazetted 12th January, 1856.]

THE DIVISION COURT DIRECTORY.

Intended to show the number, limits and extent of the several Division Courts in every County of Upper Canada, with the names and addresses of the Officers—Clerk and Bailiff,—of each Division Court.†

COUNTY OF LAMBTON.

Judge of the County and Division Courts, CHARLES ROBINSON, Port Sarnia.

First Division Court—Clerk, Thomas Forsyth, Port Sarnia; *Bailiff*, Tilton Howard, Port Sarnia; *Limits*—The Townships of Sarnia, Plympton and Enniskillen, and the eight northern concessions of Moore.

Second Division Court—Clerk, J. F. Elliott, Warwick; *Bailiff*, Robert Evans, Warwick; *Limits*—The Townships of Bosanquet, Warwick and Brooke.

Third Division Court—Clerk, G. M. Webster, Dresden; *Bailiff*, William Sixsmith, Dresden; *Limits*—The Townships of Dawn and Euphemia.

Fourth Division Court—Clerk, Ewen McMillen, Wallaceburg; *Bailiff*, James R. Maybee, Wallaceburg; *Limits*—Township of Sombra, and the four southern concessions of Moore.

COUNTY OF ESSEX.

Judge of the County and Division Courts, ALEXANDER CREWETT, Sandwich.

First Division Court—Clerk, Joseph Mercer, Sandwich; *Bailiff*, Constant Gauthier, Sandwich; *Limits*—The Townships of Sandwich and Maidstone, including the Town of Sandwich.

Second Division Court—Clerk, Alanson Botsford, Amherstburgh; *Bailiff*, Theo. Brush, Amherstburgh; *Limits*—The Townships of Anderdan and Malden, including the Town of Amherstburgh.

Third Division Court—Clerk, James King, Kingsville; *Bailiff*, Ernest Nightingale, Kingsville; *Limits*—The Township of Gosfield.

Fourth Division Court—Clerk, Gordon Buchanan, Colchester; *Bailiff*, James Waddell, Colchester; *Limits*—The Township of Colchester.

Fifth Division Court—Clerk, Jonathan Wigfield, Mersea; *Bailiff*, James Robson, Mersea; *Limits*—The Township of Mersea.

Sixth Division Court—Clerk, —Graham, Maidstone Cross; *Bailiff*, Patrick Daly, Maidstone Cross; *Limits*—The Townships of Rochester and West Tilbury.

† Vide observations ante page 106, Vol. I. on the utility and necessity for this Directory.