

ROBERTSON, J.]

[March 29.

IN RE MOORE v. FARQUHAR.

*Mandamus—Division Court—Application for new trial—Time—Judgment—
Notice of judgment—R.S.O., c. 51, ss. 144, 145—57 Vict., c. 23, s. 4.*

Motion by the defendant for an order in the nature of a mandamus directed to the second junior judge of the County Court of the county of York, commanding him to hear a motion by the defendant for a new trial of a plaint in a Division Court, which motion the judge refused to hear because he considered he had no jurisdiction after the lapse of fourteen days from the delivery of judgment.

After the hearing of the plaint, the judge postponed his judgment, and afterwards delivered it in writing to the clerk of the court. By reason of a mistake of the clerk, the defendant was not notified of the judgment for several days after its delivery, and, assuming that the notification which he did receive (not dated) was promptly sent, he made his motion for a new trial just before the expiry of fourteen days from the date at which he received notification, and after the expiry of fourteen days from the actual delivery of judgment.

Section 145 of the Division Courts Act, R.S.O., c. 51, provides that "the judge, upon the application of either party, within fourteen days after the trial, may grant a new trial."

Rule 283 (f) of the Revised Rules of the Division Courts, 1894, provides that "where, under the 144th section of the Act, judgment in writing is delivered at the clerk's office, application for a new trial may be made within fourteen days from the day of delivering such judgment."

By 57 Vict., c. 23, s. 4, an amendment was made to s. 144 of R.S.O., c. 51, which now reads: "The judge in any case heard before him shall, openly in court and as soon as may be after the hearing, pronounce his decision, but, if he is not prepared to pronounce a decision instant, he may postpone judgment until it is convenient for him to give the same, when he shall forthwith send the same to the clerk of the court, who shall, upon the receipt thereof by him, forthwith enter the judgment and notify the parties to the suit of the same; and such judgment shall be as effectual as if rendered in court at the trial."

The motion for a mandamus was argued in Chambers on the 29th of March, 1895.

ROBERTSON, J., held that, in view of the amendment allowing judgment to be given without previously naming a day, and directing that the parties shall be notified, the fourteen days within which a party may move for a new trial do not begin to run until the day on which the party has notice of the judgment.

Ordered, that a mandamus should issue in one week, unless the judge should see fit to act upon the opinion expressed. No costs.

W. R. Smyth for the defendant.

Angus MacMurphy for the plaintiff.