

Sheriff's hands for execution. The defendant, then and there made aware of his mistake, at once tendered the \$75 and costs; and, this being refused, now resorts to the Court.

The plaintiff insists upon his rights, and contends that there is no power to relieve from the default.

So far as I know, there is no case governing the precise point now before me. The judgment was a consent judgment, and I have no power to vary the consent given by the parties or to make a new bargain for them. The judgment, as drawn up and issued, is in exact accord with their intentions; there is in it no slip or error. There is no fraud or misleading upon the part of the plaintiff, and nothing in his conduct upon which any equity can be raised against him. . . .

[Reference to *Ainsworth v. Wilding*, [1896] 1 Ch. 673; *Wilding v. Sanderson*, [1897] 2 Ch. 534; *Labelle v. O'Connor*, 15 O.L.R. 519; *Canadian Fairbanks Co. v. Johnston*, 18 Man. L.R. 589; *Barrow v. Isaacs*, [1891] 1 Q.B. 417; *Avalon v. McKinnon*, [1909] 1 Ch. 476.]

I am satisfied that the defendant has erred in good faith, and that he should be relieved if I have power. The oft-quoted words of Ferguson, J., in *Re Gabourie*, 12 P.R. 252, 254, "to do justice in the particular case, where there is discretion, is above all other considerations," are not widely, if at all, different from what is said by Halsbury, L.C., in *South African Territories Co. v. Wallington*, [1898] A.C. 313, 314.

Neale v. Lady Gordon Lennox, [1902] A.C. 465, I think, gives me the same power in this case to relieve the defendant from his slip as I would have to relieve from a slip or default in the course of an action—and the same principle should guide me in the exercise of that discretion. . . .

The plaintiff here used the aid of the Court, by its process, to restore him to the possession of his own land, free from the possession of the defendant, taken under the original agreement and held under the terms of the consent judgment. I cannot see that in assuming that I now have a power to relieve, upon proper terms, I am really carrying this case (the *Neale* case) beyond its due application. I place the exercise of this discretion on the power to relieve against mistakes, slips, blunders, and even stupidity of parties in the course of litigation, which I regard as quite distinct from the power assumed by Equity to relieve from default under a foreclosure decree.

Had a motion been made by the defendant for an extension of time to pay the money by the date he had, by his contract, fixed