

Province of Ontario.**HIGH COURT OF JUSTICE.**

Middleton, J.]

LOVEJOY v. MERCER.

[Jan. 6.

Judgment by consent—Mistake as to date—Power of court to relieve from.

This was a motion by the defendant for an order relieving him from the consequences of default in making a payment on a certain date under a judgment pronounced by consent of counsel at the hearing. This judgment was intended to place the rights of the parties upon a definite basis and the date for the payment of a certain sum of money was fixed. There was a clear misunderstanding by the defendant as to this date, he thinking the amount was not payable for some time after the date mentioned in the judgment. There was no fraud or misleading on the part of the plaintiff and nothing in his conduct upon which any equity could be raised against it.

MIDDLETON, J.:—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 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.