

# The Ontario Weekly Notes

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No. 17.

## HIGH COURT OF JUSTICE.

MIDDLETON, J.

JANUARY 6TH, 1911.

\*LOVEJOY v. MERCER.

*Judgment—Consent—Provision for Payment of Money on Definite Date—Default—Genuine Mistake as to Date—Power of Court to Relieve—Terms—Costs.*

Motion by the defendant for an order relieving him from the consequences of default under a judgment pronounced by consent of counsel at the hearing.

W. S. McBrayne, K.C., for the defendant.

J. L. Schelter, for the plaintiff.

MIDDLETON, J. :—By the judgment of the 5th December, 1910, it was undoubtedly intended to place the rights of the parties upon a clear and definite basis, and that the right conferred upon the defendant to purchase the land should depend upon his carrying out to the letter the stipulations of the judgment, as to which time was made strictly of the essence, and that, upon default, the defendant should stand absolutely debarred and foreclosed from all rights under the judgment.

The defendant, under this judgment, was called upon to pay \$75 on the 28th December, 1910. This date was named as being one month after the 28th November, a date formerly arranged between the parties. There is no ambiguity in the judgment, and nothing whatever was done by the plaintiff to mislead the defendant, but the defendant assumed that he had a month from the date of the judgment, 8th December, to make the payment.

On default occurring, the plaintiff, as was his right, issued a writ of possession on the 29th December, and placed it in the

\*This case will be reported in the Ontario Law Reports.