

**WILLIAM VOSS**, Agent for J. W. West, River Cess, Plaintiff, v. **F. JONATHAN HOOKE**, Defendant.

ARGUED APRIL 20, 1915. DECIDED MAY 10, 1915.

Dossen, C. J., and Johnson, J.

1. A court may alter its judgment at any time before it is entered; or if it is entered before it is made final. But it should not *be* allowed without notice to both parties.
2. To justify a rehearing the court must be satisfied that there was a mistake as to the law or facts, when the judgment was given.

Mr. Justice Johnson delivered the opinion of the court.

Debt, Writ of Error—Motion to Vacate Judgment by Default. In this case, judgment by default was entered against the defendant in error on the motion of plaintiff in error, at the December term of this court, A. D. 1913, said defendant in error having failed to answer in person or by counsel, and Counsellor P. J. L. Brumskine, whose name appeared upon the docket as attorney for defendant in error announcing, upon inquiry from the court, that he had not been retained by said defendant in error.

Subsequently, and before the perfecting of the judgment, a motion was filed at said April term of the court, by counsel for defendant in error, in which it was alleged that said defendant had retained Counsellor Brumskine to appear and defend his interest in said cause; but that the said counsellor on being queried by the court, declared that he was not the attorney for defendant, and the case went by default. He therefore, prayed the court to vacate the judgment by default, and to permit a rehearing of the case. Whereupon the court ruled:

"That the case be continued, that Counsellor Brumskine be summoned to give evidence in the matter; and that if the facts stated by the defendant in error are substantiated, a rehearing of the case will be had."

A court may alter its judgment at any time before it is entered, or if it is entered before it is made final, before it is carried into effect.

But it should not be allowed, without notice to both parties, nor without full hearing and adequate cause. To justify a rehearing, the court must be satisfied that there was

a mistake as to the law or facts, when the judgment was given (*Doggett v. Emerson et al.* U. S. Reports.—Procedure and practice of the Supreme Court of England).

At the present term of this court, the motion to vacate judgment, having been called for the consideration and determination of the court, Counsellor Brumskine, who had been summoned to appear and testify in the matter, declared upon oath that he had not been retained by defendant in error. There being no evidence produced by the said defendant in error to substantiate his statement, it was admitted by his counsel, that the court had no alternative but to perfect the judgment by default rendered as aforesaid.

The court is therefore, of the opinion that the judgment of the court below should be reversed with costs against defendant in error; and it is so ordered.

*C. B. Dunbar*, for plaintiff in error.

*Arthur Barclay*, for defendant in error.