

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

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 defendants in error on the motion of plaintiff in error, at the December term of this court, A. D. 1913, said defendants 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 defendants in error announcing, upon inquiry from the court, that he had not been retained by said defendants in error.

Subsequently, and before the perfecting of the judgment, a motion was filed at said April term of the court, by counsel for defendants in error, in which it was alleged that said defendants had retained Counsellor Brumskine to appear and defend their interests in said cause; but that the said counsellor on being queried by the court, declared that he was not the attorney for defendants, 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 defendants 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 defendants in error. There being no evidence produced by the said defendants in error to substantiate their statement, it was admitted by their 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 defendants in error; and it is so ordered.

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

*Arthur Barclay*, for defendants in error.