

Case No. 17,950.

{4 McLean, 254.}<sup>1</sup>

WOOD ET AL. V. LUSE ET AL.

Circuit Court, D. Michigan.

June Term, 1847.

JUDGMENT—MOTION TO SET ASIDE.

1. A judgment can not be set aside on motion, after the term in which it was rendered.

{Cited in The Illinois, Case No. 7,003; Shuford v. Cain, Id. 12,823; U. S. v. Millinger, 7 Fed. 189; U. S. v. Walsh, 22 Fed. 648.}

2. In New York it is otherwise.

{Cited in The Illinois, Case No. 7,003.}

3. But the supreme court follow the common-law doctrine on this subject.

{Cited in The Illinois, Case No. 7,003.}

[Proceeding by Wood, Grant & Wood against Luse & Niles.]

Mr. Davidson, for plaintiffs.

Joy & Porter, for defendants.

MCLEAN, Circuit Justice. This is a motion by defendants to set aside certain proceedings, as well in the above cause as in another, in both of which judgments had been obtained more than six years ago. An affidavit is filed as the foundation of the motion. If the motion was not objectionable on other ground,

it is clear that the proceeding on the original suit and the notes on which it was founded, could not be revised in this manner. If the judgment was irregularly entered, as if no notice had been served on the defendants, so that it could not otherwise be considered than as a nullity, the court would entertain the motion. In New York, motions to set aside a judgment which had been entered at a preceding term, or perhaps years before the motion, are frequently made and acted upon, as their merits may require. But by the common law, the judgment of a previous term can not be set aside on motion. And this is the doctrine of the supreme court. It is admitted that relief, in modern practice, is given on motion where, formerly, an audita querela was necessary. But this does not apply to the solemn judgments of the court. A clerical error in the entry of the judgment will be corrected at any time, but judgments can not be set aside on motion, after the term at which they were entered. The motion is overruled.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]