

breast of the Court during the term. Lord Holt, however, observed that there was a diversity between an act of the Court done upon record, for that is in the breast of the Court and may be altered by them during the term, and an act of the party recorded by the Court, as a nonsuit or default, for that once recorded cannot be altered by the Court, as it would be a means of introducing falsity in matter of fact into records. And in *Dickinson v. Plaisted*, 7 T. R. 474, it was held, that even in case of the consent of the parties, no alteration could be made in a roll, though incomplete, without the leave of the Court. The principle of both these cases seems a sound one, though the diversity mentioned in the first is not often noticed in practice; see *Clammer v. the State*, 9 Gill, 279, and the note to 8 H. 6, c. 12, *infra*.

Power of court to strike out judgment.—It is fully settled in this State that a judgment by default, or otherwise, becomes absolute at the end of the term, *Henderson v. Gibson*, 19 Md. 234; *Graff v. Merchants and Miners' Transportation Co.*, 18 Md. 364;¹ and an appeal will lie from an order striking it out after the term, *Munnickhuysen v. Dorsett*, 2 H. & G. 374; *Sherwood v. Mohler*, 14 Md. 264; *Green v. Hamilton*, 16 Md. 317, and other cases. There appears to be one exception to this,—that of a judgment in ejectment against the casual ejector, which may be stricken out after the term, if of recent date, and no opportunity for improvements has occurred and no trial lost; see the note to 4 Geo. 2, c. 28.²

However, in spite of the solemnity of the judgment records, under the Act of 1787, ch. 9, sec. 6, introduced with an alteration into the Code. Art. 75, sec. 38,³ the first named Act speaking of fraud, surprise, deceit and irregularity, while the latter speaks only of fraud and irregularity, the Courts have long exercised the power of striking out judgments for such causes after the term, but in such cases it was required by the Act of 1787 that the continuances should be brought up, *Munnickhuysen v. Dorsett supra*; *Saddler v. Cox*, 2 H. & G. 379. This provision is omitted in the Code, which simply directs that the cause shall be continued as long as may be necessary for a trial on the merits. And on this Mr. Evans, in his *Practice*, 438, observes that it is at least doubtful whether a judgment can now be stricken out after the term. In *Kemp v. Cook*, 18 Md. 130, the Court of Appeals said that the power of striking out judgments is a *common law* power, incident to Courts of Record, and exercised usually under
213 restraints imposed by their own rules, and rarely *after the term has passed in which it was rendered. And again, that the Act of 1787, ch. 9, gives no additional power to the court in respect of correcting or setting aside judgments, but assumes that the power exists, and that in de-

¹ As to the conclusiveness of a judgment by default, see *Twigg v. Hopkins*, 85 Md. 302; *Heyward v. Sanner*, 86 Md. 21; *Loney v. Bailey*, 43 Md. 10; *Betz v. Welty*, 116 Md.—.

² See *Joynes v. Scott*, 34 Md. 58. But now, since under the Act of 1870, ch. 420 (Code 1911, Art. 75, sec. 71), the action of ejectment must be brought by the real claimant against the real defendant, the exception noted above would certainly no longer exist. Cf. *Brooke v. Gregg*, 89 Md. 234.

³ Code 1911, Art. 75, sec. 62.