

**J. W. GOOD, Appellant, vs. RANDOLPH SCHMIDT and WILSON SLIGHT,
Appellees.**

LRSC 1; 1 LLR 197

[January Term, A. D. 1886.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. Damages.

1. Where upon petition a writ of arrest is granted a party, it is error in the judge to afterwards revoke his order. He may be compelled to enforce the order granting the writ. .
2. The revocation of an order is an act of the judge *dehors* the record. The record in this case presents a great variety of facts, out of which several important questions have arisen ; but as the merits of the cause may be completely disposed of by decision of a few points, the facts which illustrate them will alone be mentioned.

This is an appeal from the rulings and judgment of the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 1885. The appellant, J. W. Good (plaintiff below), instituted an action of damages against the appellees (defendants below) for enticing and taking away his infant daughter from his services and society and carrying her to parts beyond the limits of the Republic.

The judge, upon the petition of the plaintiff in the court below (now appellant), for a writ of arrest, having in the exercise of his discretion granted the order for the same, ought not to have revoked it. But it was the right of the appellant to resort to the legal means, within the embraces of the law, to compel the judge to enforce the order for the writ of arrest, and the plaintiff neglecting to so avail himself of his right guaranteed by the law of the land amounts to a waiver.

Again, the revocation of an order is an act of the judge, which is *dehors* the record; therefore the defendants were not answerable for the said revocation. Nor were the defendants within the jurisdiction of the court at the time of the revocation of the order referred to, and were not so until they were summoned and so returned by the sheriff. For this reason we are of opinion that the court was right in striking out the first count of the plaintiff's complaint.

Again, the plaintiff having directed the issue of a writ of summons, after he had petitioned for the writ of arrest, he was thereby concluded, and therefore the law will not lend its aid to any exceptions taken by plaintiff (now appellant) to the revocation of the order for the writ of arrest. The charge against the appellees of inducing and enticing away appellant's daughter from him, does not appear from the evidence in the case to be well founded. The word "induce" comprehends the idea that there was some influence brought to bear upon the will or judgment of the mind,—which in this case, from the evidence, appears to the contrary.

Without, therefore, entering into a more minute consideration of the facts surrounding this case, the court being satisfied that the verdict is not contrary to the evidence, and the judgment thereon being well founded in law, the judgment of the court is affirmed, with costs.

Key Description Arrest (Execution of Warrant; Civil error for judge to revoke order granting)