

or under any circumstances that would imply a contract, but under a special arrangement whereby at her request the child was left with her to keep and provide for during her life time, the defendant promising to allow the child to remain with her for that time. She further testifies that at the time there never was any word or thought of payment, and that she would not now ask payment if defendant would leave the child with her. Of course this arrangement could not be enforced, but it seemed to me that it was sufficient to shew there was no implied contract; and at the conclusion of the plaintiff's case, I gave judgment dismissing his action, and signed an order for judgment to that effect. I am now asked to re-open that judgment and vacate that order.

I was not, at the trial, nor am I now asked for any amendment to plaintiff's statement of claim. The action still stands as one on an implied contract, and nothing more or less, and plaintiff must succeed on an implied contract or not at all. A number of grounds are mentioned in the notice of motion, but all were abandoned at the argument but one, namely, that the agreement or arrangement under which plaintiff kept the child being unenforceable at law would not destroy or do away with the implied contract that plaintiff sought to set up. Two questions arise: 1st, Does the section relied on (section 86 of the County Court Act) give me authority to do what is asked? 2nd, If it does, have proper grounds been shewn to warrant me in using that authority?

1st. It is perfectly clear, altogether apart from the section, that if a judgment is given or an order signed under a mistake or misapprehension, as in *Smith v. Horton*, 26 N. S. R. p. 41, or in *Re Australia Steamship Co.*, 3 Ch. D. 661. In this latter case the order had not been signed (see in *Re St. Nazaire Co.*, 12 Ch. D. 91), and it is trite law to say that until an order is signed a Judge can re-consider his decision. See the *N. Cape Breton Election case*, 6 E. L. R. p. 532. A Judge can rescind or vacate any order he has made, but when a Judge has deliberately, with all the facts before him, and as a result of the best consideration he could give the matter, given judgment, and upon that judgment has signed an order, I do not think that apart from this section he could rescind his judgment and vacate his order; and I am bound to say that I do not think this section gives or was intended to give him such power. I think it was only