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Mattingly v. Crowley.

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PER CURIAM: A rule will be entered requiring the plaintiff in error to sign the assignment of errors; but notice of the rule must be given him.

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### MATTINGLY v. CROWLEY.

(November Term, 1864.)

APPEAL—*when it would lie prior to the act of 1865.* At the November Term, 1864, it was held that an appeal would not lie from a judgment in replevin, in favor of the defendant, and awarding a return of the property, because, in such case, the judgment did not amount to twenty dollars, nor relate to a franchise or freehold.\*

THIS was an action of replevin instituted in the Circuit Court of Jasper county by Mattingly against Crowley. The property sued for was taken under the writ, and placed in the possession of the plaintiff. The property was alleged in the plaint to be of the value of twenty-three dollars. A trial was had in the Circuit Court, which resulted in a finding of the issues for the defendant, and a judgment in his favor, ordering a return of the property. From that judgment the plaintiff took this appeal.

Mr. B. C. SMITH, for the appellee, moved this court to dismiss the appeal for the want of jurisdiction, insisting that the judgment appealed from did not amount to the sum of twenty dollars, nor any sum, and therefore an appeal would not lie. Citing Rev. Stat. 1845, 420, § 47.

Mr. W. B. COOPER, for the appellant, said it appeared from the plaint in the record that the value of the property, the return of which was ordered in the judgment appealed from, to be returned, exceeds twenty dollars, and the appeal would lie.

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\* Since this decision, the act of February 16, 1865 (see 32 Ill. 10), allows appeals to the Supreme Court from all decrees, judgments and orders of inferior courts, from which writs of error may be lawfully prosecuted.

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Carr v. Miner.

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Per CURIAM: The judgment below does not amount to the sum of twenty dollars, nor relate to a franchise or freehold. An appeal, therefore, does not lie.

*Appeal dismissed.*

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CARR v. MINER.

(April Term, 1865.)

1. APPEAL—*when it will lie—construction of act of 1865.* Prior to the passage of the act of 1865, allowing appeals to be prosecuted from all judgments, etc., upon which a writ of error might be sued out, a party could not have an appeal from a judgment in his own favor; the only mode by which he could have the case reviewed was by writ of error.

2. And that act is prospective, only, in its operation in that regard; so a judgment rendered before its passage is not within its operation.

3. SUPERSEDEAS—*when granted.* A supersedeas will not be granted on the application of a plaintiff in error who seeks the reversal of a judgment in his own favor.

4. SAME—*its effect.* The granting of a supersedeas will not have the effect to prevent the clerk of the court below from issuing his fee bills to collect the costs in the cause, occasioned by the parties respectively; it would only restrain the successful party from proceeding under his judgment.

THIS cause came to this court by appeal. The appellant moved for a rule upon the appellee to join in error. A cross motion was entered to dismiss the appeal, upon the ground that the judgment appealed from was in favor of the party taking the appeal.

In opposition to the cross motion, the act of February 16, 1865. Sess. Acts, p. 3, was cited, as showing that an appeal will lie in all cases in which a writ of error may be prosecuted.

Per CURIAM: We have often decided that under the law as it existed prior to the passage of the act cited, a party could not prosecute an *appeal* from a judgment which was in his favor. If a successful party was dissatisfied with his judgment, the only mode by which he could have the case reviewed in this court was by writ of error. *Addix v. Fahnestock*, 15 Ill.