

No. 14588

Supreme Court of Illinois

Gordon

VS.

Houlihan

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 75

J. W. Middleton & Co. Stationers, Chicago, Ill.

1864

Exhibits

Keulegan

1-38

Austin H. Gordon

No.

vs.

Thomas Haulihan

Eno to Peoria -
Writ of Error ~~Appeal~~ Dis-
missed.

APPELLANT'S PLAINTIFF'S COSTS.

Filing record and errors, 20; docketing cause, 12½; preparing and filing bond, 56½;.....
writ of error and filing, 106½; supersedeas, 81½; scire facias and filing, 106½; appearance, 25;.....
motion for alias scire facias, 25; under advisement, 25; order for same, 25;.....
~~furnishing and~~ filing printed abstracts, ; motion for leave to file certificate of publication, 25;
under advisement, 25; order for same, 25; motion to approve certificate of publication, 25;.....
under advisement, 25; order for same, 25; certificate of publication and filing, 125;.....
suggesting diminution of record, 25; motion for certiorari, 25; under advisement, 25;.....
order sustaining overruling motion, 25; motion for leave to file amended record, 25;.....
under advisement, 25; order sustaining overruling motion, 25; motion for rule to join in error, 25;.....
under advisement, 25; order for same, 25; motion to continue cause, 25; under advisement, 25;.....
order sustaining overruling motion, 25; abstract fee, ; motion ~~for~~ ~~and~~ order dismissing writ
of error ~~appeal~~, 25; under advisement, 25; order sustaining ~~overruling~~ motion, 25; certiorari and seal, 100;
affidavit and filing, — ; filing papers, 25 ; bill of costs, 37½; copy, 25; certificate and seal, 50;
fee bill, 50; docket fee, 600; filing and docketing, 18½; Sheriff's return, 12½; satisfaction, 25;.....
Revenue stamps, 1.00 ; transcript 3.00 ; Sheriff's fees for serving and returning scire facias, ;... ..

Dolls.	Cts
	88½
3	18½
	75
1	37½
6	25
4	00
16	48

Amount,.....

C. J. Hunt. 3.00
C. J. C. C. 12.00
15.00

Received this Writ on this.....day
of.....186

Perine June 19/63
J. Deland Esq. Sir

We enclose
to you Bond for Supermarine
in care of Jordan Es.

Recd. also Twelve
Dollars as requested please
issue immediately and
oblige

Yours Respectfully
Cooper & Sons

75

Lorenzo Selam Esq.,

Dear Sir =

We enclose herewith Record, with points &c., and one copy of Printed Abstract, in case Gordon vs. Houlahan, on which we wish to get a Supersedeas allowed by Judge Caton, and if need - Will you have the goodness to present the papers without delay to Judge C., for us, and get him to order the Supersedeas, if satisfied a proper case exists - It is quite important to Gordon that it should issue; inasmuch as Houlahan is supposed to be entirely irresponsible; and if he gets the horses under the order of the Court here, that will probably be ~~that~~ the last Gordon will hear of them. In case the Supersedeas is allowed, please acquaint us immediately with the fact, & either send us the Record to be executed, or let us know the amount &c., and how much ^{money} we shall have to advance to get the Record filed, &c. &c. It is important to have the thing attended to without delay, as otherwise, the Supersedeas, will be of no avail. Should Judge Caton not be at home please return the papers at once, and we will try reach one of the other Judges. We do not care about filing the Record just now, unless the Supersedeas issues. Your prompt attention

until much alive,

Beauva. June 12/63 =

Yours truly = Cooper & Mayo,
Per = J. R. Cooper

S. Island Capt -
Clerk

Byron & Co
Ottawa
Mo =

Supreme Court of Illinois, Third Grand Division,

April Term, A. D. 1864.

AUSTIN H. GORDON, Pl'ff in Error. }
THOMAS HOULIHAN, Deft. in Error. } Error to Peoria.

Suit in Replevin to June Term, A. D. 1863.

Page 1. May 8, 1863. Affidavit of Austin H. Gordon, filed, shows that he is the owner of one *Brown* horse, about nine years old, and one black horse with white strip in his face, and white on the lower part of one or both hind legs. Value, \$220. The possession of which Thomas Houlihan wrongfully obtained and detains; said affidavit is otherwise in usual form.

Page 2. May 3, 1863. A Writ of Replevin issued for said property, directed to the Sheriff of said County.

Page 3. May 5, 1863. Returned by sheriff; served by delivering said property to plaintiff, and reading to Defendant.

Pages 3 and 4. May 22, 63. Declaration in due form filed, for the property in said Affidavit described.

BILL OF EXCEPTIONS FILED JUNE 3, 1863, SHOWS :

Page 7 June 2, 1863. Motion of Defendant to dismiss said cause at Plaintiff's cost, and for a rule on Plaintiff to return the property.

Page 8 Affidavit of Thomas Houlihan, said Defendant, sets out that on May the 4th, 1863, in said County, Affiant caused a Writ of Replevin to be issued to the Sheriff for the recovery of the following property:—*One horse of a darkish color*, with a white *spot* in his face, and of about the age of eight years, and one Bay horse of about the age of nine years, which said property was in possession of and wrongfully detained by said Gordon, that said sheriff did on said day, by virtue of said Writ, take said property and deliver it to Affiant.

Page 9. That on the 5th of said month, while said property was in his possession said Gordon caused a writ of replevin to be issued for the return and possession of said property so replevied by Affiant; that the Sheriff did then and there seize by force said horses aforesaid while in Affiant's possession, and delivered them to said Gordon against Affiant's will. That said horses were, and each of them is, the same identical horses replevied by affiant from said Gordon May 4, 1863, and again replevied from this Affiant by said Gordon and said Sheriff, May 5, 1863; that said horses are the identical horses mentioned in the affidavit and declaration in the above entitled cause. That said replevin suit commenced by this Affiant for said horses is still pending in said Circuit Court, and that said Gordon and said Sheriff had knowledge of such proceedings at the time of the taking on said May 5, 1863, as aforesaid; that said horses are the same for which the said suit was commenced.

Page 10. Motion by Plaintiff to strike from the files the motion and affidavit of Defendant, and for rule on him to plead to Plaintiff's declaration. Cross motion overruled, and suit dismissed at Plaintiff's cost, and a writ of restitution ordered. To all of which proceedings, decisions and orders of said Court Plaintiff at the time objected and excepted, and therefore prayed an appeal to the Supreme Court. Appeal disallowed, to which disallowance Plaintiff by his counsel objected and excepted.

ASSIGNMENT OF ERRORS.

1st. In overruling cross motion of Plaintiff to strike motion to dismiss from the files, and for a rule on Defendant to plead.

2d. In sustaining motion of Defendant, and in dismissing said cause and ordering return of the property, and rendering judgment vs. Plaintiff for costs.

3d. In refusing application of Plaintiff for an appeal.

COOPER & MOSS,
For Plaintiff in Error.

78
Gordon No. Houlihan
~~Pls. Pines.~~
Abstract

STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County Peoria - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between

Austin H. Gordon

Complainant, and

Thomas H. Hulahan

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid

Gordon

as we are informed by his

complaint..... and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the complaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 22nd day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty thru.

L. Leland
Clerk of the Supreme Court.

75

Austin H. Gordon

No.

vs.

Thomas Haulihan

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

Skeland
Clerk.

FILED

June 22 A. D. 186*3*.

Skeland
Clerk.



Know all Men by these Presents, That Austin H. Gordon _____ as principal, and John G. Beyson _____ as security, are held and firmly bound unto Thomas Houlahan _____

in the penal sum of five hundred dollars _____ good and lawful money of the United States, for the payment of which, well and truly to be made, the said Austin H. Gordon & John G. Beyson _____

bind themselves, their heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, the hands & seals of the said Austin H. Gordon & John G. Beyson _____ this _____ day of June — A. D. 1863,

The Condition of the above Obligation is such, That, whereas the above named

Thomas Houlahan _____ did, at the June Term of the Circuit Court, _____ held in and for the County of Peoria — in the State of Illinois, A. D. 1863 recover a judgment against the above bounden

Austin H. Gordon for the costs of suit & for the return of the property replevied in said writ _____

for the sum of _____ to reverse which said judgment, the said Austin H. Gordon _____

has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the said _____

Austin H. Gordon _____ shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjudge against him, said Gordon, _____ and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

A. H. Gordon [SEAL.]
J. G. Beyson [SEAL.]
[SEAL.]
[SEAL.]

75
No.

SUPREME COURT,

THIRD GRAND DIVISION.

Austin H. Gordon

vs.

Thomas Houlahan

SUPERSEDEAS BOND.

Filed *June 22^d* 1869,
S. Keland Clerk.

Austin H. Gordon } In the Supreme Court:
 vs. } 3^d Grand Division:
 Thomas Houlihan } To the April Term 1864
 Error to Peoria:

Jonathan K. Cooper, being first duly sworn
 says on oath, that he is well acquainted
 with John G. Bryson, who is offered by
 said plaintiff in error, as security, for the
 purpose of obtaining a supersedeas, on the
 writ of Error about to be sued out from
 the office of the Clerk of the Supreme Court
 for the 3^d Grand Division of the State of
 Illinois - that said Bryson resides in
 the city of Peoria, in said Peoria County, Ill.
 Affiant further states that he has known
 said Bryson for many years, and is also
 acquainted sufficiently with his pecuniary cir-
 cumstances, to say unhesitatingly that he
 is undoubtedly good for many times the
 amount of any bond likely to be required on
 the granting of such supersedeas: Affiant
 cannot speak with certainty as to the exact a-
 vailable means of said Bryson, but con-
 sider it entirely safe to say that he said
 Bryson is worth from six to ten thousand
 dollars, above all his debts. And further
 affiant saith not:

Jonathan K. Cooper

Subscribed & sworn to before me this

12th day of June A.D. 1863. Enock Sloan, Clerk Circuit
 Court Peoria Co., Ill.

purpose is proper.

Here the Court could not know from the papers in this case, that any other suit was pending between these parties; much less that the property alleged to be replevied in such other suit, was the same property for which this action was brought.

There were questions upon which the plff. had an undoubted right to take issue; and which, it is submitted it was not the province of the Court to decide in this summary way.

29 But assuming that the matters relied on for dismissal, is sufficient, and that the same could properly be raised by motion, still, for reasons apparent on the face of this record, this motion should have been denied:

The property replevied in this suit is "One Brown Horse, about nine years old, and, One Black Horse, with white Strip in his face, and white on the lower part of one or both hind legs" (see off. & Declaration of Plff pp. 13 & 14 of Record). Whereas the Horses claimed by Def't. (see his off. p. 8 of Record) are "the

" Horse of a darkish color, with a white
" spot in his face, and of about the
" age of Eight years - and one Bay
" Horse of about the age of nine years.
Ann constat that the horses in the
two cases were identical: There should
have been further proof of the fact =

3^d = The order of the Court for the re-
turn of this property, was Erroneous,
none of the cases contemplated by
the statute (see Chap. 88 Sec. 6 ~~Per~~ Per-
ples, Stat. 2, 869) authorizing a judg-
ment for return of the property sta-
ken, existed unless indeed the Court
is to be considered as having adjudged
the right of property against
the plaintiff, which assumption
however, it is submitted, shows
the gross impropriety of the whole
proceeding. For it will hardly be
claimed, ~~that~~ ~~that~~ the right of prop-
erty could be legitimately passed
on & determined by the Court in
this manner. And yet, this is, in
effect, what the Court did do, when
it undertook to say that the
horses the plaintiff replevied were
the same, with those claimed by, &c.

4th = The horses ~~being~~ ^{being} replevied by plaintiff
from the possession of the Sgt. were

not in the Custody of the Law as
assumed. And the mere fact that
such possession by Def. may have
been obtained by prior receipt from
the plff., would not of itself, it is
conceived, necessarily preclude the
plff. from having his writ - Since
the property may have become his,
or his right to the possession have
accrued, by matter arising subse-
quently to the issuing & service of
the first writ =

Cooper & Moss
for Plff. in Error =

And now comes the said
Plaintiff in Error by Cooper & Moss
his attorneys, and files the record
and Abstract in the above enti-
tled cause; and presents to the
Hon. John Dean Cator, ^{one} ~~judge~~,
of the Judges of the Supreme Court,
the above Points, together with the
Record and Abstract, in the
above case. And pray that a
Supersedeas may be issued there-
on

Cooper & Moss
for plff in Error =

75
Austin H. Gordon
Thomas Houlahan

Pfpp. Paints =

Filed June 22^d 1863.
S. L. Leland
Ch.

Pleas before the Circuit Court, within and for the County
of Peoria, in the State of Illinois, on the 3rd day of
June, in the year of Our Lord One thousand Eight hundred
and Sixty three

Be it remembered that heretofore, to wit: on the 5th day of
May, in the year of Our Lord One thousand Eight hundred
and Sixty three, there was filed in the office of the clerk of
the Circuit Court of Peoria County, in the State of Illinois,
an affidavit, in words and figures following, to wit:

Affidavit

State of Illinois

Peoria County

3rd Oct.

In the Circuit Court

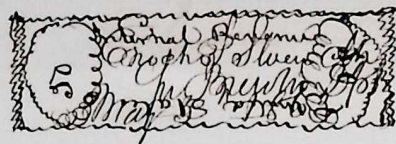
To the June Term 1863.

Austin H. Gordon, being first duly sworn, says
on oath, that he is the owner of the following described goods
chattels & personal property, viz: One Brown Horse, about
nine years Old, and One Black Horse, with white strips
in his face, and white on the lower part of one or both
hind legs of the value together of Two Hundred & twenty
dollars, the possession of which, One Thomas Houlahan has
wrongfully obtained, and unlawfully detains the same from
affiant. Affiant further states that said Horses nor either
of them have or has not been taken for any tax assessment
or fine, levied by virtue of any law of this State, nor
seized under any execution or attachment against the goods
& chattels of affiant liable to execution or attachment =
affiant therefore prays that a writ of Replevin may issue
out of said Circuit Court, against said Houlahan for said
property, returnable as the law directs = A. H. Gordon

Subscribed and sworn to before me this 5th day of May A D 1863. Enosh P. Sloan, Clerk
In Meantime

2 And afterwards, to wit on the said 5th day of May A D 1863
there was issued from the office of the Clerk of said Court,
a writ of Replevin, in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss.
PEORIA COUNTY,



The People of the State of Illinois,

To the Sheriff of Peoria County, Greeting:

WE Command you, that without delay, you cause to be replevied and delivered to
Austin Gordon

the following described Goods and Chattels, to wit:

One Brown Horse about nine years Old, and one Black
Horse with white strips in his face, and white on the lower
part of one or both hind legs of the value together of Two
Hundred and twenty dollars as it is said.

WHICH *Thomas Houlahan*
wrongfully detains from the said *Austin Gordon*

as it is said, and to summon the said

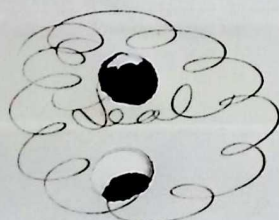
Thomas Houlahan

to be and appear before our Circuit Court, on the first day of the next Term thereof, to be held at
the Court House in Peoria, in and for the County of Peoria, on the *first Monday of June next*
to answer unto the said *Austin Gordon*

for the unlawful detention of the Goods and Chattels aforesaid: Provided, however, that the said

Austin Gordon

shall give you bond with good and sufficient security to prosecute *his* suit to effect without
delay, and make return of the said Goods and Chattels, if return thereof shall be awarded, and
further to keep you harmless in replevying said property, and have you then and there the said
Bond, together with this writ, and an endorsement thereon of the manner in which you have exe-
cuted the same.



Witness ENOCH P. SLOAN, Clerk of our said Court, and the seal
thereof, this *5th* day of *May* in the
year of our Lord, one thousand eight hundred and ~~one~~ *sixty three*

Enoch P. Sloan Clerk,
Ju Newton Spty

Shff Return

Which said writ of Replevin was afterwards returned into said clerks office Endorsed as follows, to wit:

I have duly served this writ by taken the within described property and delivered the same to the plaintiff Austin Gordon and also by reading the same to the Defendant Thomas Houlahan May 5th 1863. J A J Murray
Fees Paid \$ 2.50 Sheriff

And afterwards, to wit: on the 22nd day of May A.D. 1863. there was filed in the office of the Clerk of said Court a Declaration in words and figures following, to wit:

Declaration

State of Illinois }
Peoria County } ss. In the Circuit Court
To the June Term 1863.

Thomas Houlahan Defendant in this suit was summoned to answer Austin H Gordon the Plaintiff in this suit, of a plea wherefore he took the Horses of the said Austin H Gordon, and unjustly detained the same against justice and pledges until &c. And thereupon the said Austin H Gordon by Cooper & Mads his Atty: Complains. For that the said defendants on the 4th day of May A.D. 1863 in the County of Peoria and State of Illinois took the Horses of the said Plaintiff. to wit: One Brown Horse about nine years Old, and One Black Horse, with white strip in his face, and white on the lower part of one or both hind legs of great value, to wit: of the value of two Hundred and twenty Dollars, Wherefore the said

4

Plaintiff saith, that he is injured, and hath sustained damage to the amount of \$100, and therefore he brings his suit &c.

By Cooper & Moss his attys -

And whereas also the said defendant was summoned to answer the said plaintiff wherefore he detained against sureties and pledges &c. other goods chattels & personal property of the said plaintiff - and thereupon the said Austin H. Gordon by Cooper & Moss his attys, complains, For that the said defendant on the 4th day of May A.D. 1863. in the County of Peoria and State of Illinois had possession of, and unjustly detained other goods Chattels & personal property of said plaintiff, to wit: One Brown Horse about nine years old, and one Black Horse with white strip in his face, with white on the lower part of one or both hind legs of great value, to wit: of the value of two Hundred and twenty Dollars =

Wherefore the said plaintiff saith, that he is injured, and hath sustained damage to the amount of \$100, and therefore he brings his suit &c.

By Cooper & Moss his attys

Proceedings at a term of the Circuit Court begun and held at the court house in the city and County of Peoria, State of Illinois, on the first Monday in the month of June, in the year of Our Lord One thousand Eight hundred and sixty three, it being the first day of said month. Present J. A. Murray Sheriff and Enoch P. Hoan clerk, to wit:

Monday June 1st A.D. 1863.

The Judge of this court not being present, by force of the statute in such case

6-

made and provided, this court stands adjourned until to morrow.

Tuesday June 2nd. A.D. 1863.

This day at 10 o'clock in the forenoon came the Honorable A. L. Herriman Judge of the 16th Judicial Circuit in said state, and in due form of ~~law~~ this court is opened.

Austin H. Gordon | U
vs. Replevin

Thomas Boulahan

This day came the defendant by O'Brien his attorney, and entered his motion to dismiss this suit, for reasons stated in affidavit.

Wednesday June 3rd A.D. 1863.

Austin H. Gordon
vs Replevin

Thomas Boulahan

This day this cause came on to be heard on the motion to dismiss this suit, and on plaintiffs cross motion to strike from the files the motion to dismiss and affidavit of defendant, and on consideration the court sustains the motion to dismiss this suit and overrules the cross motion. Ordered that a writ of Return Habeas issue herein for the return of the property replevin, and that said defendant have and recover of said plaintiff his costs and charges by him about his defence in this behalf expended and that he have execution therefor. The plaintiff by his attorney J. K. Cooper, then and there excepted to the ruling of the court and prayed an appeal to the Supreme court of this state

6. On Consideration the Court refused to grant the Prayer
of said Plaintiff.

State of Illinois }
Peoria County } ss.

I, Enoch P. Sloan Clerk of the Circuit
Court, within and for said County, do hereby certify that
the foregoing is a true and complete copy of all the papers
filed in the cause wherein Austin M. Gordon is Plaintiff
and Thomas Mcoulhan is Defendant, and of the proceedings
of said Court appertaining to said cause, as the same appears
on file and of record in my office.

Given under my hand and the seal of said
Court, at Peoria, this 11th day of June, in the
year of our Lord One thousand eight hundred
and sixty three.

Enoch P. Sloan Clerk
Ju Newton Dph

And afterwards, to wit: on the 3rd day of June A. D. 1863
there was filed in said Circuit Court, a Bill of Exceptions
in words and figures as follows, to wit:

Bill of Exceptions Austin H. Gordon 3

Thomas ^{us} Houlihan

In the Circuit Court, Peoria County
Ill. June Term A. D. 1863.

In Reflevin =

Be it remembered that on the coming on of this cause for hearing, by the court, upon the motion & affidavit of said defendant & the cross motion of said plaintiff, on file herein, which said motion affidavit & cross motion are in words & figures as follows, to wit:

Motion

State of Illinois } ss.
County of Peoria }
Austin Gordon

County of Georgia }

Austin Gordon

Thomas ^{res} Horileham

222

Circuit Court June Term 1863,

Replevin

Motion

And now comes the said Thomas Houlahan defendant herein, by W.W. O'Brien his attorney, and moves the court here to dismiss this cause at the costs of the above named plaintiff, and also for a rule of said court upon said plaintiff requiring him within a reasonable time to be fixed by said court to return and deliver up to said defendant Thomas Houlahan the property mentioned and described in the affidavit & declaration herein filed vs. for reasons on file

W.W. O'Brien

W. M. O'Brien

atty For. Defh.

affidavit

State of Illinois }
County of Peoria } ss.

Circuit Court.

June Term A.D. 1863.

Austin Gordon }

vs.

Thomas Houlahan }

Replevin

Affidavit

Thomas Houlahan the defendant in the above entitled cause being first duly sworn says that heretofore, to wit. On or about the fourth day of May 1863 at and within the County aforesaid, this affiant sued out and caused to be issued from the Clerk of the Circuit Court in and for said Peoria County a writ of Replevin and placed the same in the hands of J. A. Jellumray Esq who was then and still is the acting and lawful Sheriff of said Peoria County, for the recovery, and to obtain possession of the following goods and chattels, to wit. One horse of a darkish color with a white spot in his face and of about the age of eight years, and one bay horse of about the age of nine years, which said goods and chattels were then in the possession, and wrongfully detained by Austin Gordon the above named plaintiff. That afterwards to wit. On the said fourth day of May 1863 said Sheriff of Peoria County under and by virtue of said writ of Replevin did seize and take possession of said property above mentioned and did then and there deliver the same to this affiant pursuant to the command of said writ of Replevin. Affiant further says that afterwards, to wit on the fifth day of said month of May and while said property was in the possession of this affiant, he the said Austin Gordon, did sue out and caused to be issued from the said Clerk of said

9
Circuit Court as aforesaid a writ of Replevin for the
return and possession of said property so replevined by
this affiant from him as aforesaid, to wit; said horses
aforesaid, and delivered the said writ to said Sheriff of
said Peoria County which said Sheriff did then and there
seize ^{by force} said goods and chattels to wit; said horses aforesaid
while so in the possession of this affiant as aforesaid
and did then and there deliver the same to him the
said Austin Gordon, against the will and consent of
this affiant, affiant further says that said horses were
and each of them is the same identical horses which
were Replevined by him from said Austin Gordon on
said fourth day of May 1863. and again Replevined and
taken from this affiant by said Gordon and said Sheriff
on the said fifth day of May 1863. as above mentioned
and that said horses are the same identical horses and
property mentioned and alluded to in the affidavit and
declaration in the above entitled cause affiant further
says that the proceedings in Replevin instituted and commenced
by him on said fourth day of May as aforesaid, for the
recovery of the said horses aforesaid are still pending and
undetermined in said Circuit Court of said Peoria County
and that said proceedings were so pending at the time of the
taking of said horses from affiant by said Gordon and
said Sheriff as aforesaid, and that said Gordon and said
Sheriff had full knowledge and notice of such proceedings
and the pendency thereof in said Court at the time of
the taking of said property from this affiant on said
fifth day of May as aforesaid, Affiant further says that
said horses are the same for which the above cause was

Commenced and is now pending &c.

Thomas ^{his} ~~mark~~ Houlahan

Subscribed and sworn to before
me this 26th day of May A.D. 1863
Enoch P. Slaan Clerk
for Newton Dpty

Cross motion

Austin H. Gordon
vs
Thomas Houlahan
In the Circuit Court Peoria County
Ills June Term 1863.
In Replevin

And now Comes the said Plff by Cooper & Moss his
attys and moves the court to strike from the files of this
Cause the affidavit & Motion to dismiss of the said defend-
ant, filed against Austin Gordon, on the 27th day of
May 1863. and for a rule upon said defendant to
plead to the declaration of said Plaintiff herein =
Cooper & Moss
for Plff.

The court overruled the said cross motion of said Plaintiff
and sustained said Motion of defendant, and thereupon
dismissed said suit at the costs of said Plaintiff, and
directed that a writ of restitution issue out of said Court
for the return of the property in Plaintiffs declaration
mentioned to said defendant - to all which proceedings
decisions & orders of said Court, in overruling the cross
motion of said Plaintiff, sustaining defendants Motion,
dismissing said suit, rendering judgment against Plff
for costs & ordering return of said property & the issue

11
of said writ of restitution, said Plaintiff then & there
at the time of said several rulings & proceedings of said
Court, by his Counsel objected & excepted - and thereupon
said Plaintiff prayed an appeal from said judgment
orders of said Court to the Supreme Court, which application
for an appeal is disallowed by the Court - to which decis-
ion of the Court in refusing to grant an appeal to the Supreme
Court, Plaintiff by his Counsel, then & there excepted &
prayed that this his bill of Exceptions be signed &
sealed by the Court, which is done.

A. S. Merriam
Judge

Seal



State of Illinois
Peoria County 3 ss.

I, Enoch P. Sloan Clerk of the Circuit
Court within and for said County, do hereby certify that
the foregoing is a true and complete copy of all the papers
filed in the Cause wherein Austin H. Gordon is Plaintiff,
and Thomas Houlahan is defendant, and of the proceedings
of said Court appertaining to said Cause, as the same appears
on file and of record in my office.

Given under my hand, and the seal of
said Court at Peoria this 11th day of June
in the year of Our Lord one thousand eight
hundred and sixty three,

Enoch P. Sloan clerk
per Newton Dpty

And now comes the said Austin H. Gordon, the plff in error herein, and says that in the Record, proceedings & judgment of the Circuit Court in this cause manifest error hath intervened, to his prejudice, in this, viz:

- 1st Said Court Erred in overruling the cross motion of said plff. to strike said defendants motion from the files and for a rule on said def. to plead to the declaration of said plff.
- 2^d Said Court Erred in sustaining the said motion of said defendants and in dismissing said cause and ordering the return of the property in Plff. declaration mentioned to said def. and rendering judgment against said Plff. for costs.
- 3^d Said Court Erred in refusing the application of said plff. for an appeal to the Supreme Court.

Wherefore & for other good & sufficient reasons appearing in said record the plff. in error prays that said judgment & proceedings of said Circuit Court be reversed, set aside, annulled & for naught esteemed.

Codford Burr for Plff. in Error

Set a supersedeas issue in this
cause bail ~~five~~ hundred dollars
\$500 John C. Bryson surety
J. D. Carson
C. J.

75
Gordon

Haulihan.

Record

Filed June 22, 1863
S. Veland
Clk.

Recd of Mr. Cooper
\$3⁰⁰/₁₀₀ clerks fees over
the record, O. J. Sloan, etc