

Case No. 8,335.

[7 Chi. Leg. News, 116.]

LEWIS V. WHITE ET AL.

Circuit Court, N. D. Ohio.

Dec. Term, 1874.

REMOVAL OF CAUSE UNDER ACT OF 1866.

Motion to remand cause from the common pleas of Ottawa county upon the grounds: First, that the cause could not be heard as to the removing defendants without the other defendants being present; second, that all the non-resident defendants should have joined in the petition for removal.

Prentiss, Baldwin & Ford, for the motion.

Willey, Terrell & Sherman and W. B. Sloan, contra.

Before EMMONS, Circuit Judge.

Held: That under the act of 1866 [14 Stat. 306], for removing causes, all the nonresident defendants need not join. That, however restricted the 12th section of the judiciary act [1 Stat. 79] and the act of 1867 [14 Stat. 558] might be in this respect, the act of 1866 clearly permitted a severance of defendants and gave the right of removal to any of the non-resident defendants on the proper affidavit, showing: Second, that a final determination of the cause could be had as between the plaintiff and the removing defendants, for that, although it was alleged that the title to the real estate sought to be set aside was held by one for the benefit of all, yet as the petition alleged that such title was obtained by fraud of all of the defendants there could be no trust to be protected as to and of the defendants. Motion overruled.

LEWIS, The HENRY. See Case No. 6,377.

LEWIS, The MATILDA A. See Case No. 9,281.