

Case No. 8,930.

McVAUGHTER v. CASSILY.

{4 McLean, 351.}<sup>1</sup>

Circuit Court, D. Indiana.

May Term, 1848.

REMOVAL OF CAUSES—PETITION—UNCERTAINTY—“CIRCUIT OR DISTRICT COURT.”

A petition to remove a case from a state court to the circuit or district court of the United States, which was granted, creates no uncertainty, as the removal can only be to the circuit court.

At law.

Mr. Sullivan, for plaintiff.

Mr. Marshal, for defendant.

OPINION OF THE COURT. This case is brought from the state court, under the act of congress [3 Stat 234], by the defendant. A motion is now made to dismiss the case, on the ground that the order for the removal was in the alternative, either to the district or circuit court. The petition to remove the cause to the next circuit or district court of the United States in Indiana was granted by the state court. The district court has no jurisdiction in such a case, consequently it is void; the order for the removal was irregular. There is some irregularity in the application, and in the order of the state court, but as there can be no uncertainty or surprise by the other party, the motion is overruled. As the district court has no jurisdiction the removal could only be to the circuit court.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]