

SPRAGGINS v. COUNTY COURT OF
HUMPHRIES.

{Brunner, Col. Cas. 218;¹ 1 Cooke, 160.}

Circuit Court, D. Tennessee.

1812.

REMOVAL OF CAUSES—MANDAMUS.

A mandamus will lie to enforce the removal of a cause from a state to a federal court.

{Disapproved in *Hough v. Western Transp. Co.*, Case No. 6,724; *Fisk v. Union Pac. R. Co.*, Id. 4,827.}

Hezekiah Johnson commenced a caveat in the court of pleas and quarter sessions for the county of Humphries against Samuel Spraggins, to prevent the emanation of a 956 grant for eighty one acres of land. Spraggins appeared and filed his petition, praying that the cause might be removed for trial to this court. The petition stated that he was at the time of filing it a citizen of the state of Louisiana, and was at the commencement of the suit a citizen of the territory now composing that state. It also alleges that the matter in dispute was of more value than five hundred dollars. The allegations in the petition were supported by proof; and every other requisite of the act of congress was offered to be complied with; but the county court overruled the motion made by Spraggins, and refused to permit the removal of the cause to this court.

Cooke, on behalf of Spraggins, produced the record, and thereupon moved this court for a mandamus directed to the county court of Humphries. And after argument on the part of the applicant,—

M'NAIRY, District Judge (absent TODD, Circuit Justice). When this subject was first agitated I felt inclined to believe that this court had not the power to issue a mandamus in such a case as the present. But I am now clearly satisfied that the power exists. By the act of congress passed on this subject this court

have a right to the cause. The law has placed such causes precisely in the same situation as if this court had original jurisdiction of them; and, therefore, as the county court was bound, upon the case being properly made out, to remove the cause upon application to this court; and as I see that this application has been made and improperly refused, I can have no hesitation in granting the mandamus. It is a legal privilege which the defendant possesses to have his cause tried here; but if the state court illegally and unjustifiably refuses the transmission of the suit, and this court refuses by mandamus to aid the applicant, will he not be remediless? And no principle is clearer than that where the law has given a clear right, and no remedy exists, the respective courts will interfere by mandamus, and see that justice and law is administered. 4 Burrows, 2186; Hard. 172; 3 Burrows, 1267-1660.

In one point of view this may be considered as in the nature of an appeal to this court. And it is well settled that where the inferior jurisdiction refuses an appeal allowable by law, a mandamus will lie. 1 East, 686. But, independent of all this, the fourteenth section of the act of congress in question expressly provides that this court shall have power "to issue all writs and other process necessary for the exercise of its jurisdiction." To maintain the jurisdiction of this court in the present instance it is necessary to issue the writ of mandamus.

NOTE. Mandamus to Compel Removal of Cause.—The doctrine laid down in this case that a mandamus will lie to compel the removal of a cause from a state to a federal court is severely criticised and denied, the courts holding that no mandamus is necessary for such purpose, and therefore no jurisdiction is acquired to issue the writ. See *Fisk v. Union Pac. R. Co.* [Case No. 4,827]; *Hough v. Western Transp. Co.* [Id. 6,724].

¹ {Reported by Albert Brunner, Esq., and here
reprinted by permission.}

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Google](#). 