

Case No. 15,501. UNITED STATES EX REL. WHITE ET AL V. JUDGES.
[5 Chi. Leg. News, 137.]

Circuit Court, N. D. Ohio.

1872.

REMOVAL, OF CAUSES—REFUSAL OF STATE COURT TO ORDER REMOVAL.

[When all the steps required by the acts of congress have been complied with, and a transcript of the proceedings in the state court has been filed in the federal court within the time prescribed by law, the cause is then pending in the latter court, although the state court has refused to grant an order of removal; and any further proceedings in the latter court will be void.]

This was a petition for a mandamus requiring the removal of a cause commenced in the common pleas of Ottawa county, wherein John Lewis was plaintiff, and said A. J. White et al., the relators, were defendants, to the circuit court of the United States, it being claimed that all the steps required by the statutes of the United States for such removal had been taken, but that the common pleas refused to order such cause removed.

S. F. Taylor, for complainant, Lewis.

Wiley, Cary & Terrill and Mr. Sloan, for relators and defendants.

Before EMMONS, Circuit Judge

It appeared, on examination, that an alternative mandamus had already been granted in the case, and partially heard, and this part of the case was not now pressed, but it was intimated by Judge EMMONS that, having had occasion to examine this question, he was clear that according to the true theory of the laws bearing upon this subject, and repudiating entirely the idea that the courts of the two systems, federal and state, were in any sense to be considered foreign or antagonistic to each other, it was competent for the court to grant such a writ, and with the same freedom as if between courts of the same jurisdiction, but both judges concurred that as it appeared in this case that a transcript of the proceedings in the common pleas had been in fact filed in this court within the time prescribed by law (although filed by the defendants), the original case of Lewis v. White [Case No. 8,335] was properly entered and pending in this court, and therefore the court ordered the same to be docketed by the clerk, and that the respondents should file their answer by the first Monday in January, and the cause be proceeded with here, and that all further proceedings in the state court would, by the express terms of the act of congress, be void.