

Case No. 15,869. UNITED STATES v. NEWCOMER.
[12 Pittsb. Leg. J. 140.]

District Court, N. D. Ohio.

Oct., 1864.

CRIMINAL LAW—REMOVAL OF PRISONER TO ANOTHER
DISTRICT—PROCESS—ARREST.

Before a warrant for the removal of a prisoner to another district in which a warrant for his arrest issued on indictment found, can be granted, some proof must be offered showing that the defendant committed the crime charged, or in lieu thereof, the information or affidavit on which the warrant issued, or copies of the same certified by the magistrate issuing the warrant, or a copy of the indictment with a certificate of the clerk of the court, in which the indictment was found, of its genuineness, and that the same is still pending, must be produced.

The defendant, upon application of the marshal of Indiana, alleging that Newcomer was indicted in that district, had been arrested upon a warrant issued by the district judge, the Honorable H. V. WILLSON, and now R. F. Paine, Esq., district attorney, moved the judge to issue a warrant removing the defendant to Indiana for trial, and to sustain said motion offered in evidence a *capias* in the usual form, issued from the district court of Indiana, directing the marshal to arrest Henry Newcomer to answer an indictment found in that court He also offered an affidavit of one Lockhart, a deputy marshal of Indiana, stating that said indictment was still pending.

B. White opposed the motion.

[Before WILLSON and McCANDLESS, District Judges.]

Held by WILLSON, District Judge, that, before the warrant of removal can be granted some proof must be offered showing that the defendant committed the crime charged; or in lieu thereof, the information or affidavit on which the warrant issued, or copies of the same certified by the magistrate issuing the warrant or a copy of the indictment with a certificate of the clerk of the court in which the indictment was found, of its genuineness, and that the same is still pending must be produced. As the proof offered does not meet either of these requirements the defendant is discharged.