

Ohio Code. The only prayer of the petition was that the city be enjoined from proceeding to open or occupy said premises as a street, or in any way interfering with the use of the same by the plaintiff, and that, upon final hearing, the injunction might be made perpetual. The decree of the court was that the equity of the case was with the defendant, and that the petition be, and the same was, dismissed, and the temporary injunction allowed in the case dissolved. An appeal was taken to the circuit court, where the plaintiff moved to dismiss the action without prejudice to a new action, but the court overruled the motion. On the same day counsel for the plaintiff announced in open court that the plaintiff refused to further prosecute the action, and thereupon, on motion of the defendant, the appeal was dismissed for want of prosecution, and the case remanded to the court of common pleas for execution. From that judgment of the circuit court the plaintiff instituted proceedings in error in the supreme court of Ohio, but it does not appear that any bond was filed or supersedeas granted. However they may have been, the judgment of the court upon the application for an injunction is no bar to the prosecution by plaintiff of its legal right to the possession of said premises. It was held in *Chamberlain v. Sutherland*, 4 Ill. App. 494, where an interlocutory injunction had been allowed, but the bill was afterwards dismissed for want of prosecution, that the final order of dismissal did not operate as *res judicata* upon the questions involved. In this case there was a decree of dismissal by the court of common pleas upon the hearing, and the dismissal of the appeal by the circuit court left the judgment of the court below in full force, with the mandate of the circuit court to carry it into effect; but the decree related only to the equities of the parties, and created no estoppel whatever against the assertion of its legal rights by the Baltimore & Ohio Railroad Company.

The judgment in this case must be for the plaintiff; but as the defendants have, since the petition was filed, left the premises, and are no longer in possession, the judgment will be only for costs.

UNITED STATES v. JACQUES.

(Circuit Court, S. D. New York. April 13, 1893.)

ELECTIONS—FRAUDULENT REGISTRATION—DEFECTIVE INDICTMENT.

An indictment under Rev. St. § 5512, against a voter, for fraudulent registration, in falsely stating his place of residence, is fatally defective in failing to aver that such statement was made to the inspectors of election at the time of registration.

At Law. Indictment against Zachariah Jacques for fraudulent registration. Demurrer to indictment sustained.

John O. Mott, Asst. U. S. Atty.
Henry D. Hotchkiss, for defendant.

BENEDICT, District Judge. This case comes before the court upon a demurrer to the indictment. The indictment is found under

section 5512, by which it is made an offense against the United States for any person to fraudulently register at a registration of voters for election of representative in congress. The portion of the indictment here in question charges that the defendant did "unlawfully, knowingly, and fraudulently register as a voter at the place of registry in the third election district of the twenty-seventh assembly district in the city of New York, he, the said Zachariah Jacques, then and there not having a lawful right so to do, which said registration was then and there false and fraudulent, in this: that said Zachariah Jacques, at the time he so registered as aforesaid, stated that his residence was at Randall's Island Hospital, New York city, whereas, in truth and in fact, as he, the said Zachariah Jacques, then and there well knew, he, the said Zachariah Jacques, had no residence at Randall's Island Hospital, New York city, which entitled him to register as a voter, as aforesaid." To this averment, two objections were taken: First, that it is fatally defective because the false statement alleged to have been made by the defendant is not charged as having been made under oath; a statement to the inspectors of election, under oath, being required of every applicant for registration in the city of New York, by the law of the state of New York. The second ground of objection is, it is nowhere averred that the statement was made to the inspectors of election.

Without passing upon the first objection, I am of the opinion that the indictment must be held bad for omitting to aver that the false statement set forth was a statement made to the inspectors of election. The indictment does not say to whom the statement was made. The averment is simply that at the time of registering the defendant made the false statement. For all that appears upon this indictment, the statement might have been made to a policeman or a bystander. This indictment would be proved by evidence showing that, at the time the defendant registered, he falsely stated to a bystander that he resided at Randall's Island, but such a statement would not make the registration fraudulent, within the meaning of the statute.

There must be judgment for the defendant on the demurrer.

In re WHITE.

(Circuit Court of Appeals, Second Circuit. February 20, 1893.)

1. INTERSTATE EXTRADITION—FUGITIVES FROM JUSTICE—PURPOSE OF FLIGHT.
Under Rev. St. § 5278, providing for interstate extradition, a person is a fugitive from justice when he has committed a crime within a state, and withdraws from the jurisdiction of its courts without waiting to abide the consequences, and it matters not that some other cause than a desire "to flee" induced such withdrawal. *Roberts v. Reilly*, 6 Sup. Ct. Rep. 291, 116 U. S. 80, followed.
2. SAME—HABEAS CORPUS—EVIDENCE.
Where extradition proceedings are brought to remove a person from New York to Wyoming for the theft of certain shares of stock, it is not competent for such person, on habeas corpus, to show that the shares