

Case No. 5,051.

[9 Reporter, 6.]¹

FRANK V. CHETWOOD.

Circuit Court, S. D. New York.

Sept. 5, 1879.

REMOVAL OF CAUSE TO FEDERAL
COURT—JURISDICTION—CITIZENSHIP—PRACTICE—COUNTER
CLAIM—SECTIONS 639, 914, REV. ST.

1. The test of jurisdiction is not the citizenship of the parties at the time a contract is made or broken, but at the time the action is commenced.
2. Where a suit is brought in a state court in which a counter claim might be interposed and the suit is removed into the circuit court, the same counter claim may be set up in that court.

On motion for a new trial. The action was brought in the supreme court of New York on a lease and was removed into this court

P. J. Joachimsen, for plaintiff.

B. C. Chetwood, for defendant

BLATCHFORD, Circuit Judge. Citizenship of the parties at the time of making the lease, or at the time of the breach of its covenants, is not the test of jurisdiction, but citizenship at the time the suit was commenced. The suit, being a suit at law, if a counter claim could be set up in it in the state court, and a judgment be had by the defendant against the plaintiff for a sum of money due under the instrument on which the suit was brought, the same counter claim may be set up and the same judgment had in the suit when removed into this court. The suit when removed is to proceed in the same manner as if it had been brought here by original process. Rev. St U. S. § 639. A counter claim being proper in a suit in a state court it is made proper here by section 914 of the Revised Statutes of the United States. It is an incident of bringing a suit subject to removal, that the plaintiff submits himself to the jurisdiction of this court in respect to a counter claim. The process of removal is sufficient process to give this court jurisdiction over the person of the plaintiff to award a judgment against him for the counter claim. Motion denied, and judgment ordered.

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