

FRELINGHUYSEN *v.* BALDWIN.

*Circuit Court, S. D. New York.*      January 7, 1884.

REMOVAL OF CAUSE—REV. ST. § 639, SUBD.  
3—CITIZENSHIP AT INSTITUTION OF SUIT.

Where a case is removed under Rev. St. § 639, subd. 3, the requisite diversity of citizenship must exist both when the suit is begun and when the petition for removal is filed.

Motion to Remand.

*Martin & Smith*, for plaintiff.

*Abbett & Fuller*, for defendant.

WALLACE, J. Since the decision in *Miller v. Chicago, B. & Q. R. Co.* 17 FED. REP. 97, the supreme court, in *Gibson v. Bruce*, 2 Sup. Ct. Rep. 873, has construed the language of sections 2 and 3 of the removal act of 1875 to require as a condition of removal that the requisite diversity of citizenship exist both when the suit was begun and when the petition for removal is filed. That decision seems to control the present case, where the removal was procured by the plaintiff under subdivision 3 of section 639 of the Revised Statutes, the parties both being residents of New Jersey when the suit was brought, but the defendant having removed subsequently to New York. The language of this subdivision is substantially similar to that of section 2 of the removal act of 1875, so far as it relates to the question now under consideration, and the reasons stated in the opinion of the court in *Gibson v. Bruce* apply with equal force to a removal under subdivision 3 of section 639.

The motion to remand is granted.