circuit, at least, a pretty strict rule should be adhered to, in requiring a clear case for removal to be made out in the first instance in the court where the suit is brought; and that the court to which a removal is made should not be lax in allowing defective records to be made good by amendment after removal. This is the principle heretofore acted upon in this court.

For the reasons indicated, leave to amend the petition so as to show jurisdiction is denied, and the cause remanded to the state court, with costs.

JUDGE and others *v.* ANDERSON.

(Circuit Court, D. Minnesota. April 24, 1884.

1. PRACTICE IN CASES REMOVED FROM STATE COURTS—WHEN JURISDICTION ATTACHES.
   The jurisdiction of the United States circuit court attaches in a case removable under the statute at the time when the petition and bond is filed in the state court.
2. SAME—WHEN ISSUE MAY BE JOINED.
   If the cause commenced in the state court 30 days before the next session of the circuit court, and is not at issue when removed, the rule of the United States circuit court in this district gives until the fifth day of the term to make up the issue, and the case then stands for trial.

On April 9, 1884, the defendant filed a petition and bond for removal of the above-entitled cause to the circuit court of the United States for the district of Minnesota. The petition is in compliance with the statute for the removal of causes from the state to the federal court, and is accompanied by the bond required. An order was made for the removal by the state court, and on April 14th the *plaintiffs* procured and filed a transcript of the record of the cause in the clerk's office of the United States circuit court for the district of Minnesota. The term of that court as fixed by law commenced on the second Monday in December, A. D. 1883, and was still continuing when the transcript of the record was filed. The circuit court has a rule that when a cause is commenced in the state court, 30 days before the next term of the United States circuit court in the district convenes, if issue is not joined in the state court at the time of the removal, the cause shall stand for trial, and the issues shall be joined therein within five days from the first day of the said term. The defendant, by counsel, appears specially under protest, and objects to the jurisdiction of the court to proceed in the action and grant judgment for default according to the state statute, unless an answer is filed within a time to be fixed by the court.

Frackelton & Careins, for plaintiffs.

Warner & Stevens, for defendant.

NELSON, J. It has been decided by the supreme court of the United States that the jurisdiction of the United States circuit court attaches in a case removable, under the statute, at the time when the petition and bond is filed in the state court. The transfer of jurisdiction is then complete in advance of the entry of a transcript of the record in the clerk's office of the circuit court. *Duncan* v. *Gegan*, 101 U. S. 812; *Railroad Co.* v. *Koontz*, 104 U. S. 15; *Steam-ship Co.* v. *Tugman*, 106 U. S. 122; S. C. 1 Sup. Ct. Rep. 58; *St. Paul & C. Ry. Co.* v. *McLean*, 2 Sup. Ct. Rep. 499. The circuit court does not take the suit unless its jurisdiction appears of record; and if, before the statutory time when the removing party is required to enter a copy of the record and his appearance in the United States circuit court, either party procures a transcript and files it in the clerk's office, the jurisdiction then appears of record, and all proceedings necessary to prepare the cause for trial at the next session of the court can be taken by either party. The court then has jurisdiction of the cause as if it had been commenced there by original process.

In the case of *Kern* v. *Huidekoper*, 103 U. S. 487, the plaintiff applied for removal July 6th, and filed the transcript in the clerk's office of the United States circuit court on July 27th. The term of that court prescribed by law began on July 2d, before the petition for removal was filed in the state court. On November 14th, the July term still continuing, the circuit court made an order approving the filing of the record. The supreme court held that the filing of the record July 27th gave the circuit court the right to proceed with the cause; that is, as I understand the decision, to go on and perfect the issues, if necessary, and grant provisional remedies, but the removing party is not required to try the issues until the term next ensuing that of the state court when the cause was removed.

The rule cited by counsel does not prevent the court from entertaining motions to make up the issues when applied to by the parties. If the cause commenced in the state court 30 days before the next session of the circuit court, and is not at issue when removed, this rule gives until the fifth day of the term to make up the issues, and the cause then stands for trial. It applies to all cases removed and docketed on the first day of the term, where neither party had previously applied to the court to proceed in the case.

The defendant will file his answer within five days from this day, to-wit, April 24, 1884; and it is so ordered.

MULVILLE, Trustee, *v.* ADAMS and others.

(*Circuit Court, N. D. New York.* March 4, 1884.)

1. FIRE INSURANCE — DESCRIPTION OF PREMISES — RESPONSIBILITY OF THE ASSURED FOR WARRANTIES AND REPRESENTATIONS.
   Where, in an application for insurance whereby the assured agrees that the application is a just, full, and true exposition of all the facts and circumstances in regard to the condition, situation, value, and risk of the property, so far as the same are known to him and are material to the risk, it is immaterial whether the statements are regarded as warranty or merely as representations of the truth of the statement, because the applicant only assumes responsibility for their truth so far as the facts are known to him and are material to his risk.
2. SAME—CONDITIONS WORKING FORFEITURE.
   Conditions that work a forfeiture are not to be extended by construction. Being put into the policy for the benefit of the insurer, they will be construed most liberally for the assured.
3. SAME—MATERIALITY A QUESTION OF FACT.
   The materiality of a representation is a question of fact. The test is the probable effect of the representation upon the judgment of the insurer.

In Equity.

Wm. W. Badger, for complainant.

Wetmore & Jenner, for defendants.

WALLACE, J. The complainant, as trustee for 21 insurance companies that had issued policies of fire insurance to the defendant Adams, took an assignment of a bond and mortgage executed by Adams to one Dodge, and has filed this bill to foreclose the mortgage and obtain a decree against Adams on the bond. The property of Adams insured by said policies had been burned, and suits had been brought, some by Adams and some by Dodge, against the several companies to recover the loss, when it was arranged between all the parties that Dodge should assign the bond and mortgage to the complainant, and the pending suits should be discontinued. The assignment contained the following clause:

"The said Mulville, in consideration of receiving said assignment and the discontinuance of such actions, agrees to and with the said Dodge that he will within thirty days commence a suit to foreclose the said mortgage, to which suit the said Adams shall be made a party, and a claim made against him for any deficiency, and that if any of the said policies of insurance were valid as to the interest of said Adams therein at the time of the fire, May 15, 1877, that then such of them as were then valid shall be deemed a good and sufficient defense to the extent that such policies may have been valid."

The property insured consisted of "a saw-mill building, a stone boiler-house attached thereto, and a brick chimney standing detached, all known as the Clinton Mills, together with the engines, boilers, machinery, tools, and all fixtures and appurtenances contained in the buildings." The total insurance was $20,500, of which $5,473.50 was upon the buildings and $15,026.50 was upon the personal property and fixtures.