

SCHNADIG *v.* FLESCHER.

*Circuit Court, D. Colorado.*

January 8, 1887.

REMOVAL OF CAUSE—REV. ST. § 689, SUBD. 3—DIVERSITY OF CITIZENSHIP.

It is a condition requisite to removal under Rev. St. U. S., § 639, subd. 8, that the diversity of citizenship must exist, both when the suit was begun and when the petition for removal is filed. *Gibson v. Bruce*, 2 Sup. Ct. Rep. 878. S. C. 108 U. S. 561, followed.

On Motion to Remand case to state court.

*Markham & Dillon*, for plaintiff.

*Geo. W. Allen*, for defendant.

BREWER, J. The motion to remand is sustained on the authority of *Gibson v. Bruce*, 108 U. S. 561, S. C. 2 Sup. Ct. Rep. 873, and *Freling-huysen v. Baldwin*, 19 Fed. Rep. 49. The first case is an authoritative declaration that, under the removal act of 1875, the requisite citizenship must exist, both at the time of commencing the suit and also at the time of filing the petition for removal. The language of the act of 1867 is not identical with that of the act of 1875, but the difference is not such as to indicate a different intent on the part of congress. See the opinion of Circuit Judge Wallace in the second case.