

diction. The foregoing seems to me to be the essential and important features of the enactment. The provision requiring such motion or petition to be "made under and in accordance with the act or acts of congress of the United States" manifestly refers to procedure, and is not a qualification of, or condition precedent to, the exercise of the right of transfer. In my opinion, it is not necessary to ignore these words, to maintain the right of transfer in this case. They should receive, and, in my opinion, can receive, such construction as will permit the entire section to stand and be operative. The jurisdictional facts, viz. the diverse citizenship of the parties, and the amount or value of the matter in dispute, must be brought to the attention of the court. A motion or petition is the appropriate and usual procedure for that purpose. By the provisions of the act of March 3, 1887, a petition must be addressed to the state court in which the suit is pending, and this petition must disclose the facts entitling a defendant to remove the case. A petition for the purpose of a transfer under the enabling act and constitution of Utah need disclose nothing more than the facts entitling the petitioner to the transfer. The petitions, therefore, in the two cases, serve the same general purpose. They should show jurisdictional facts which entitle a court of the United States to take the control of the case. The subjects (that is to say, removal and transfer) are similar, and it is quite natural and altogether reasonable to hold that the language employed in the constitution, requiring the petition to be made under and in accordance with the act or acts of congress, refers to the method of procedure adopted by congress in the kindred subject of removals. The petition for the transfer of this case to this court conforms in all essential particulars, so far as procedure is concerned, to the requirements of the act of congress in question, and must be held sufficient. It follows that the motion to remand must be denied.

FRASER et al. v. TRENT.

(Circuit Court, D. Utah. April 20, 1896.)

No. 8.

JURISDICTION OF FEDERAL COURTS—ADMISSION OF UTAH—TRANSFER OF PENDING CASES.

On the admission of Utah to statehood, a party to a pending cause, over which the state and federal courts have concurrent jurisdiction, was entitled to have the same transferred into the federal court, although his petition therefor was not filed until after the defendant was required to answer or plead. *Crown Point Min. Co. v. Ontario Silver-Min. Co.*, 74 Fed. 419, followed.

This suit was instituted by Fraser and Chalmers against L. C. Trent in a court of the territory of Utah, and was pending therein at the time of its admission as a state. The citizenship of the parties being diverse, the defendant petitioned for a transfer of the case to the federal circuit court, and the transfer was made accordingly. Defendant now moves to remand it to the state court.

Bennett, Harkness, Howat & Bradley, for plaintiffs.
Brown, Henderson & King, for defendant.

ADAMS, District Judge (orally). There is no controversy but what the application for transfer of this case to this court was made later than the time when, under the removal act, it should have been made. But for the reasons stated in the case of *Crown Point Min. Co. v. Ontario Silver-Min. Co.*, 74 Fed. 419, I hold that such fact presents no legal objection to the transfer of this case to this court, under the enabling act of congress and the constitution of Utah. The motion to remand is therefore denied.

LEE v. CONTINENTAL INS. CO.

(Circuit Court, D. Utah. April 20, 1896.)

No. 13.

FEDERAL COURTS—JURISDICTIONAL AMOUNT—COUNTERCLAIMS.

A counterclaim, of a class which defendant is required by local statute to present in the original action, on pain of being forever barred from litigating it (Code Civ. Proc. Utah, § 3228), is a part of the matter in dispute, and is to be added to the sum sued for by plaintiff, in determining the jurisdictional amount.

This case was instituted by J. E. Lee against the Continental Insurance Company in a court of Utah territory, and, on the admission thereof as a state, was transferred, on proper petition, to this court, on the ground of diverse citizenship. The case is now heard upon a motion to remand it to the proper state court.

M. D. Lessenger and W. L. Maginnus, for plaintiff.
Williams, Van Cott & Sutherland, for defendant.

ADAMS, District Judge (orally). In this case the same questions are raised as have been already passed upon in the cases of *Crown Point Min. Co. v. Ontario Silver-Min. Co.*, 74 Fed. 419, and *Fraser v. Trent*, Id. 423. But there is one additional question in this case which requires attention. It appears from the papers on file that the amount in controversy, as claimed by the plaintiff in his petition, is \$1,058,—an amount under the minimum (\$2,000) of the jurisdiction of this court,—and for this reason also plaintiff presents his motion to remand. It appears from the pleadings, as they stood prior to the transfer to this court, that there is a counterclaim asserted against the plaintiff, and in favor of the defendant. The counterclaim is of the character specified in the first clause of section 3227 of the Code of Civil Procedure (Comp. Laws Utah). That clause permits a counterclaim to be filed whenever there is "one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action" (among others): Subdivision (1): "A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's