'whether by advertising, speaking, patrolling any public street or any place where any person or persons may lawfully be'; but precludes misrepresentation of the facts of the controversy. And it declares that 'nothing herein shall be construed to legalize a secondary boycott.' * * * Inherently, the means authorized are clearly unobjectionable. In declaring such picketing permissible, Wisconsin has put this means of publicity on a par with advertisements in the press. * * * The picketing was peaceful. The publicity did not involve a misrepresentation of fact; nor was any claim made below that relevant facts were suppressed."

The state statute, defining "labor disputes" and declaring the means that lawfully may be used against employers in such controversies, does not purport to make lawful either the end here sought by petitioners or the means they employed to attain it. Their purpose was not unionization of respondent's employees, for they already belonged to a labor organization of their own choosing. The purpose was to coerce the employees to join a particular organization which they had already repudiated. There

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is nothing in the state or federal statutes that purports to give labor unions or individuals so contriving the status of party to a "labor dispute." Coercion of employees to surrender their freedom of self-organization is repugnant to both statutes. Wis. Laws 1935, c. 551, § 5. 29 U.S.C. §§ 101, 102, 29 U.S.C.A. §§ 101, 102. Cf. American Furniture Co. v. I. B. of T. C., etc., 222 Wis. 338, 268 N.W. 250, 106 A.L.R. 335; Senn v. Tile Layers Protective Union, 222 Wis. 383, 268 N.W. 270, 872; Senn v. Tile Layers Union, 301 U.S. 468, 57 S.Ct. 857, 81 L.Ed. 1229. There is no ground upon which petitioners' purpose in this case or the means employed to accomplish it can be supported as lawful.

4. The case is a simple one. Respondent's employees had no connection with the union, and were unwilling to have any. The union, being unable to persuade the employees to assent to its wishes in that regard, undertook to subjugate them to its will by coercing an unlawful interference with their freedom of action on the part of the employer. If that is a "labor dispute," destructive of the historical power of equity to intervene, then the Norris-La Guardia Act attempts to legalize an arbitrary and alien state of affairs wholly at variance with those principles of constitutional liberty by which the exercise of despotic power hitherto has been curbed. And nothing is plainer under our decisions than that if the act does that, its effect will be to deprive the respondent of its property and business without due process of law, in contravention of the Fifth Amendment. Truax v. Corrigan, supra, 257 U.S. 312, 327, 328, 42 S.Ct. 124, 127, 128, 66 L.Ed. 254, 27 A.L.R. 375.

I am of opinion that the Circuit Court of Appeals rightly held that this case discloses no "labor dispute" within the meaning of the Norris-La Guardia Act; that the union's coercive attack upon respondent was unlawful under state law and in violation of the policy declared by the federal statute, and was properly enjoined; and that, there being no "labor dispute" as defined by that act, its pro-

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visions as to allegations, proof, and findings do not apply. I would affirm the judgment.

Mr. Justice McREYNOLDS concurs in this opinion.


303 U.S. 283

## ST. PAUL MERCURY INDEMNITY CO. v. RED CAB CO.

No. 274.

Submitted Jan. 10, 1938.

Decided Feb. 28, 1938.

1. Courts ⇐328(2)

In suits in federal courts, unless the law gives a different rule, sum claimed by plaintiff controls matter of dismissal for want of jurisdiction if claim is apparently made in good faith, and it must appear to a legal certainty that claim is really for less than jurisdictional amount to justify dismissal. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

2. Courts ⇐328(6)

Neither a plaintiff's inability to recover an amount adequate to give federal court jurisdiction nor fact that complaint discloses existence of a valid defense to claim shows bad faith or ousts jurisdiction, but if, from face of pleadings, it is apparent to a legal certainty that plaintiff cannot recover

amount claimed, or if, from the proofs, court is satisfied that plaintiff never was entitled to recover that amount and that his claim was colorable for purpose of conferring jurisdiction, suit will be dismissed. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**3. Courts ⇐328(8)**

Events occurring subsequent to institution of suit in federal court reducing amount recoverable below statutory limit do not oust jurisdiction. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**4. Courts ⇐328(6)**

A plaintiff's good faith in choosing a federal forum is open to challenge not only by resort to face of complaint but by facts disclosed at trial, and, if from either source it is clear that his claim never could have amounted to sum necessary to confer jurisdiction, court must dismiss suit. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**5. Courts ⇐328(6)**

Upon disclosure of collusion between a plaintiff and defendant to confer jurisdiction on a federal court by plaintiff's claiming a fictitious amount and defendant's failing to deny veracity of averment of amount in controversy, court must dismiss suit. Jud. Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**6. Removal of causes ⇐72**

Where a suit is instituted in a state court and removed to a federal court, there is a strong presumption that plaintiff has not claimed a large amount for purpose of conferring jurisdiction on federal court or that parties have colluded to that end. Jud. Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**7. Removal of causes ⇐75**

The status of a case as disclosed by plaintiff's complaint is controlling on question whether case is removable from state to federal court because of amount involved, and defendant must file his petition for removal before time for answer. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**8. Removal of causes ⇐75**

Where face of complaint shows that suit cannot involve necessary amount for removal from state to Federal District Court, case must be remanded, but fact that face of complaint shows that defendant has a valid defense, if asserted, to all or a portion of claim, or fact that District Court's rulings after removal reduce amount recoverable below jurisdictional requirement do not justify remand. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**9. Removal of causes ⇐74**

Events occurring subsequent to removal of cause from state to Federal District Court reducing amount recoverable below requisite amount, whether beyond plaintiff's control or the result of his volition by stipulation, affidavit, or amendment of his pleadings, do not oust District Court's jurisdiction once it has attached. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**10. Removal of causes ⇐74**

A plaintiff's claim whether well or ill founded in fact fixes defendant's right to remove cause from state to federal court because of amount involved, and plaintiff should not be allowed to defeat that right and bring cause back to state court at his election. Jud.Code §§ 24, 28, 37, 28 U.S.C. A. §§ 41, 71, 80.

**11. Courts ⇐319**
**Removal of causes ⇐43**

In suit properly begun in federal court or originally brought in state court and removed to federal court because of diversity of citizenship, change of citizenship of a party does not oust federal court's jurisdiction. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

**12. Removal of causes ⇐102**

Where plaintiff, after removal of cause from state to federal court because of separable controversy, discontinues or dismisses cause with respect to defendant who removed, so that a separable controversy no longer exists, cause must be remanded to state court. Jud.Code §§ 24, 28, 37, 28 U.S. C.A. §§ 41, 71, 80.

**13. Removal of causes ⇐75**

In employer's action on insurance binder covering workmen's compensation risks, insurer was entitled to invoke jurisdiction of Federal District Court on face of complaint alleging that by reason of insurer's breach employer was compelled to incur expenses of $4,000, and fact that statement of particulars of claim furnished by employer after removal showed that total amount paid or incurred was only $1,380.89 did not oust District Court's jurisdiction. Jud.Code §§ 24, 28, 37, 28 U.S.C.A. §§ 41, 71, 80.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Action on a 30-day insurance binder by the Red Cab Company against the Saint Paul Mercury Indemnity Company and one Harlan. Harlan was dismissed as a defendant, and judgment was entered for plaintiff. To review a judgment of the Circuit Court of Appeals reversing the judgment for plaintiff with directions to remand the case to the state court of Indiana where it was begun, 90 F.2d 229, the Saint Paul Mercury Indemnity Company brings certiorari.

Judgment reversed, and cause remanded to Circuit Court of Appeals for further proceedings.

Mr. Burke G. Slaymaker, of Indianapolis, Ind., for petitioner.

Mr. William E. Reiley, of Indianapolis, Ind., for respondent.

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Mr. Justice ROBERTS delivered the opinion of the Court.

The decision under review is that, although, at the time of removal of a cause from a state court, the complaint disclosed an amount in controversy requisite to the federal court's jurisdiction, a subsequent amendment, reducing the sum claimed to substantially less than that amount, necessitates remand to the state court. We granted the writ of certiorari (302 U.S. 669, 58 S.Ct. 38, 82 L.Ed. ——) because of alleged conflict with our decisions and with those of other federal courts.

The respondent, a corporation of Indiana, issued a summons out of the superior court of Marion county, Indiana, against the petitioner, a Minnesota corporation doing business in Indiana, and one Harlan as its agent. The complaint alleged that the respondent was subject to the provisions of the Indiana Workmen's Compensation Act, Acts 1929, c. 172, as amended, and had entered into a contract of insurance with the petitioner, evidenced by a binder, whereby the petitioner insured the respondent against loss or expense by reason of claims for compensation for a period of thirty days from December 30, 1933, and agreed to act for the respondent in the filing of reports and notices under the Act; that, during the term of the insurance employes of the respondent had suffered injury in the course of employment and made claims therefor; that the petitioner had been notified of each injury and investigated it in connection with the claim for compensation; that after the expiration of the contract the petitioner notified the respondent that it would not recognize any of the claims and denied liability under the binder; that as a consequence respondent was compelled to employ attorneys, investigators, and medical assistants to investigate and satisfy claims covered by the contract and to pay employes who had suffered injuries during the contract period, and

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to pay, or obligate itself to pay, for medical, hospital, or dental bills in connection with such injuries; to the damage of the respondent in the sum of $4,000. It was alleged that the petitioner had acted, in making the contract, through Harlan, its authorized agent and representative, and an order was prayed that Harlan retain all moneys due by him to the petitioner for the purpose of answering any judgment which might be recovered. The complaint concluded by demanding $4,000 and other appropriate relief. Upon the petitioner's timely application the cause was removed to the United States District Court for Southern Indiana. The respondent thereafter filed an amended complaint, the substance of which is not now material, and later a "second amended complaint for breach of contract and for damages," in which the allegations of the original complaint were repeated and damages were claimed in the sum of $4,000. An exhibit was attached which gave the names of the employes and the amounts expended in connection with their asserted injuries totaling $1,380.89. The court dismissed Harlan as a defendant, transferred the cause to the law docket, and overruled a demurrer to the complaint as not stating facts sufficient to constitute a cause of action. The answer denied the making of the contract. A jury trial was waived and the court made findings, stated its conclusions, and entered judgment for the respondent for $1,162.98. The petitioner appealed. The Circuit Court of Appeals refused to decide the merits on the ground that as the record showed respondent's claim did not equal the amount necessary to give the

District Court jurisdiction, the case should have been remanded to the State court.[1]

The question presented is one of statutory construction. The act defining the jurisdiction of district courts of the

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United States is section 24 of the Judicial Code.[2] So far as here material, the Code confers jurisdiction of a suit of a civil nature, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000 and is between citizens of different states.

Authority for removal of certain causes from a state to a federal court was first given by section 12 of the Judiciary Act of 1789[3] which permitted removal of a civil suit, instituted by a citizen of the state in which the suit was brought, against a citizen of another state, where the matter in dispute exceeded the sum or value of $500, exclusive of costs. Such removal could be had only at the instance of the nonresident defendant. The Act of July 27, 1866,[4] enlarged the privilege of removal by providing that if, in such a civil suit, it was shown that a nonresident defendant was party to a separable controversy, which could be determined without the presence of other defendants, that defendant might remove the cause.

The Judiciary Act of 1875[5] altered preexisting law to permit suits involving a controversy between citizens of different states to be removed by either party. The Judiciary Acts of 1887, 1888[6] increased the jurisdictional amount to more than $2,000, exclusive of interest and costs, and confined the right of removal to a nonresident defendant, and the Judicial Code increased the limit to over $3,000, exclusive of interest and costs, and also restricted the privilege to nonresident defendants.[7] The

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statute governing dismissal or remand for want of jurisdiction is section 37 of the Judicial Code:[8]

"If in any suit commenced in a district court, or removed from a State court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

This provision first appeared as section 5[9] of the Act of March 3, 1875 (supra), and save for the elision of a concluding clause, and the substitution of "district court" for "circuit court" is identical with that section. It was included in the Judiciary Acts of 1887, 1888 supra, and has been continuously in force since 1875. It altered the practice by requiring the court to dismiss or remand of its own motion in a proper case although want of jurisdiction was not raised by appropriate motion or by plea or answer,[10] but did

1 7 Cir., 90 F.2d 229.

2 Act of March 3, 1911, c. 231, § 24, 36 Stat. 1091, as amended, U. S. C. tit. 28, § 41, 28 U.S.C.A. § 41.

3 Act of Sept. 24, 1789, § 12, 1 Stat. 73, 79.

4 Chapter 288, 14 Stat. 306.

5 Act of March 3, 1875, 18 Stat. 470.

6 Act of March 3, 1887, § 1, 24 Stat. 552; Act of Aug. 13, 1888, § 1, 25 Stat. 433.

7 Act of March 3, 1911, c. 231, §§ 24, 28, 36 Stat. 1087, 1091, 1094, 28 U.S.C.A. §§ 41, 71.

8 Act of March 3, 1911, c. 231, § 37, 36 Stat. 1098, U.S.C., tit. 28, § 80, 28 U.S.C.A. § 80.

9 18 Stat. 472.

10 Prior to 1875 the courts did not act of their own motion, but upon a motion to dismiss or a plea in abatement. Smith v. Kernochen, 7 How. 198, 12 L.Ed. 666; McNutt v. General Motors Corporation, 298 U.S. 178, 183, 56 S.Ct. 780, 782, 80 L.Ed. 1135. Since then it has been their duty not only to act upon a motion to dismiss, (Steigleder v. McQuesten, 198 U.S. 141, 25 S.Ct. 616, 49 L.Ed. 986) or, if the state practice permits, upon a denial of jurisdiction in the answer, (Gilbert v. David, 235 U.S. 561, 35 S.Ct. 164, 59 L.Ed. 360; North Pac. S. S. Co. v. Soley, 257 U.S. 216, 42 S.Ct. 87, 66 L.Ed. 203) but to act sua sponte (McNutt v. General Motors Corporation, supra, 298 U.S. 178, 184, 56 S.Ct. 780, 782, 80 L.Ed. 1135) upon any disclosure, whether in the pleadings or the proofs, which satisfies the court, in the exercise of a sound judicial discretion, that the plaintiff did not

not change the substantial basis for
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the court's action. The principles governing dismissal of a cause initiated in the federal court or the remand of one begun in a state court have remained as they were before the section was adopted.

[1-3] The intent of Congress drastically to restrict federal jurisdiction in controversies between citizens of different states has always been rigorously enforced by the courts. The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls[11] if the claim is apparently made in good faith.[12]
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It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.[13] The inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction.[14] Nor does the fact that the complaint discloses the existence of a valid defense to the claim.[15] But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed.[16] Events oc-
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curring sub-

in fact have a claim for the jurisdictional amount or value, and knew, or reasonably ought to have known, that fact. Williams v. Nottawa, 104 U.S. 209, 211, 26 L.Ed. 719; McNutt v. General Motors Corporation, supra, 298 U.S. 178, 184, 56 S.Ct. 780, 782, 80 L.Ed. 1135. It is plaintiff's burden both to allege with sufficient particularity the facts creating jurisdiction, in view of the nature of the right asserted, and, if appropriately challenged, or if inquiry be made by the court of its own motion, to support the allegation. McNutt v. General Motors Corporation, supra, 298 U.S. 178, at pages 182–189, 56 S.Ct. 780, 782–785, 80 L.Ed. 1135; KVOS v. Associated Press, 299 U.S. 269, 57 S.Ct. 197, 81 L.Ed. 183. Even an appellate court must notice the absence of the elements requisite to original jurisdiction or to a removal. Williams v. Nottawa, supra; Robinson v. Anderson, 121 U.S. 522, 7 S.Ct. 1011, 30 L.Ed. 1021; McNutt v. General Motors Corporation, supra; American Bridge Co. v. Hunt, 6 Cir., 130 F. 302; International & G. N. R. Co. v. Hoyle, 5 Cir., 149 F. 180.

11 Wilson v. Daniel, 3 Dall. 401, 407, 408, 1 L.Ed. 655; Barry v. Edmunds, 116 U.S. 550, 6 S.Ct. 501, 29 L.Ed. 729; Sherman v. Clark, Fed.Cas.No.12,763, 3 McLean 91; Stuckert v. Alexander, D. C., 4 F.Supp. 172, 173.

12 Peeler v. Lathrop, 5 Cir., 48 F. 780; Ung Lung Chung v. Holmes, C.C., 98 F. 323; Washington County v. Williams, 8 Cir., 111 F. 801; Greene County Bank v. Teasdale Co., C.C., 112 F. 801; American Sheet & Tin Plate Co. v. Winzeler, D.C., 227 F. 321; Bruner Co. v. Manefee Co., 9 Cir., 292 F. 985; Walker Grain Co. v. Southwestern Tel. & Tel. Co., 5 Cir., 10 F.2d 272.

13 Barry v. Edmunds, supra; Wetmore v. Rymer, 169 U.S. 115, 122, 18 S.Ct. 293, 42 L.Ed. 682; Put-In-Bay Waterworks Co. v. Ryan, 181 U.S. 409, 432, 433, 21 S.Ct. 709, 45 L.Ed. 927; Hampton Stave Co. v. Gardner, 8 Cir., 154 F. 805.

14 Smithers v. Smith, 204 U.S. 632, 27 S.Ct. 297, 51 L.Ed. 656; Holden v. Utah & M. Co., C.C., 82 F. 209; Maffet v. Quine, C.C., 95 F. 199; Kunkel v. Brown, 4 Cir., 99 F. 593; Ung Lung Chung v. Holmes, supra; Washington County v. Williams, supra; Denver City Tramway Co. v. Norton, 8 Cir., 141 F. 599; Hampton Stave Co. v. Gardner, supra; Lewis Mercantile Co. v. Klepner, 2 Cir., 176 F. 343; St. Tammany Bank v. Winfield, 5 Cir., 263 F. 371; Ragsdale v. Rudich, 5 Cir., 293 F. 182; Walker Grain Co. v. Southwestern Tel. & Tel. Co., 5 Cir., 10 F.2d 272; Kimel v. Missouri State Life Ins. Co., 10 Cir., 71 F.2d 921; Simecek v. U. S. Nat. Bank, 8 Cir., 91 F.2d 214.

15 Interstate B. & L. Ass'n v. Edgefield Hotel Co., C.C., 109 F. 692; Armstrong v. Walters, D.C., 219 F. 320; Mullins Lumber Co. v. Williamson Land Co., 4 Cir., 246 F. 232.

16 Williams v. Nottawa, supra; Barry v. Edmunds, supra; Vance v. Vandercook Co., 170 U.S. 468, 18 S.Ct. 645, 42 L.Ed. 1111; Lion Bonding Co. v. Karatz, 262 U.S. 77, 43 S.Ct. 480, 67 L.Ed. 871; First National Bank v. Louisiana Highway Comm., 264 U.S. 308, 44 S.Ct. 340, 68 L. Ed. 701; Simon v. House, C.C., 46 F. 317; Horst v. Merkley, C.C., 59 F. 502; Cabot v. McMaster, C.C., 61 F. 129; Bank of Arapahoe v. Bradley & Co., 8 Cir., 72 F. 867; Armstrong v. Walters, supra; Maurel v. Smith, D.C., 220 F. 195; LeRoy v. Hartwick, D.C., 229 F. 857; Sclarenco v. Chicago Bonding Co., D.C., 236 F. 592; Operators' Co. v. First Wisconsin Trust

sequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction.[17]

[4, 5] What already has been said, and circumstances later to be discussed lead to the conclusion that a dismissal would not have been justified had the suit been brought in the federal court. The principles which govern remand of a removed cause, more urgently require that it should not have been remanded. In a cause instituted in the federal court the plaintiff chooses his forum. He knows or should know whether his claim is within the statutory requirement as to amount. His good faith in choosing the federal forum is open to challenge not only by resort to the face of his complaint, but by the facts disclosed at trial, and if from either source it is clear that his claim never could have amounted to the sum necessary to give jurisdiction there is no injustice in dismissing the suit. Indeed, this is the court's duty under the Act of 1875. In such original actions it may also well be that plaintiff and defendant have colluded to confer jurisdiction by the method of the one claiming a fictitious amount and the other failing to deny the veracity of the averment of amount in controversy. Upon disclosure of that state of facts the court should dismiss.

[6-9] A different situation is presented in the case of a suit instituted in a state court and thence removed. There is a strong presumption that the plaintiff has not claimed a large amount in order to confer jurisdiction on a federal court or that the parties have colluded to that end.[18]

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For if such were the purpose suit would not have been instituted in the first instance in the state but in the federal court. It is highly unlikely that the parties would pursue this roundabout and troublesome method to get into the federal court by removal when by the same device the suit could be instituted in that court.[19] Moreover, the status of the case as disclosed by the plaintiff's complaint is controlling in the case of a removal, since the defendant must file his petition before the time for answer or forever lose his right to remove.[20] Of course,

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if, upon the face of the complaint, it is obvious that the

Co., 7 Cir., 283 F. 904; Wilderman v. Roth, 3 Cir., 17 F.2d 486; Chick v. New England Tel. Co., D.C., 36 F.2d 832; Nixon v. Town Taxi Inc., D.C., 39 F.2d 618; Cohn v. Cities Service Co., 2 Cir., 45 F.2d 687; Miller-Crenshaw Co. v. Colorado Mill Co., 8 Cir., 84 F.2d 930.

17 Mutual Life Ins. Co. v. Rose, D.C., 294 F. 122; Hood v. Bell, 4 Cir., 84 F.2d 136.

18 In Smith v. Greenhow, 109 U.S. 669, 3 S.Ct. 421, 422, 27 L.Ed. 1080, a case of trespass for entering plaintiff's premises and carrying away goods of the value of $100, interfering with plaintiff's business, annoying and disturbing him, &c., the damages were laid at $6,000. Though there was not diversity of citizenship, as the pleadings raised a federal question, the cause was removed. It was remanded as the circuit court thought there was no federal question involved. The decision was reversed. Speaking of the facts disclosed the court said: "There is a ground for remanding the cause suggested by the record, but not sufficiently apparent to justify us in resorting to it to support the action of the circuit court. The value of the property taken is stated in the declaration to be but $100, although the damages for the alleged trespass are laid at $6,000. * * * We cannot, of course, assume, as a matter of law, that the amount laid, or a less amount, greater than $500, is not recoverable upon the case stated in the declaration, and cannot, therefore, justify the order remanding the cause, on the ground that the matter in dispute does not exceed the sum or value of $500. But if the circuit court had found, as matter of fact, that the amount of damages stated in the declaration was colorable, and had been laid beyond the amount of a reasonable expectation of recovery, for the purpose of creating a case removable under the act of congress, so that, in the words of the fifth section of the act of 1875, it appeared that the suit 'did not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court,' the order remanding it to the state court could have been sustained." This appears to be the only reported case of a removal by the plaintiff as authorized by the Act of 1875, and is distinguishable on that ground, as respects the possibility that plaintiff's claim may have been colorable for the purpose of removing the case.

19 Hayward v. Nordberg Mfg. Co., 6 Cir., 85 F. 4, 9, per Taft, Lurton and Clark, JJ.

20 Gordon v. Longest, 16 Pet. 97, 10 L.Ed. 900; Kanouse v. Martin, 15 How. 198, 14 L.Ed. 660; Chesbrough v. North-

suit cannot involve the necessary amount, removal will be futile and remand will follow.[21] But the fact that it appears from the face of the complaint that the defendant has a valid defense, if asserted, to all or a portion of the claim, or the circumstance that the rulings of the district court after removal reduce the amount recoverable below the jurisdictional requirement,[22] will not justify remand. And though, as here, the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount, this does not deprive the district court of jurisdiction.[23]

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Thus events occurring subsequent to removal which reduce the amount recoverable, whether beyond the plaintiff's control or the result of his volition, do not oust the district court's jurisdiction once it has attached.[24] This is well illustrated by Kirby v. American Soda Fountain Company, 194 U.S. 141, 24 S.Ct. 619, 621, 48 L.Ed. 911, where in a suit brought by Kirby he alleged that he was induced by the company's false representations to agree to the exchange of his apparatus for one made by the defendant and to pay $2025 in addition. He prayed the cancellation of his obligation to pay the balance of $2,025, damages of $2,500, and general relief. The cause was removed to the circuit court. The company answered denying Kirby's charges of fraud, relied upon a written agreement alleged to contain all the terms of the contract, asserted full performance on its part, and that he had paid but $325 on his obligation to pay $2,025. By cross-complaint, the company demanded $1,700 and interest from Kirby and the establishment of a lien on the apparatus delivered to him. Kirby answered that he had voluntarily dismissed the original suit brought by him and that the cross-bill was not within the jurisdiction of the court because it did not claim in excess of $2,000, exclusive of interest and costs. The plea was overruled and judgment rendered on the cross-complaint. In affirming the court referred to the amount demanded in Kirby's original complaint and said: "The matter in dispute having thus been made to exceed the sum or value of $2,000, exclusive of interest and costs, defendant presented his petition and bond for removal,

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and the cause was thereupon removed. The jurisdiction thus acquired by the circuit court was not devested by plaintiff's subsequent action."

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ern Trust Co., 252 U.S. 83, 40 S.Ct. 237, 64 L.Ed. 470, affirming Chesbrough v. Woodworth, 6 Cir., 251 F. 881; Muns v. DeNemours, Fed.Cas.No.9,931, 2 Wash. C.C. 463; Riggs v. Clark, 6 Cir., 71 F. 560; Hayward v. Nordberg Mfg. Co., supra; Johnson v. Computing Scale Co., C.C., 139 F.2d 339.

[21] North American T. & T. Co. v. Morrison, 178 U.S. 262, 20 S.Ct. 869, 44 L.Ed. 1061.

[22] Levinski v. Middlesex Banking Co., 5 Cir., 92 F. 449; Tennent-Stribling Shoe Co. v. Roper, 5 Cir., 94 F. 739; Mannheimer v. Nederlandsche, D.C., 6 F.Supp. 564. Contra: Jones v. Western Union Tel. Co., D.C., 233 F. 301.

[23] Kanouse v. Martin, supra; Kirby v. American Soda Fountain Co., 194 U.S. 141, 24 S.Ct. 619, 48 L.Ed. 911; Wright v. Wells, Fed.Cas.No.18,101, Pet.C.C. 220; Roberts v. Nelson, Fed.Cas.No. 11,907, 8 Blatchf. 74; Zinkeisen v. Hufschmidt, Fed.Cas.No.18,214, 1 Cent.L.J. 144; Waite v. Phoenix Ins. Co., C.C., 62 F. 769; Riggs v. Clark, supra; Hayward v. Nordberg Mfg. Co., supra; Johnson v. Computing Scale Co., supra; Coffin v. Philadelphia, W. & B. R. Co., C. C., 118 F. 688; Donovan v. Dixieland Amusement Co., C.C., 152 F. 661; Bernheim v. Louisville Property Co., D.C., 221 F. 273; Jellison v. Krell Piano Co., D.C., 246 F. 509; Twin Hills Gasoline Co. v. Bradford Oil Corporation, D.C., 264 F. 440; Kane v. Reserve Oil Corporation, D.C., 52 F.2d 972; Travelers' Protective Ass'n v. Smith, 4 Cir., 71 F.2d 511; Beddings v. Great Eastern Stages, Inc., D.C., 6 F.Supp. 529. Contra: Hughes & Co. v. Peper Tobacco W. Co., C.C., 126 F. 687. In two tort cases where large damages were claimed, but it appeared at trial that plaintiff's injuries and losses were so slight that a verdict for more than a fraction of the jurisdictional amount could not be sustained the courts remanded. Though not placed upon that ground, their action may have been justified by the conviction that the defendant when it removed knew that the amount involved was too little to give jurisdiction: Turmine v. West Jersey R. Co., D.C., 44 F.2d 614; American Stores Co. v. Gerlach, 3 Cir., 55 F.2d 658.

[24] The same principle applies in cases where a fixed amount is requisite to jurisdiction on appeal. Lee v. Watson, 1 Wall. 337, 17 L.Ed. 557; Cook v. United States, 2 Wall. 218, 17 L.Ed. 755.

Fifty years earlier in Kanouse v. Martin, 15 How. 198, 14 L.Ed. 660, the court had held that voluntary reduction of the amount demanded below the sum necessary to give the circuit court jurisdiction could not defeat that jurisdiction once removal proceedings had been perfected. In reliance upon these precedents many cases, cited in Note 23, have been decided.

[10] We think this well established rule is supported by ample reason. If the plaintiff could, no matter how bona fide his original claim in the state court, reduce the amount of his demand to defeat federal jurisdiction the defendant's supposed statutory right of removal would be subject to the plaintiff's caprice. The claim, whether well or ill founded in fact, fixes the right of the defendant to remove, and the plaintiff ought not to be able to defeat that right and bring the cause back to the state court at his election. If he does not desire to try his case in the federal court he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove.[25]

[11] This view is further supported by the authorities as to causes in which jurisdiction depends on diversity of citizenship. It uniformly has been held that in a suit properly begun in the federal court the change of citizenship of a party does not oust the jurisdiction.[26] The same

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rule governs a suit originally brought in a state court and removed to a federal court.[27]

[12] The decisions as to remand of a cause removed because it involves a separable controversy are not inconsistent with those concerning remand for lack of jurisdictional amount. In the case of a separable controversy, if, after removal, the plaintiff discontinues or dismisses as to the defendant who removed, so that there no longer exists any separable controversy, the cause must be remanded.[28] If a cause be removed on this ground the whole case, including the controversy between citizens of the same state, is taken over by the federal court only because one or more of the defendants is entitled to invoke its jurisdiction. The basis of federal jurisdiction failing, it is proper that the remaining parties, who were involuntarily taken into the federal court, should, upon the cessation of the separable controversy which was the cause of their transmission to another tribunal, have their case returned to the state court.

[13] The present case well illustrates the propriety of the rule that subsequent reduction of the amount claimed cannot oust the district court's jurisdiction. Suit was instituted in the State court June 5, 1934. The lump sum claimed was largely in excess of $3,000, exclusive of interest and costs. The items which went to make up the respondent's demand for indemnity were numerous and

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each, in turn was itself the total of several items of expenditure or liability. There is nothing to indicate that all of the sums for which reimbursement was claimed had actually been expended prior to the beginning of suit or that the sums thereafter to be expended had been

[25] Woods v. Massachusetts Protective Ass'n, D.C., 34 F.2d 501. And an amendment in the state court reducing the claim below the jurisdictional amount before removal is perfected is effective to invalidate removal and requires a remand of the cause: Maine v. Gilman, C.C., 11 F. 214; Waite v. Phoenix Ins. Co., supra; Harley v. Firemen's Fund Ins. Co., D.C., 245 F. 471.

[26] Morgan v. Morgan, 2 Wheat. 290, 297, 4 L.Ed. 242; Mullen v. Torrance, 9 Wheat. 537, 6 L.Ed. 154; Dunn v. Clarke, 8 Pet. 1, 8 L.Ed. 845; Clarke v. Mathewson, 12 Pet. 164, 9 L.Ed. 1041; Tug River Coal Co. v. Brigel, 6 Cir., 86 F. 818, affirming C.C., 73 F. 13.

[27] Haracovic v. Standard Oil Co., C.C., 105 F. 785; Lebensberger v. Scofield, 6 Cir., 139 F. 380. Change of parties by substitution or by intervention does not oust the jurisdiction: Phelps v. Oaks, 117 U.S. 236, 6 S.Ct. 714, 29 L.Ed. 888; Hardenbergh v. Ray, 151 U.S. 112, 14 S. Ct. 305, 38 L.Ed. 93; Wichita R. R. & Light Co. v. Public Utilities Comm., 260 U.S. 48, 43 S.Ct. 51, 67 L.Ed. 124.

[28] Texas Transportation Co. v. Seeligson, 122 U.S. 519, 7 S.Ct. 1261, 30 L.Ed. 1150; Torrence v. Shedd, 144 U.S. 527, 12 S.Ct. 726, 36 L.Ed. 528; Iowa Homestead Co. v. Des Moines N. & R. Co., C. C., 8 F. 97; Bane v. Keefer, C.C., 66 F. 610; Youtsey v. Hoffman, C.C., 108 F. 699; Cassidy v. Atlanta, etc., Ry. Co., C. C., 109 F. 673; Sklarsky v. Great Atlantic, etc., Tea Co., D.C., 47 F.2d 662.

ascertained. Not until the second amended complaint was filed in the United States court, in November 1934, did the respondent furnish a statement of the particulars of its claim. That statement is not inconsistent with the making of a claim in good faith for over $3,000 when the suit was instituted. Nor is there evidence that the petitioner when it removed the cause knew, or had reason to believe, that the respondent's claim, whether well or ill founded in law or fact involved less than $3,000. On the face of the pleadings petitioner was entitled to invoke the jurisdiction of the federal court and a reduction of the amount claimed after removal, did not take away that privilege.

The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for further proceedings in conformity to this opinion.

Reversed and remanded.

So ordered.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration or decision of this case.


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## ADAIR v. BANK OF AMERICA NAT. TRUST & SAVINGS ASS'N.

No. 365.

Argued Feb. 2, 1938.

Decided Feb. 28, 1938.

1. Bankruptcy ⇐1

The powers granted by the bankruptcy clause of the Constitution are not limited to the bankruptcy law and practice in force in England or the states at the time of its adoption. Const. art. 1, § 8, cl. 4.

2. Bankruptcy ⇐3
Constitutional law ⇐308

The stay under judicial discretion, as to enforcement of claims provided by the statute relative to agricultural extensions and compositions in the bankruptcy court, does not take property without due process and is constitutional. Bankr.Act, § 75(o), 47 Stat. 1471–1473, 11 U.S.C.A. § 203(o).

3. Bankruptcy ⇐38

The provisions of the statute, relating to agricultural compositions or extensions in the bankruptcy court for the exercise by the court of such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors, look toward the maintenance of the farm as a going concern and afford authority in a proper case for the continuance of the operations of the farm. Bankr.Act, § 75(e, n), 47 Stat. 1471–1473, 11 U.S.C.A. § 203(e, n).

4. Bankruptcy ⇐38

The statute empowering a referee in bankruptcy to perform such part of the duties, except as to questions arising out of applications of bankrupts for compositions, or discharges, as are conferred on courts of bankruptcy, does not use the phrase "applications of bankrupts for compositions" as referring to proceedings of a debtor for rehabilitation under the statute relative to agricultural compositions and extensions. Bankr.Act, § 38(4), § 75(a–r), 47 Stat. 1470–1473, as amended 48 Stat. 925, §§ 8, 9, 11 U.S.C.A. § 66(4), § 203 and note.

5. Bankruptcy ⇐38

A conciliation commissioner, to whom a petition by a farmer for a composition or extension is referred, has authority prior to an adjudication of bankruptcy to act as the court, in the first instance and subject to review, in controlling the property of the debtor in the best interests of the farmer and his creditors. Bankr.Act, §§ 38(4), 39, § 75 (a–r), 47 Stat. 1470–1473, as amended, 48 Stat. 925, §§ 8, 9, 11 U.S.C.A. §§ 66(4), 67, § 203 and note; General Order 50, subsecs. 3, 6, 11, 11 U.S.C.A. following section 53.

6. Bankruptcy ⇐38

The acts of a conciliation commissioner in a proceeding for an agricultural composition or extension, in authorizing expenditures for gathering the crop of one year, preparing for the crop of the following year, and paying fees and expenses, were "judicial acts," and error within his jurisdiction does not subject him to personal liability. Bankr. Act, §§ 38(4), 39, § 75(a–r), 47 Stat. 1470–1473, as amended, 48 Stat. 925, §§ 8, 9, 11 U.S.C.A. §§ 66(4), 67, § 203 and note; General Order 50, subsecs. 3, 6, 11, 11 U.S.C.A. following section 53.

[Ed. Note.—For other definitions of "Judicial Act," see Words & Phrases.]