

received in action." The claim herein is neither a legal nor an equitable claim against the United States and the court is therefore without jurisdiction to liquidate the amount, the same resting in the bounty of Congress.

Thereupon this motion for mandamus was filed, the petitioner claiming that he had a clear legal right to have the Court of Claims report to the President of the Senate the amount which he would receive and the Government pay if Congress should enact into law Senate Bill No. 7013, and that it was the duty of the Court of Claims so to do under the Tucker act.

Mr. Charles F. Carusi, Mr. C. W. Pennebaker and Mr. Eugene A. Jones for petitioner.

Per Curiam: Motion for leave to file petition for writ of mandamus denied.

MATTER OF TOBIN, PETITIONER.

MATTER OF KRISTIANSON.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AGAINST HONORABLE PAGE MORRIS, DISTRICT JUDGE OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, AND AGAINST THE CIRCUIT COURT OF THE UNITED STATES FOR THAT DISTRICT.

No. —. Original. Submitted May 17, 1909.—Decided May 24, 1909.

Leave to file petition for mandamus to remand a case to the state court denied.

As stated in the petition, petitioner is plaintiff in an action against the Republic Iron and Steel Company, a corporation, commenced in the state court which had jurisdiction.

Defendant filed a bond and petition for removal, and caused

said action to be removed to the United States Circuit Court of the District of Minnesota, Fifth Division, on the ground that the plaintiff was a citizen of Minnesota and the defendant a citizen of New Jersey. Thereupon, the plaintiff made a motion before said Federal court to remand said cause of action to said state court for the reason that the said Federal court did not have jurisdiction of said cause of action or said parties because the requisite diversity of citizenship did not exist, and because the plaintiff at the time of the commencement of the action and at all times was an alien and the defendant was not a resident or citizen of the State of Minnesota.

It is conceded that the plaintiff was and is an alien and that the defendant is not a resident or citizen of the State of Minnesota. The court denied the motion to remand, and application is therefore made to this honorable court for leave to file a petition praying for a writ of mandamus as the said Circuit Court erred in denying the motion to remand for the reason that said Circuit Court could not assume and did not have jurisdiction of said cause of action or said parties without the consent of the plaintiff.

Mr. Samuel A. Anderson for petitioner.

Per Curiam: Motion for leave to file petition for writ of mandamus denied.

UNITED STATES FIDELITY & GUARANTY COMPANY
v. UNITED STATES.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH
CIRCUIT.

No. 179. Argued April 23-26, 1909.—Decided May 24, 1909.

Judgment of the lower court against a surety on the official bond of an Indian agent affirmed without opinion by a divided court.

Quare, Whether failure to give credit for vouchers because of misrepre-