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THE 1940 AMENDMENT TO THE DIVERSITY OF CITIZENSHIP CLAUSE

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In 1940 Congress, through amendment,¹ changed Section 24 of the Judicial Code² to provide:

"The district courts shall have original jurisdiction . . . Of all suits of a civil nature . . . where the matter in controversy . . . is between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory . . ." (amendment italicized)

CONSTITUTIONALITY OF THE AMENDMENT

Prior to the enactment of this amendment, the federal district courts, in the absence of a federal question, were closed to citizens of the District of Columbia and the territories.³ It

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¹Act of April 20, 1940, c. 117, 54 Stat. at L. 143, 28 U. S. C. § 41 (1) (b).

²Act of March 3, 1911, c. 231, § 24, 36 Stat. at L. 1091, 28 U. S. C. § 41 (1), as amended.

³Hepburn v. Ellzey, 2 Cranch 445, 2 L. Ed. 332 (U. S. 1805), was the first of an unbroken line of cases which held that, within the meaning of the Judicial Code, citizens of the territories and of the District of Columbia are not citizens of states and therefore may not invoke federal jurisdiction on the basis of diversity of citizenship. *New Orleans v. Winter*, 1 Wheat. 91, 4 L. Ed. 44 (U.S. 1816) (citizen of the Territory of Mississippi); *Hooe v. Jamieson*, 166 U. S. 395, 17 Sup. Ct. 596, 41 L. Ed. 1049 (1897) (citizen of the District of Columbia). This result was strongly criticized in *Watson v. Brooks*, 13 Fed. 540, 544 (D. C. Ore. 1882).

BIBLIOTECA DE LA CORTE SUPREMA	Fichado anal. x-54
Nº. DE ORDEN	15570
UBIGACION	
FICHA MATERIA	CONTENTS



LEADING ARTICLES

The 1940 Amendment to the Diversity of Citizenship Clause.....*John A. Dykes and Arthur J. Keffee* 171
The Method of the Roman Jurists.....*K. Kagan* 192

BENCH AND BAR

Limitation of Coverage under a Policy of Workman's Compensation Insurance.....*Ben R. Miller* 207
Report of Committee on Latin American Law..... 218

COMMENTS

The Pact *De Non Alienando* in Louisiana..... 238
Landlord and Tenant: Summary Ejectment in Louisiana..... 256

NOTES

Constitutional Law — Bill of Attainder	278	Injunction—The Right of Privacy—Taking and Retention of Photographs by the Police	289
Criminal Law and Procedure—Responsive Verdict—Verdict of Attempted Murder or Attempted Manslaughter not Responsive to Indictment for Murder — Articles 27, 29, Louisiana Criminal Code of 1942 — Articles 405, 406, Louisiana Code of Criminal Procedure of 1928	281	Marriage—Effect of Marriage by Female under Sixteen Years of Age—Article 92, Louisiana Civil Code of 1870	293
Immovables — Requirement of a Written Transfer — Article 2275 of Louisiana Civil Code of 1870—Comparison with Implied Trust Doctrine	286	Mines and Minerals—Mineral Servitudes—Interruption of Prescription <i>Acquirendi Causa</i>	293
		Mines and Minerals—Prescriptibility of Royalty—Effect of Minor Owner of Royalty on Prescription <i>Liberandi Causa</i>	297

Monopolies — Sherman Anti-Trust Act — Exclusion of Competitors as an Element of Monopolization	300	Searches and Seizures—Unreasonable Searches and Seizures — Voluntary Character of Consent	319
Municipal Corporations—Contracts Procedurally Ultra Vires—Estoppel	303	Things — Immovables by Destination—Dwelling Houses—Article 468, Louisiana Civil Code of 1870	316
Partnership—Creation of Partnership—Essential Elements of Louisiana Partnership	307	Wills — Accretion — Conjoint Legacies—Article 1707, Louisiana Civil Code of 1870....	319
Removal of Causes—Conflicting Jurisdiction of State and United States Courts—Removal of Suit under Fair Labor Standards Act	311		

REVIEWS

Federal Rules of Criminal Procedure.....	<i>Clarence J. Morrow</i>	324
UPDEGRAFF AND MCCOY: Arbitration of Labor Disputes	<i>Samuel Lang</i>	326
Book Notes		327
Articles of Interest in Current Legal Periodicals.....		328
Books Received		328