

## TULANE LAW REVIEW

Vol. XXI

DECEMBER, 1946

No. 2

## THE 1940 AMENDMENT TO THE DIVERSITY OF CITIZENSHIP CLAUSE

JOHN A. DYKES† AND ARTHUR J. KEEFFET

In 1940 Congress, through amendment, changed Section 24 of the Judicial Code<sup>2</sup> 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.<sup>3</sup> It

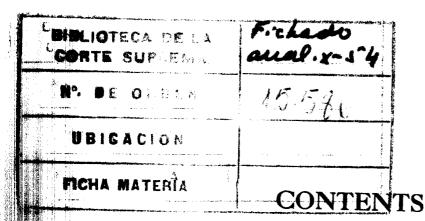
<sup>†</sup>Statutory Interpretation Editor, Tulane Law Review.

<sup>‡</sup>Professor of Law, Cornell University.

<sup>&</sup>lt;sup>1</sup>Act of April 20, 1940, c. 117, 54 Stat. at L. 143, 28 U. S. C. § 41 (1) (b).

<sup>&</sup>lt;sup>2</sup>Act of March 3, 1911, c. 231, § 24, 36 Stat. at L. 1091, 28 U. S. C. § 41 (1), as amended.

<sup>&</sup>lt;sup>3</sup>Hepburn 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).





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