

after Nov. 1, 1980, see section 701(c)(1)(B) of Pub. L. 96-417, set out as a note under section 251 of this title.

### § 1353. Indian allotments

The district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty.

The judgment in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency. (June 25, 1948, ch. 646, 62 Stat. 934.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §41(24) (Mar. 3, 1911, ch. 231, §24, par. 24, 36 Stat. 1094; Dec. 21, 1911, ch. 5, 37 Stat. 46).

Words “any civil action” were substituted for “all actions, suits, or proceedings,” in view of Rule 2 of the Federal Rules of Civil Procedure.

The sentence “The right of appeal shall be allowed to either party as in other cases” was omitted as covered by section 1291 of this title, relating to appeals to the court of appeals.

Changes in phraseology were made.

### § 1354. Land grants from different states

The district courts shall have original jurisdiction of actions between citizens of the same state claiming lands under grants from different states.

(June 25, 1948, ch. 646, 62 Stat. 934.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §41(1) (Mar. 3, 1911, ch. 231, §24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, §1, 48 Stat. 775; Aug. 21, 1937, ch. 726, §1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1342, 1345, and 1359 of this title.

Changes were made in phraseology.

### § 1355. Fine, penalty or forfeiture

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b)(1) A forfeiture action or proceeding may be brought in—

(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized

pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court<sup>1</sup> for the District of Columbia.

(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.

(d) Any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action.

(June 25, 1948, ch. 646, 62 Stat. 934; Pub. L. 96-417, title V, §507, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 102-550, title XV, §1521, Oct. 28, 1992, 106 Stat. 4062.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§41(9) and 371(2) (Mar. 3, 1911, ch. 231, §§24, par. 9, 256, par. 2, 36 Stat. 1092, 1160).

Word “fine” was inserted so that this section will apply to the many provisions in the United States Code for fines which are essentially civil. (See, also, section 2461 of this title and reviser’s note thereunder.)

Words “pecuniary or otherwise” were added to make this section expressly applicable to both pecuniary and property forfeitures. The original section was so construed in *Miller v. United States*, 1870, 11 Wall. 268, 20 L.Ed. 135; *Tyler v. Defrees*, 1870, 11 Wall. 331, and *The Rosemary*, C.C.A. 1928, 26 F.2d 354, certiorari denied 49 S.Ct. 23, 278 U.S. 619, 73 L.Ed. 542.

Changes were made in phraseology.

#### AMENDMENTS

1992—Pub. L. 102-550 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1980—Pub. L. 96-417 inserted exception for matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(B) of Pub. L. 96-417, set out as a note under section 251 of this title.

### § 1356. Seizures not within admiralty and maritime jurisdiction

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States on land or upon waters not within admiralty and maritime jurisdiction, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(June 25, 1948, ch. 646, 62 Stat. 934; Pub. L. 96-417, title V, §508, Oct. 10, 1980, 94 Stat. 1743.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§41(3) and 371(4) (Mar. 3, 1911, ch. 231, §§24, par. 3, 256, par. 4, 36 Stat.

<sup>1</sup> So in original. Probably should be capitalized.

1091, 1160; Oct. 6, 1917, ch. 97, §1, 40 Stat. 395; June 10, 1922, ch. 216, §1, 42 Stat. 634).

Section consolidates certain provisions of sections 41(3) and 371(4) of title 28, U.S.C., 1940 ed. Other provisions of such sections are incorporated in section 1333 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

1980—Pub. L. 96-417 inserted exception for matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(B) of Pub. L. 96-417, set out as a note under section 251 of this title.

§ 1357. Injuries under Federal laws

The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property on account of any act done by him, under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any State.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §41(11) (Mar. 3, 1911, ch. 231, §24, par. 11, 36 Stat. 1092.)

Words "any civil action" were substituted for "all suits," in view of Rule 2 of the Federal Rules of Civil Procedure.

Minor changes were made in phraseology.

§ 1358. Eminent domain

The district courts shall have original jurisdiction of all proceedings to condemn real estate for the use of the United States or its departments or agencies.

(June 25, 1948, ch. 646, 62 Stat. 935.)

HISTORICAL AND REVISION NOTES

Based on section 257 of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (Aug. 1, 1888, ch. 728, §1, 25 Stat. 357; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).

The venue provisions of section 257 of title 40, U.S.C., 1940 ed., are incorporated in section 1403 of this title.

Other provisions of section 257 of title 40, U.S.C., 1940 ed., are retained in said title 40.

Changes were made in phraseology.

§ 1359. Parties collusively joined or made

A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.

(June 25, 1948, ch. 646, 62 Stat. 935.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed. §§41(1) and 80 (Mar. 3, 1911, ch. 231, §§24(1), 37, 36 Stat. 1091, 1098; May 14, 1934, ch. 283, §1, 48 Stat. 775; Aug. 21, 1937, ch. 726, §1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1342, 1345, and 1354 of this title.

Provisions of section 80 of title 28, U.S.C., 1940 ed., for payment of costs upon dismissal of an action for lack

of jurisdiction are incorporated in section 1919 of this title. Other provisions of said section 80 appear in section 1447 of this title.

Provisions of section 80 of title 28, U.S.C., 1940 ed., for dismissal of an action not really and substantially involving a dispute or controversy within the jurisdiction of a district court, were omitted as unnecessary. Any court will dismiss a case not within its jurisdiction when its attention is drawn to the fact, or even on its own motion.

The assignee clause in section 41(1) of title 28, U.S.C., 1940 ed., "is a jumble of legislative jargon." (For further references to the consequences of "its obscure phraseology," see, 35 Ill. Law Rev., January 1941, pp. 569-571.)

The revised section changes this clause by confining its application to cases wherein the assignment is improperly or collusively made to invoke jurisdiction. Furthermore, the difficulty of applying the original clause is overcome and the original purpose of such clause is better served by substantially following section 80 of title 28, U.S.C., 1940 ed.

The assignee clause was incorporated in the original Judiciary Act of 1789. Such section 80 was enacted in 1875. The history of the assignee clause "shows clearly that its purpose and effect, at the time of its enactment were to prevent the conferring of jurisdiction on the Federal courts, on grounds of diversity of citizenship, by assignment, in cases where it would not otherwise exist." (Sowell v. Federal Reserve Bank, 1925, 45 S.Ct. 528, 529, 268 U.S. 449, 453, 69 L.Ed. 1041, 1048.) Thus the purpose of the assignee clause was to prevent the manufacture of Federal jurisdiction by the device of assignment. It achieves this purpose only partially. For example, the assignee clause excepts two types of choses in action from its coverage: (1) Foreign bill of exchange; and (2) corporate bearer paper. But this does not prevent the use of assignment of these choses in action to create the necessary diversity or alienage for jurisdictional purposes. Such section 80 does, however, prevent that. (See Bullard v. City of Cisco, 1933, 54 S.Ct. 177, 290 U.S. 179, 78 L.Ed. 254, 93 A.L.R. 141.) Its coverage against collusive jurisdiction is unlimited, and its approach is direct. The assignee clause, on the other hand, prevents the bona fide assignee of a chose in action within its terms from resorting to the Federal courts unless there is jurisdiction to support the assignee-plaintiff's case and a showing that there would have been jurisdiction if the assignor had brought the action in lieu of the assignee-plaintiff. Since the assignee clause deals with the bona fide assignee, there has been much litigation to determine the assignments which should or should not be within the purview of the clause. Thus the courts have thought it advisable to limit the term "chose in action" and exclude from its scope (1) an implied in law duty or promise, and (2) a transfer of a property interest; and to exclude an assignment by operation of law from the coverage of the clause. Intermediate assignments and reassignment also give difficulty.

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
Alaska .....	All Indian country within the State.