

ceeding 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. 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.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.

State of	Indian country affected
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

(Added Aug. 15, 1953, ch. 505, §4, 67 Stat. 589; amended Aug. 24, 1954, ch. 910, §2, 68 Stat. 795; Pub. L. 85-615, §2, Aug. 8, 1958, 72 Stat. 545; Pub. L. 95-598, title II, §239, Nov. 6, 1978, 92 Stat. 2668; Pub. L. 98-353, title I, §110, July 10, 1984, 98 Stat. 342.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 struck out "or Territories" after "Each of the States", struck out "or Territory" after "State" in 5 places, and substituted "within the State" for "within the Territory" in item relating to Alaska.

1978—Subsec. (a). Pub. L. 95-598 directed the amendment of subsec. (a) by substituting in the item relating to Alaska "within the State" for "within the Territory", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Subsec. (a). Pub. L. 85-615 gave Alaska jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in all Indian country within the Territory of Alaska.

1954—Subsec. (a). Act Aug. 24, 1954, brought the Menominee Tribe within the provisions of this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

AMENDMENT OF STATE CONSTITUTIONS TO REMOVE LEGAL IMPEDIMENT; EFFECTIVE DATE

Act Aug. 15, 1953, ch. 505, §6, 67 Stat. 590, provided that: "Notwithstanding the provisions of any Enabling