

1939

## COURTS - FEDERAL COURTS - REMOVAL OF CAUSES - AMENDMENT TO COMPLAINT AFTER REMOVAL REDUCING AMOUNT IN CONTROVERSY TO LESS THAN THE JURISDICTIONAL AMOUNT

Robert E. Sipes  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Courts Commons](#), and the [Jurisdiction Commons](#)

---

### Recommended Citation

Robert E. Sipes, *COURTS - FEDERAL COURTS - REMOVAL OF CAUSES - AMENDMENT TO COMPLAINT AFTER REMOVAL REDUCING AMOUNT IN CONTROVERSY TO LESS THAN THE JURISDICTIONAL AMOUNT*, 37 MICH. L. REV. (1939).

Available at: <https://repository.law.umich.edu/mlr/vol37/iss3/15>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

COURTS — FEDERAL COURTS — REMOVAL OF CAUSES — AMENDMENT TO COMPLAINT AFTER REMOVAL REDUCING AMOUNT IN CONTROVERSY TO LESS THAN THE JURISDICTIONAL AMOUNT — Plaintiff began his action for breach of contract in a state court of Indiana. On defendant's timely petition the suit was removed to the United States District Court. Plaintiff then amended his pleadings by filing particulars of his claim which reduced the amount recoverable below the jurisdictional amount. On a writ of certiorari it was held that the jurisdiction of the district court was not defeated by the amendment reducing the amount claimed to below the jurisdictional amount. *Saint Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U. S. 283, 58 S. Ct. 586 (1938).

Section 37 of the Judicial Code provides, "If in any suit commenced in a district court, or removed from a state court . . . it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court . . . the said

district court shall proceed no further therein, but shall dismiss the suit or remand it. . . ."<sup>1</sup> To justify the dismissal or remand of a suit on the ground that it does not involve the jurisdictional amount it must so appear from the record to a legal certainty.<sup>2</sup> Ordinarily the claim of the plaintiff appearing on the record at the time when the federal jurisdiction purports to attach is the measure used by the court in determining the amount involved.<sup>3</sup> It is well settled that once the jurisdiction of the federal court attaches no subsequent act reducing the amount claimed below the jurisdictional figure will invalidate the jurisdiction.<sup>4</sup> This is true where the act which reduces the amount claimed is a voluntary dismissal of the original complaint,<sup>5</sup> or the filing of a written remittitur of the excess amount recoverable over the jurisdictional amount,<sup>6</sup> or a stipulation by the parties that the amount actually claimed is less than the jurisdictional amount stated in the plaintiff's pleadings,<sup>7</sup> or, as in the principal case, an amendment is made reducing the amount claimed.<sup>8</sup> In an analogous situation a similar result is reached; jurisdiction obtained by diversity of citizenship is not lost by subsequent change of citizenship of the parties,<sup>9</sup> nor by the addition of new parties of the same citizenship as the defendant.<sup>10</sup> At first impression it might be questioned whether section 37 should be so interpreted,<sup>11</sup> but the cases are clear that, except where a suit is removed because of a severable controversy,<sup>12</sup> no subsequent changes in the circumstances leading to jurisdiction will affect the jurisdiction of the federal court after it has attached.

*Robert E. Sipes*

<sup>1</sup> Act of March 2, 1911, c. 231, § 37, 36 Stat. L. 1098, 28 U. S. C. (1935), § 80.

<sup>2</sup> *Barry v. Edmunds*, 116 U. S. 550, 6 S. Ct. 501 (1886); *Turmine v. West Jersey & Seashore Ry.*, (D. C. Pa. 1930) 44 F. (2d) 614.

<sup>3</sup> *Barry v. Edmunds*, 116 U. S. 550, 6 S. Ct. 501 (1886); *Greene County Bank v. Teasdale Commission Co.*, (C. C. Mo. 1902) 112 F. 801. The complaint will not control where it is merely colorable for the purpose of requiring jurisdiction or where the amount recoverable is as matter of law below the jurisdiction amount. *North American T. & T. Co. v. Morrison*, 178 U. S. 262, 20 S. Ct. 869 (1900).

<sup>4</sup> 4 HUGHES, FEDERAL PRACTICE, § 2351 (1931).

<sup>5</sup> *Kirby v. American Soda Fountain Co.*, 194 U. S. 141, 24 S. Ct. 619 (1904).

<sup>6</sup> *Travelers' Protective Assn. v. Smith*, (C. C. A. 4th, 1934) 71 F. (2d) 511.

<sup>7</sup> *Hayward v. Nordberg Mfg. Co.*, (C. C. A. 6th, 1898) 85 F. 4.

<sup>8</sup> *Kane v. Reserve Oil Corp.*, (D. C. N. Y. 1931) 52 F. (2d) 972.

<sup>9</sup> *Lebensberger v. Scofield*, (C. C. A. 6th, 1905) 139 F. 380.

<sup>10</sup> *Wichita R. R. & Light Co. v. Public Utilities Comm.*, 260 U. S. 48, 43 S. Ct. 51 (1922).

<sup>11</sup> For a vigorous opinion that it is not the true interpretation of the statute although recognizing it as the law, see *Cochran, J.*, in *Jellison v. Krell Piano Co.*, (D. C. Ky. 1917) 246 F. 509.

<sup>12</sup> *Texas Transp. Co. v. Seeligson*, 122 U. S. 519, 7 S. Ct. 1261 (1887); *Youtsey v. Hoffman*, (C. C. Ky. 1901) 108 F. 699; *Highway Const. Co. v. McClelland*, (C. C. A. 8th, 1926) 15 F. 187, certiorari denied, 273 U. S. 765, 47 S. Ct. 570 (1927).