was "extraordinary that the courts of the United States, which are open to aliens, and to the citizens of every state in the union, should be closed upon them. But this is a subject for legislative, not for judicial consideration."[1063] The same rule was subsequently applied to citizens of the territories of the United States.[1064]

Whether the Chief Justice had in mind a constitutional amendment or a statute when he spoke of legislative consideration remains unclear. Not until 1940, however, did Congress attempt to meet the problem by statutorily conferring on federal district courts jurisdiction of civil actions, not involving federal questions, "between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska and any State or Territory."[1065] In *National Mutual Ins. Co. v. Tidewater Transfer Co.*,[1066] this act was upheld in a five-to-four decision but for widely divergent reasons by a coalition of Justices. Two Justices thought that Chief Justice Marshall's 1804 decision should be overruled, but the other seven Justices disagreed; however, three of the seven thought the statute could be sustained under Congress's power to enact legislation for the inhabitants of the District of Columbia, but the remaining four plus the other two rejected this theory. The statute was upheld because a total of five Justices voted to sustain it, although of the two theories relied on, seven Justices rejected one and six the other. The result, attributable to "conflicting minorities in combination,"[1067] means that *Hepburn v. Ellzey* is still good law insofar as it holds that the District of Columbia is not a state, but is overruled insofar as it holds that District citizens may not use federal diversity jurisdiction.[1068]

Citizenship of Natural Persons.—For purposes of diversity jurisdiction, state citizenship is determined by the concept of domicile[1069] rather than of mere residence.[1070] That is, while the Court's definition has varied throughout the cases,[1071] a person is a citizen of the state in which he has his true, fixed, and permanent home

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[1063] 6 U.S. at 453.

[1064] City of New Orleans v. Winter, 14 U.S. (1 Wheat.) 91 (1816).

[1065] 54 Stat. 143 (1940), as revised, 28 U.S.C. § 1332(d).

[1066] 337 U.S. 582 (1948).

[1067] 337 U.S. at 655 (Justice Frankfurter dissenting).

[1068] The statute's provision allowing citizens of Puerto Rico to sue in diversity was sustained in Americana of Puerto Rico v. Kaplus, 368 F.2d 431 (3d Cir. 1966), *cert. denied*, 386 U.S. 943 (1967), under Congress's power to make rules and regulations for United States territories. *Cf.* Examining Bd. v. Flores de Otero, 426 U.S. 572, 580–597 (1976) (discussing congressional acts with respect to Puerto Rico).

[1069] Chicago & N.W.R.R. v. Ohle, 117 U.S. 123 (1886).

[1070] Sun Printing & Pub. Ass'n v. Edwards, 194 U.S. 377 (1904).

[1071] Knox v. Greenleaf, 4 U.S. (4 Dall.) 360 (1802); Shelton v. Tiffin, 47 U.S. (6 How.) 163 (1848); Williamson v. Osenton, 232 U.S. 619 (1914).