

Opinion of the Court.

"The present government of the District of Columbia having been imposed by the people of the District without any power or opportunity on the part of said people to accept or reject the same, the District cannot be held responsible for the negligence of said government."

"The District of Columbia, under the form of government existing at the time of the accident which is the subject matter of this suit, is not liable for damages resulting from said accident."

"If the care of the streets of the city of Washington, as a public duty, is imposed by the statutes upon the District of Columbia, the performance of which is for the general benefit, and the District derives no profit from it, then no action can be maintained against the District for damages resulting from a neglect to perform such public duty."

"The present form of government of the District of Columbia, consisting, as it does, of officers who are all appointed and paid by the United States, without any power to levy taxes or expend money except as directed by Congress, is not of such a character as to make the District responsible in damages for any negligence of those officers."

It is contended on behalf of the plaintiff in error that the validity of the authority conferred upon the District Commissioners by Congress is drawn in question in this suit.

We do not agree with counsel in this view. The instructions above quoted involved the acts of Congress creating the District government only as bearing upon the question of the liability of the District for negligence in failing to keep the streets in repair, and by way of construction, and the validity of the acts themselves, or of the authority exercised under them, was not denied. The case of *Baltimore and Potomac Railroad Company v. Hopkins*, ante, 210, is decisive that jurisdiction cannot be maintained on this ground under such circumstances. The writ of error will therefore be

Dismissed.

DISTRICT OF COLUMBIA v. EMERSON, No. 183. In error to the District of Columbia. Argued March 6, 1889. Decided April 1,

Statement of the Case.

1889. MR. CHIEF JUSTICE FULLER said that the same questions were presented upon the record in this case as in the *District of Columbia, Plaintiff in Error v. Lawrence E. Gannon*, No. 182, just decided, and that for the reasons there given the writ of error must be *Dismissed*.

Mr. A. G. Riddle for plaintiff in error.

Mr. S. S. Henkle for defendant in error.

STEVENS *v.* NICHOLS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF MISSOURI.

No. 190. Argued March 11, 1889. — Decided April 1, 1889.

A petition for removal which alleges the diverse citizenship of the parties in the present tense is defective, and if it does not appear in the record that such diversity also existed at the commencement of the action, the cause will be remanded to the Circuit Court with directions to send it back to the state court, with costs against the party at whose instance the removal was made.

THE case as stated by the court was as follows :

This action was commenced on the 25th day of July, 1881, in one of the courts of Missouri, by the defendant in error against the Texas and Atlantic Refrigerator Car Company, a corporation of that State, Robert S. Stevens and Henry D. Mirick. Its object was to reach, and have applied in satisfaction of a judgment obtained by the plaintiff against the car company, the several amounts due from Stevens and Mirick on their subscriptions of stock in that company.

Stevens and Mirick filed a joint petition for the removal of the case into the Circuit Court of the United States, upon the ground of the diverse citizenship of the parties. The allegation in the petition was that the plaintiff "*is* a citizen of the State of Missouri," and that the defendants "*are* not citizens