

Syllabus.

John L. Hatch was appointed United States inspector of immigration at that port, who, on May 16, made the inspection and examination required by the act of March 3, 1891, c. 551, which he reported to the collector, and, on May 18, he intervened in opposition to the writ of *habeas corpus*, stating his doings and insisting that under the act his finding and decision were reviewable by the superintendent of immigration and the Secretary of the Treasury only. The Circuit Court sustained the intervention and remanded petitioner, and its order was affirmed on appeal by this court. It was said by Mr. Justice Gray, delivering the opinion, that: "A writ of *habeas corpus* is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can legally be detained in custody; and if sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment."

The proceeding here was a state proceeding in aid of a prosecution for the violation of state laws, and under such circumstances the courts of the United States may exercise a discretion in determining the question of discharge. *Cook v. Hart*, 146 U. S. 183.

And we think the case falls within the principle of the rule laid down in *Nishimura Ekiu v. United States*.

Order affirmed.

HOOE v. JAMIESON.

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

No. 374. Submitted March 1, 1897. — Decided April 5, 1897.

A citizen of the District of Columbia cannot maintain an action against a citizen of Wisconsin, on the ground of diverse citizenship, in a Circuit Court of the United States in that State; even though a competent person be joined with him as co-plaintiff.

THE case is stated in the opinion.

Opinion of the Court.

Mr. A. R. Bushnell for plaintiffs in error.

Mr. S. S. Barney for defendants in error.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This was an action of ejectment brought in the Circuit Court of the United States for the Western District of Wisconsin, by the complaint in which plaintiffs in error alleged that they resided in and were citizens of the city of Washington, D. C., and that defendants all resided in and were citizens of the State of Wisconsin. Defendants moved to dismiss the action on the ground that the Circuit Court had no jurisdiction as the controversy was not between citizens of different States. The Circuit Court ordered that the action be dismissed unless plaintiffs within five days thereafter should so amend their complaint as to allege the necessary jurisdictional facts. Plaintiffs then moved for leave to amend their complaint by averring that three of them were when the suit was commenced, and continued to be, citizens of the District of Columbia, but that one of them was a citizen of the State of Minnesota, and that each was the owner of an undivided one fourth of the lands and premises described in the complaint, and that they severally claimed damages and demanded judgment. This motion was denied and the action dismissed. Plaintiffs sued out this writ of error under the act of March 3, 1891, c. 517, § 5, and the Circuit Court certified to this court these questions of jurisdiction:

“First. Whether or not said complaint sets forth any cause of action in which there is a controversy between citizens of different States, so as to give said Circuit Court jurisdiction thereof:

“Second. Whether or not said complaint as so proposed to be amended would, if so amended, set forth any cause of action in which there is a controversy between citizens of different States, so as to give said Circuit Court jurisdiction thereof.”

The judicial power extends under the Constitution to con-

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troversies between citizens of different States, and the Judiciary Act of 1789 provided, as does the act of March 3, 1887, as corrected by the act of August 13, 1888, 25 Stat. 433, c. 866, that the Circuit Courts of the United States should have original cognizance of all suits of a civil nature at common law or in equity in which there should be a controversy between citizens of different States.

We see no reason for arriving at any other conclusion than that announced by Chief Justice Marshall in *Hepburn v. Ellzey*, 2 Cranch, 445, February term, 1805, "that the members of the American confederacy only are the States contemplated in the Constitution"; that the District of Columbia is not a State within the meaning of that instrument; and that the courts of the United States have no jurisdiction of cases between citizens of the District of Columbia and citizens of a State.

In *Strawbridge v. Curtiss*, 3 Cranch, 267, it was held that if there be two or more joint plaintiffs and two or more joint defendants, each of the plaintiffs must be capable of suing each of the defendants in the courts of the United States in order to support the jurisdiction; and in *Smith v. Lyon*, 133 U. S. 315, *Strawbridge v. Curtiss* was followed, and it was decided that under the acts of 1887 and 1888 the Circuit Court has not jurisdiction, on the ground of diverse citizenship, if there are two plaintiffs to the action who are citizens of and residents in different States and the defendant is a citizen of and resident in a third State, and the action is brought in the State in which one of the plaintiffs resides.

New Orleans v. Winter, 1 Wheat. 91, was an action in ejectment brought by two plaintiffs claiming as joint heirs, and it appeared that one of them was a citizen of the State of Kentucky, and that the other was a citizen of the Territory of Mississippi. It was held that jurisdiction could not be maintained, and Chief Justice Marshall, delivering the opinion of the court, said: "Gabriel Winter, then, being a citizen of the Mississippi Territory, was incapable of maintaining a suit alone in the District Court of Louisiana. Is his case mended by being associated with others who are capable of suing in

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that court? In the case of *Strawbridge v. Curtiss*, it was decided, that where a joint interest is prosecuted, the jurisdiction cannot be sustained, unless each individual be entitled to claim that jurisdiction. In this case it has been doubted, whether the parties might elect to sue jointly or severally. However this may be, having elected to sue jointly, the court is incapable of distinguishing their case, so far as respects jurisdiction, from one in which they were compelled to unite."

In *Peninsular Iron Co. v. Stone*, 121 U. S. 631, the interests of the parties being separate and distinct, but depending on one contract, plaintiffs elected to sue on the common obligation, and the case was dismissed under the rule in *New Orleans v. Winter*.

In *Barney v. Baltimore*, 6 Wall. 280, 287, which was a bill for partition, it appeared that some of the defendants were citizens of the District of Columbia and some of them citizens of Maryland, and, in dismissing the case for want of jurisdiction, the court, through Mr. Justice Miller, said: "In the case of *Hepburn v. Ellzey*, it was decided by this court, speaking through Marshall, C. J., that a citizen of the District of Columbia was not a citizen of a State within the meaning of the Judiciary Act, and could not sue in a Federal court. The same principle was asserted in reference to a citizen of a Territory, in the case of *New Orleans v. Winter*, and it was there held to defeat the jurisdiction, although the citizen of the Territory of Mississippi was joined with a person who, in suing alone, could have maintained the suit. These rulings have never been disturbed, but the principle asserted has been acted upon ever since by the courts when the point has arisen."

Many other decisions are to the same effect, and in the late case of *Merchants' Cotton Press Co. v. Insurance Co.*, 151 U. S. 368, 384, the rule in *New Orleans v. Winter* was applied and it was held that "the voluntary joinder of the parties has the same effect for purposes of jurisdiction as if they had been compelled to unite."

In the case at bar no application was made for leave to discontinue as to the three plaintiffs who were citizens of the

Counsel for Plaintiff in Error.

District of Columbia, and to amend the complaint and proceed with the cause in favor of that one of the plaintiffs alleged to be a citizen of Minnesota. Jurisdiction of the case as to four plaintiffs could not be maintained on the theory that when the trial terminated it might be retained as to one. The Circuit Court was right and its judgment is

Affirmed.

HOOE v. WERNER. No. 373. Submitted with No. 374, above, and on the same briefs.

THE CHIEF JUSTICE: The only difference between this case and that just decided is that the proposed amendment was allowed and the action then dismissed for want of jurisdiction. For the reasons above given, this case must take the same course as that.

Judgment affirmed.

MARTIN v. ATCHISON, TOPEKA AND SANTA FE
RAILROAD COMPANY.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW
MEXICO.

No. 170. Submitted January 25, 1897. — Decided April 5, 1897.

The plaintiff in error was in the employment of the defendant in error as a common laborer. While on a hand car on the road, proceeding to his place of work, he was run into by a train, and seriously injured. It was claimed that the collision was caused by carelessness and negligence on the part of other employes of the company, roadmaster, foreman of the gang of laborers, conductor, etc. *Held*, that the co-employes whose negligence was alleged to have caused the injury were fellow-servants of the plaintiff, and hence that the defendant was not liable for the injuries caused by that negligence.

THE case is stated in the opinion.

Mr. Neill B. Field for plaintiff in error.