belong to citizens of the United States." But as only a small part of the cargo was insured by the Boston company, this averment contains no information that any other than John Boonen Graves was interested in the particular policy then to be entered into. In the letter, there is another expression which has been much relied on. It is, "on this vessel's cargo *we* want insurance." This expression has been considered as sufficiently indicating that the application was made in behalf of more than one person; and this expression has produced the principal difficulty of the case; *but on reflection, it has been thought too ambiguous, to authorize a change in the legal import of a written contract. [*444

The description obviously relates to the whole cargo; but the application for insurance was only for a part of it. If that application was made, in the name of Graves only, it was no unreasonable supposition, that the other parties concerned might be separately insured, and that the policy then required was designed to cover Graves only. That the application was so made, must be inferred from the circumstance, that the policy was so framed, at a time when there could be no motive for varying it from the insurance applied for; and that Sigourney does not allege himself to have made any communications to the president, indicating a wish to insure others than Graves.

These grounds are too equivocal, to warrant the court in varying a written contract, in a case attended with the circumstances which appear in the present. The policy was in the possession of the agent for the plaintiffs, and ought to have been understood by him, before it was executed; he retained it in his possession for several months, before a mistake was alleged. Under such circumstances, the information given to the insurance company ought to be very clear, to justify a court of equity in conforming the policy to the intention of one of the parties, which was not communicated to the other, until the loss had happened.

Under the circumstances of the case, a court of equity cannot relieve against the mistake which has been committed; and as the remedy of the plaintiff, Graves, on the policy, to the extent of his interest, is complete at law, the decree of the circuit court, dismissing his bill, must be affirmed.

Judgment affirmed.

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*Hepburn & Dundas *v.* Ellzey. (*a*) [*445

Jurisdiction.—Citizenship.

A citizen of the District of Columbia cannot maintain an action against a citizen of Virginia, in the circuit court for the Virginia district. A citizen of the District of Columbia is not a citizen of a state, within the meeting of the constitution.[1]

This was a question certified from the Circuit Court for the fifth circuit, holden in the Virginia district, on which the opinions of the judges of that court were opposed. (2 U. S. Stat. 159, § 6.)

(*a*) Present, Marshall, Ch. J., Cushing, Paterson, Chase and Washington, Justices.

[1] Wescott *v.* Fairfield Township, Pet. C. C. 45; Vane *v.* Mifflin, 4 W. C. C. 519. Nor the citizen of a territory. New Orleans *v.* Winter, 1 Wheat. 91.

The certificate set forth that "in this cause it occurred as a question, whether Hepburn & Dundas, the plaintiffs in this cause, who are citizens and residents of the district of Columbia, and are so stated in the pleadings, can maintain an action in this court against the defendant, who is a citizen and inhabitant of the commonwealth of Virginia, and is also stated so to be in the pleadings, or whether, for want of jurisdiction, the said suit ought not to be dismissed."

E. J. Lee, for the plaintiffs.—This question arises under the 2d section of the 3d article of the constitution of the United States, which defines the jurisdiction of the courts of the United States. The particular words of the section which apply to the question, are those declaring that the jurisdiction of the courts of the United States shall extend "to controversies between citizens of different states." If such words are used in the constitution as, according to their literal meaning, will give jurisdiction to the court, it is all that is necessary to be established.

It is essential, in determining this question, to ascertain the import of the term "states," which, in itself, is a vague expression. It will sometimes mean an extent of country within certain limits, within which the authority of the neighboring country cannot be lawfully exercised. It sometimes means the government which is established in separate parts of a territory occupied by a political society. It may also be said to be a society by which *446] a multitude of people unite together under *the dependence of a superior power for protection. 2 Burlemaqui 21. And sometimes, it means a multitude of people united by a communion of interest and by common laws. This is the definition given by Cicero.

Either of the above definitions will bring the district within the meaning of the constitution. It is certainly such an extent of country as excludes from within its limits the force and operation of the laws of the governments which adjoin it. There exists within it a political society, with a government over it. That government, for all general concerns of the society, is the congress and President of the United States. And as to its local concerns, there are subordinate authorities acting under the superintendence of the national government. This political society is dependent upon the superior power of the United States.

It is not essential to the formation of a state, that the members of it should have the power, in all cases, of electing their own officers; but it is sufficient that there are certain rules laid down either by themselves, or those by whom they have submitted to be governed, for their conduct.

The people of the district are governed by a power to which they have freely submitted. They do not possess, in as great degree, the rights of sovereignty, as those people who inhabit the states. And if the free exercise of all the rights of sovereignty, uncontrolled by any other power, is essential in the formation of a state, none of those sections of the country which form the United States are entitled strictly to the appellation of a "state;" for there are certain rights of sovereignty which they cannot exercise in their state capacity, such as regulating commerce, making peace and war, &c.

The term "states," as used in the constitution, may, according to the subject-matter, be understood in either of the above senses. It has been understood by a majority of the judges of this court, in the case of *Chis-*

holm's Executors v. *State of Georgia*, 2 Dall. 457, to mean the government.

*The idea, that those territories which are under the exclusive government of the United States, are to be considered in some respects as [*447 included in the term "states," as used in the constitution, is supported by the acts of congress. In the 2d paragraph of the 2d section of the 4th article of the constitution, it is declared, that "a person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." It is also declared in the same article of the constitution, that "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

Congress, in prescribing the mode of executing the powers contained in these clauses of the constitution, passed a law, dated February 12th, 1793, c. 7, § 1 (1 U. S. Stat. 302), which declares, "that whenever the executive authority of any state in the union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled," and shall produce such evidence of the fact as is prescribed by the act, the person so escaping shall be surrendered, &c. A similar provision, with respect to persons held to labor or service under the laws of the states or territories, is contained in the same act of congress.

If these territories are not, as to some purposes, included in the term "states," used in the above clauses of the constitution, congress could not constitutionally pass a law making it the duty of the executive of a state to comply with such a requisition of the executive of one of those territories. If they are thus included, why may they not also be included in that part of the constitution which uses the same term, "states," in defining the jurisdiction *of the courts? The citizens of the territories are subject to the same evil, if they are obliged to resort to the [*448 state courts, which was intended to be remedied by that clause of the constitution which authorizes citizens of different states to resort to the federal courts. And if, being within the same evil, authorized congress to give a latitude to the term "states," in one part of the constitution, the same reason will authorize the same construction of the same term in another part.

The words of the constitution only authorize such a requisition to be made by the executive of a state, upon the executive of another state. It must, therefore, be acknowledged, either that the territories are included in the term states, or that the act of congress is unconstitutional. As a further proof of the same construction of the word state, congress, by the 6th section of the act supplementary to the act concerning the district of Columbia, have enacted, that in all cases where the constitution or laws of the United States provide that criminals and fugitives from justice, or persons held to labor in any state, escaping into another state, shall be delivered up, the chief justice of the said district shall be, and he is hereby required to cause to be apprehended and delivered up such criminal, &c., who shall be found within the district.

Independently of these considerations, it seems to be agreeable to the first principles of government, that all persons who are under the peculiar and exclusive government and protection of a particular power, have, as it were, a natural claim upon that power for protection and redress of wrongs. And that the courts of the United States are the most proper tribunals to which the people of the District of Columbia can apply for redress, in all cases where the aggressor can be found within the jurisdiction of those courts. It seems to be a denial of that protection which the United States are bound to afford to those who reside under their exclusive jurisdiction, to say, that because you may sue your debtor in a foreign tribunal (if I may use the expression), therefore, you shall not resort to our own courts, although your debtor may be found within our jurisdiction. The framers of the constitution could never have supposed it necessary to declare, in express terms, that the courts of the United States should have power to hear and decide on the complaints of one of the citizens of those districts that
*449] were under the exclusive government and care of the *United States, to whom alone allegiance was due. They could not have intended to deny to that part of the citizens of the United States who inhabit the territories, the privileges which were granted to citizens of particular states, and even to foreigners ; especially, the right of resorting to an impartial tribunal of justice. When they permitted aliens to resort either to the state or to the federal courts, they could not mean to confine one of their own exclusive citizens to a remedy in the state courts alone. It would be strange, that those citizens who owe no allegiance but to the United States, should be debarred from going into the courts of the United States for redress, when that privilege is granted to others, in like circumstances, who owe allegiance to a foreign, or to a state government.

C. Lee, contrà.—This is a new question, which has arisen in consequence of the cession of the district of Columbia, by the states of Virginia and Maryland, to the United States.

The words of the constitution do not take in the case, and the act of congress is also too narrow. The constitution is a limited grant of power. Nothing is to be presumed but what is expressed.

It is contended, that a citizen of the district of Columbia is a citizen of a state. It is said, that he is a citizen of the United States, and not being a citizen of the same state with the defendant, he must be a citizen of a different state. But there may be a citizen of the United States, who is not a citizen of any one of the states. The expression a citizen of a state, has a constitutional meaning. The states are not absolutely sovereigns, but (if I may use the expression) they are demi-sovereigns. The word state has a meaning peculiar to the United States. It means, a certain political society forming a constituent part of the union. There can be no state, unless it be entitled to a representation in the senate. It must have its separate executive, legislative and judicial powers. The term may also comprehend a number of other ideas.

Even if the constitution of the United States authorizes a more en-
*450] larged jurisdiction than the judiciary act of 1789 *has given, yet the court can take no jurisdiction which is not given by the act. I, therefore, call for the law which gives a jurisdiction in this case. The

jurisdiction given to the federal courts, in cases between citizens of different states, was, at the time of the adoption of the constitution, supposed to be of very little importance to the people. See the Debates in the Virginia Convention, p. 109, 122, 128.

In no case from any one of the territories has this court ever considered itself as having jurisdiction; and in that of *Clark* v. *Bazadone* (1 Cr. 212), the writ of error was quashed, because the act of congress had not given this court appellate jurisdiction in cases from the territories.

This is not a case between citizens of different states, within the meaning of the constitution. And in the case of *Bingham* v. *Cabot*, 3 Dall. 382, it was decided by this court, that the courts of the United States were courts of limited jurisdiction, and that it must appear upon the record, that the parties were citizens of different states, in order to support the jurisdiction.

E. J. Lee, in reply.—A law was not necessary to give the federal courts that jurisdiction which is provided for by the constitution. It was only necessary to limit the amount of the claims which should come before the different inferior courts. If a demand should be made by the executive power of the district of Columbia, upon the executive of a state to deliver up a fugitive from justice, the constitution would apply, and oblige the state executive to respect the demand. If the term *state* is to have the limited construction contended for by the opposite counsel, the citizens of Columbia will be deprived of the general rights of citizens of the United States. They will be in a worse condition than aliens.

By the 4th article of the constitution of the United States, § 1, "Full faith and credit shall be given, in *each state, to the public acts, records and judicial proceedings of every other state." If the district [*451
of Columbia is not to be considered as a state for this purpose, there is no obligation upon the states to give faith or credit to the records or judicial proceedings of this district. But congress, in carrying into effect this provision of the constitution, by the act of March 27th, 1804 (2 U. S. Stat. 298), has expressly declared, that it "shall apply as well to the public acts," &c., "of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts," &c., "of the several states," thereby giving another clear legislative construction to the word *states*, conformable to that for which we contend.

Again, by the 9th section of the 1st article of the constitution of the United States, "no tax or duty shall be laid on articles exported from any state." Can congress lay a tax or duty on articles exported from the district of Columbia, without a violation of the constitution? By the same section, "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." Can congress constitutionally give a preference to the ports of the district of Columbia over those of any of the states? The same section says, "nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another." Can vessels sailing to or from the district of Columbia be obliged to enter, clear or pay duties in Maryland or Virginia? Yet all this may be done, if the rigid construction contended for, be given to the word *state*.

It is true, that the citizens of Columbia are not entitled to the elective

franchise, in as full a manner as the citizens of states. They have no vote in the choice of president, vice-president, senators and representatives in congress. But in this, they are not singular. More than seven-eighths of the free white inhabitants of Virginia are in the same situation. Of the white population of Virginia, one-half are females; half of the males probably are under age; and not more than one-half of the residue are freeholders, and entitled to vote at elections. The same case happens in some degree
*452] in all the states. A great majority *are not entitled to vote. But in every other respect, the citizens of Columbia are entitled to all the privileges and immunities of citizens of the United States.

Marshall, Ch. J., delivered the opinion of the court.—The question in this case is, whether the plaintiffs, as residents of the district of Columbia, can maintain an action in the circuit court of the United States for the district of Virginia. This depends on the act of congress describing the jurisdiction of that court. That act gives jurisdiction to the circuit courts in cases between a citizen of the state in which the suit is brought, and a citizen of another state. To support the jurisdiction in this case, therefore, it must appear that Columbia is a state.

On the part of the plaintiffs, it has been urged, that Columbia is a distinct political society; and is, therefore, "a state," according to the definitions of writers on general law. This is true. But as the act of congress obviously uses the word "state" in reference to that term as used in the constitution, it becomes necessary to inquire whether Columbia is a state in the sense of that instrument. The result of that examination is a conviction that the members of the American confederacy only are the states contemplated in the constitution.

The house of representatives is to be composed of members chosen by the people of the several states; and each state shall have at least one representative. The senate of the United States shall be composed of two senators from each state. Each state shall appoint, for the election of the executive, a number of electors equal to its whole number of senators and representatives. These clauses show that the word state is used in the consti-
*453] tution as designating a member of the union, and excludes *from the term the signification attached to it by writers on the law of nations. When the same term which has been used plainly in this limited sense, in the articles respecting the legislative and executive departments, is also employed in that which respects the judicial department, it must be understood as retaining the sense originally given to it.

Other passages from the constitution have been cited by the plaintiffs, to show that the term state is sometimes used in its more enlarged sense. But on examining the passages quoted, they do not prove what was to be shown by them.

It is true, that as citizens of the United Sates, and of that particular district which is subject to the jurisdiction of congress, it is 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.

The opinion to be certified to the circuit court is, that that court has no jurisdiction in the case.