

Without deciding whether we would follow those decisions in a similar case arising in this District, it is sufficient to say, that there is an obvious distinction between the liability of stockholders to the amount of their stock, which is a part of the obligation assumed when the stock is taken and which is an exact sum, ascertainable by the number of shares owned by the shareholder, and the case of the managing trustees, jointly liable for a violation of their trust to all the creditors of the corporation who may be injured thereby.

In the Supreme Judicial Court of Massachusetts, under the identical form of words which we are construing in the present case, it has been repeatedly decided that the only remedy is a suit in equity, in which all the creditors are parties; and that even in equity one creditor cannot sue alone, but must either join the other creditors, or bring his suit on behalf of himself and all the others. And while the case is considered in reference to remedies afforded by the statute, it is placed on the solid ground, that the fund, by the statute, consists of the excess of all debts over the capital, and that there are various parties having several and unequal claims against the fund, which exceed it in amount. A demurrer to the action at law was sustained on these grounds in the *Merchants' Bank of Newburyport v. Stevenson and Others*, 10 Gray, 232. See also *Crease v. Babcock*, 19 Met. 501; 5 Allen, 398. The same principle is held by this court in the recent case of *Pollard v. Bailey*, 20 Wall. 520, which, we think, disposes of the one before us.

Judgment affirmed.

YZNAGA DEL VALLE v. HARRISON ET AL.

As the Code of Practice of Louisiana provides that all definitive or final judgments must be signed by the judge rendering them, this court, under sect. 691 of the Revised Statutes, as amended by the act of Feb. 16, 1875 (18 Stat. 316), cannot, where the matter in dispute does not exceed the sum or value of \$5,000, exclusive of costs, review the judgment of a circuit court of the United States sitting in that State, signed subsequently to May 1, 1875.

MOTION to dismiss a writ of error to the Circuit Court of the United States for the District of Louisiana.

Mr. Edward Janin for the defendants in error, in support of the motion.

Mr. Thomas J. Durant and *Mr. C. W. Hornor* for the plaintiff in error, in opposition thereto.

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

The judgment in this case is for less than \$5,000, and was given April 9, 1875. A motion for new trial, entered and filed April 13, was overruled, after argument, May 8. The judgment as given was signed by the judge May 10, 1875.

A motion to dismiss for want of jurisdiction is now made, because the matter in dispute is less than \$5,000. This writ of error was issued under sect. 691 of the Revised Statutes, as amended by the act of Feb. 16, 1875 (18 Stat. 316), which provides for the re-examination in this court of all final judgments of the circuit courts rendered previous to May 1, 1875, where the matter in dispute exceeds the sum or value of \$2,000, and of such as were rendered after that date where it exceeds \$5,000. The only question presented by this motion is whether the judgment of the Circuit Court was "rendered" before or after May 1, 1875. If before, we have jurisdiction; if after, we have not.

By the Code of Practice of Louisiana, "the judge must sign all definitive or final judgments rendered by him; but he shall not do so until three judicial days have elapsed, to be computed from the day when such judgments were given." Art. 545, Code 1870; art. 546 of former Code. This, by the operation of sect. 914 of the Revised Statutes (which is a reproduction of sect. 6 of "An Act to further the administration of justice," passed June 1, 1872, 17 Stat. 197), is now by law a rule of practice for the courts of the United States within that State; and it seems, that, as early as 1828, the District Court of the United States in Louisiana had adopted it as a rule of that court. Such being the case, this court held, in *Life and Fire Insurance Company of New York v. Wilson's Heirs*, 8 Pet. 303, decided in 1834, that "the judgment, without the signature of the judge, cannot be enforced. It is not a final judgment on which a writ of error may issue for its reversal. Without the

action of the judge, the plaintiffs can take no step. . . . They can neither issue execution on the judgment, nor reverse the proceedings by writ of error." This is in accordance with the settled practice in Louisiana, and is decisive of this case. *Stark v. Burke*, 9 La. Ann. 345; *Sprigg v. Wells*, 5 Mart. n. s. 105; *Ex parte Nicholass*, 4 Rob. 53; *Mech. & Tr. Bank N. O. v. Walter*, 7 id. 451; *Succession of Arbridge*, 1 La. Ann. 207; *McWillie v. Perkins*, 20 id. 169. As only final judgments can be re-examined here upon writs of error, the judgment to be "rendered," which the statute refers to, must be the final judgment. That judgment is not rendered in Louisiana until it is signed by the judge. In other States, the rule in this respect may be different; and in *Silsby v. Foote*, 20 How. 295, we said, "The time to be taken as when the judgment or decree may be said to be rendered or passed may admit of some latitude, and may depend somewhat upon the usage and practice of the particular court." But this being a judgment in Louisiana, and not having been signed until after May 1, was not rendered, according to the practice in that State, before that date; and consequently the writ must be dismissed for want of jurisdiction.

SHAW *v.* UNITED STATES.

Where a steamer, lying at the time at the wharf at St. Louis, was taken into the service of the United States by a quartermaster of the United States, for a trip to different points on the Mississippi River, the compensation for the service required being stated at the time to the captain, and no objection being made to the service or compensation, and the service was rendered, the possession, command, and management of the steamer being retained by its owner, — *Held*, that the United States were charterers of the steamer upon a contract of affreightment, and that they were not liable, under such a contract, to the owner for the value of the steamer, though she was destroyed by fire whilst returning from the trip, without his fault.

APPEAL from the Court of Claims.

The court below found the facts as follows: —

That on the seventeenth day of September, 1863, the steam-boat "Robert Campbell, Jr.," of which the claimant was and continued to be the sole owner, when lying at the wharf in the