from the evidence aforesaid they should be of opinion that the directors of the company had permitted the said credits to be given, and had acquiesced in the same, the defendant would not be liable for the merchandise sold on credit, and appearing on the books of the company;" which instruction the court refused, and instructed the jury, "that the evidence did not, in law, justify an inference that the directors, acting as a board under the articles, had authorized the agent to sell the merchandise aforesaid, on credit, and that the agent could not, in law, be justified in selling on credit by any direction of the directors, individually made, when not acting as a board under the articles;" to which opinion and instruction the counsel for defendant excepted.

Swann, for the plaintiff in error, argued that the bond must conform to the articles of association, which was not incorporated. He cited the case of the Commonwealth v. Fairfax et al., where the words, "so long as he shall continue in office," in the condition of a sheriff's bond, were construed not to extend to a second and new appointment.

Lee, for the defendant in error, was stopped by the court.

91*] *Marshall, Ch. J. The case of the sheriff's bond is very different. The commission of sheriff, in Virginia, is annual; of course, his sureties are bound for one year only. It is true, the directors of this company are elected annually; but the company has not said that the agent shall be for one year only; his appointment is during pleasure. The sureties do not become sureties in consequence of their confidence in the directors, but of their confidence in the agent whose sureties they are. the court is unanimously of the opinion that the judgment of the Circuit Court ought to be affirmed.

Judgment affirmed.

[Constitutional Law.]

THE CORPORATION OF NEW ORLEANS v. WINTER et al.

A citizen of a territory cannot sue a citizen of a state in the courts of the United States, nor can those courts take jurisdiction by other parties being joined, who are capable of suing. All the parties on each side must be subject to the jurisdiction, or the suit will be dismissed.

ERROR from the District Court for the District of Louisiana. The defendants in error commenced their suit in the said court to recover the possession and property of certain 92*] lands in the city of New *Orleans; claiming title as the heirs of Elisha Winter, deceased, under an alleged grant from the Spanish government, in 1791; which lands, it was stated, were afterwards reclaimed by the Baron de Carondelet, governor of the province of Louisiana, for the use of fortifications. One of the parties, petitioners in the court below, was described in the record as a citizen of the state of Kentucky, and the other as a citizen of the Mississippi territory. The petitioners recovered a judgment in the court below, from which a writ of error was brought.

Winder, for the plaintiffs in error. The court below had no jurisdiction of the cause. The case of Hepburn & Dundas v. Ellzey[1] determined that a citizen of the District of Columbia could not sue a citizen of the state of Virginia in the courts of the United States. The subsequent case of Strawbridge et al. v. Curtis et al.,[2] shows that all the parties on the one side, and all the parties on the other, must be authorized to sue and be sued in those courts, or there is a defect of jurisdiction. The right of action was joint, but they might have severed it, which they did not, and they are incompetent to join in point of jurisdiction.

Key, contra. A citizen of the Mississippi territory has a right to sue in the courts of the United States. This point was left open in the decision of *the case of Sere v. Pitot.[3] [*93 There is a manifest distinction, in this respect, between the right of a citizen of the District of Columbia and the Mississippi territory. The jurisdiction of the District Court of Louisiana is the same with that of Kentucky. The several territories are "members of the American confederacy." The constitution puts the citizens of the District of Columbia on the same footing with inhabitants of lands ceded for the use of dockyards, etc.; they are not "members of the American confederacy." The district has no legislative, executive, nor judicative authority, power, or privileges. The territories have them all. They are in a sort of minority and pupilage; have the present right of sending delegates to Congress, and of being hereafter admitted to all the immunities of states, in the peculiar sense of the constitution. In this case, each party takes an undivided interest, and has a right to a separate action, whether the inheritance be of moveable or of real property.

Harper, in reply. There is no distinction, in this particular, between the District of Columbia and the territories. Congress might give to the district a delegate, with the same privileges as the delegates from the territories. The United States are the common sovereign of all these communities; and may grant or refuse this, or any other privilege, at their pleasure. The action is brought jointly, not each claiming his several part; and the court cannot *disconnect the parties. The petitioners [*94 complain under the civil law, by the rules of which it is not competent for them to sever. Spanish law, which prevailed in Louisiana before its acquisition by this country, is a modification of the Roman. By the civil law, inheritances of real, as well as personal property, are joint. What is the mode of proceeding? Though ambiguous and mixed, it is chiefly the civil law process, like our chancery proceedings. All parties must, therefore, regularly have been before the court.

Marshall, Ch. J., delivered the opinion of the court, and, after stating the facts, proceeded as follows:

The proceedings of the court, therefore, is arrested in limine, by a question respecting its

NOTE.—Diverse citizenship as ground of Federal jurisdiction, see notes to 1 L. ed. U. S. 640; 2 L. ed. U. S. 435; 7 L. ed. U. S. 287; 36 L. ed. U. S. 579.

1.—2 Cranch, 445.
2.—3 Cranch, 262.
3.—6 Cranch, 336.

jurisdiction. In the case of Hepburn & Dundas v. Ellzey,[1] this court determined, on mature consideration, that a citizen of the District of Columbia could not maintain a suit in the Circuit Court of the United States. That opinion is still retained.

It has been attempted to distinguish a territory from the District of Columbia; but the court is of opinion that this distinction cannot be maintained. They may differ in many respects, but neither of them is a state, in the sense in which that term is used in the constitution. Every reason assigned for the opinion of the court, that a citizen of Columbia was not capable of suing in the courts of the United States, under the judiciary act, is equally applicable to a citizen of a territory. Gabriel 95*] Winter, then, *being a citizen of the Mississippi territory, was incapable of maintaining a suit alone in the Circuit Court of Louisiana. Is his case mended by being associated with others who are capable of suing in that court? In the case of Strawbridge et al. v. Curtis et al.[2] 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. The Circuit Court of Louisiana therefore, had no jurisdiction of the cause, and their judgment must, on that account, be reversed, and the petition dismissed.

Judgment reversed.

96*] *[Instance Court.]

THE AURORA. Walden et al., Claimants.

A hypothecation of the ship by the master is invalid, unless it is shown by the creditor that the advances were necessary to effectuate the objects of the voyage, or the safety of the ship, and the supplies could not be procured upon the owner's credit, or with his funds, at the place.

A bottomry bond given to pay off a former bond, must stand or fall with the first hypothecation, and the subsequent lenders can only claim upon the same ground with the preceding, of whom they are virtually the assignees.

APPEAL from the Circuit Court for the District of Pennsylvania. The brig Aurora, commanded by Captain Owen F. Smith, and owned by the claimants, sailed in July, 1809, from New York, on a trading voyage to the Brazils, and from thence to the South Sea Islands, for the purpose of procuring a cargo for the market of Canton or Manilla; with liberty, after completing this adventure, to continue in this trade, or engage in that between Canton and the north-west coast of America. The brig duly arrived at Rio Janeiro, where the principal part of her outward cargo was sold, and from thence proceeded to Port Jackson, in New Holland. At this port, the brig underwent considerable repairs; on account of which, advances and supplies were furnished by Messrs. Lord & Williams, who were merchants there. The original objects of the voyage seem here to have *been lost sight of, [*97 and the brig was chartered by the master, to Messrs. Lord & Williams, for a voyage of discovery, and was actually retained in their service for about a year, under this engagement. At the end of this time the brig had returned to Port Jackson, and Captain Smith was here put in jail, by some persons whose names are unknown, for debts contracted, as it was asserted or supposed, on account of the vessel, and was relieved from imprisonment by Messrs. Lord & Williams. About this time, viz., in July, 1811, the brig was again chartered to Messrs. Lord & Williams, for a voyage from Port Jackson to Calcutta, and back to Port Jackson; and a bottomry bond was executed for the same voyage by Captain Smith, in favor of Messrs. Lord & Williams, for the sum of £1,482 6 1, and interest at nine per cent., being the amount, as the bond expresses it, of "charges incurred for necessaries and stores, found and provided by Messrs. Lord & Williams, of, etc., at various times and places, for the use of the said brig." The vessel duly proceeded to Calcutta, and landed her cargo there; but being prevented, as it was alleged, by the British government in Calcutta, from returning to Port Jackson, the voyage was broken up. In December, 1811, Captain Smith entered into a contract with the libelants, Messrs. Chamberlain & Co., at Calcutta, by which he engaged to charter the brig to them, to carry a cargo on their account to Philadelphia, for the gross freight of 12,000 sicca rupees, to be paid to him in advance in Calcutta; and also, to give the charterers the appointment of the master for the voyage. *He further agreed, in [*98 consideration of the libelants paying the bottomry bond of Messrs. Lord & Williams, and advancing any sums necessary for the repairs and supplies of the ship, to execute a bottomry bond to them for the same voyage, for the principal sum thus paid and expended, and 20 per cent. interest. In pursuance of this agreement, on the 17th of December, a certain captain George Lee, with the assent of Smith, was appointed by the libelants to superintend the repairs, equipments, and loading of the brig, and afterwards sailed as master on the voyage. A bottomry bond, for 18,000 sicca rupees, was formally executed by Captain Smith on the 23d, and a charter-party on the 26th December. In the latter part of January, 1812, Captain Smith resigned his nominal command of the ship to Captain Lee, and delivered to him the ship's papers and letters for the owners. The ship duly sailed on the voyage, and arrived at Philadelphia, and there safely delivered her cargo. The advance freight was paid to Captain Smith, according to the contract, and he remained behind at Calcutta, under the pretense that, with this advance freight, it was his intention to prosecute the plan of his original voyage, and to endeavor to repair the losses sustained by his former conduct. It also appeared in evidence

1.—2 Cranch, 445.
2.—3 Cranch, 262.

NOTE.—What contracts will support maritime lien; bottomry, see note to 70 L.R.A. 418.