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States, by the third section of the act of 1828, authorizing them to alter final process, so far as to conform it to any change which may be adopted by the legislatures of the respective states, for the state courts; there is the same danger to be apprehended as from state legislation, and state adjudications on the same subject. And therefore, no rule ought to be made, without the concurrence of the circuit judge. No rule made by a district judge will, therefore, be recognised by this court as binding, except those made by district courts exercising circuit court powers. The statute of Mississippi, taking away the right to a writ of error, in the case of a forthcoming bond forfeited, can have no influence whatever in regulating writs of error to the circuit courts of the United States; a rule of court adopting the statute as a rule of practice would, therefore, be void.

Regarding the forthcoming bond as part of the process of execution, a refusal to quash the bond is not a judgment of the court, and much less is it a final judgment; and therefore, no writ of error lies in such a case. 6 Pet. 648. But in this case, the writ of error is not to the supposed judgment, in refusing to quash the forthcoming bond, but to the principal judgment. It has been sued out and prosecuted by one of several joint defendants; and without asking that the other defendants should be summoned and served; the defendant in error has, however, appeared and defended the suit, and thereby waived the irregularity. But one error has been assigned to the judgment of the court, the other two apply to the final process. The judgment of the court below must, therefore, be affirmed for the reasons here stated.

Judgment affirmed.

*JOHN A. GIBSON and KINCHEN A. MARTIN, Plaintiffs in error, v. [*315
BEVERLY CHEW, Defendant in error.

Jurisdiction.—Choses in action.

The circuit courts of the United States have not cognisance of any suit to recover the contents of a promissory note or other *choses in action*, in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made; except in cases of foreign bills of exchange.

Error to the Circuit Court for the Southern District of Mississippi. An action was instituted in the circuit court of the United States for the southern district of Mississippi, by Beverly Chew, a citizen of the state of Louisiana, against John A. Gibson and Kinchen A. Martin, citizens of the state of Louisiana. The action was brought to recover the amount of a promissory note drawn by John A. Gibson, in favor of, and indorsed by, Kinchen A. Martin, for \$3500, and indorsed over to the plaintiff.

The declaration set out the promissory note, the maker and indorser of the same being included in the same writ, under the provisions of an act of the legislature of Mississippi; which had been adopted as a rule of practice in the circuit court, by order of the district judge holding the circuit court. The defendants appeared to the action, and having demurred to the plaintiff's declaration, filed the following causes of demurrer. 1. This court has no jurisdiction, the plaintiff, in his declaration, being the assignee of Kinchen A. Martin, who is a citizen of the same state with the maker of the note

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sued on, as declaration avers. 2. The declaration does not aver defendants to be residents of the southern district of Mississippi. The demurrer was overruled, and the defendants having refused to plead to the merits of the action, judgment was rendered in favor of the plaintiff. The defendants prosecuted this writ of error.

*316] *The case was argued by *Walker*, for the plaintiffs in error; and by *Key*, for the defendants.

Walker, for plaintiffs in error, stated, that this was a suit against the maker and indorser of a promissory note, both being alleged in the declaration to be citizens of the state of Mississippi. Then, by the 11th section of the judiciary act of the 24th September 1789, no suit could be prosecuted in the court below against the maker of the note. It is said, a state law authorizes this proceeding; but no state law can repeal, or be intended to repeal, an act of congress limiting the jurisdiction of the courts of the United States. By the act of congress, the courts of the Union are expressly deprived of all jurisdiction in this case; and such jurisdiction cannot be conferred by a state law, especially, in direct opposition to an act of congress in full force and unrepealed.

Key, for the defendant in error.

WAYNE, Justice, delivered the opinion of the court.—This suit was brought in the circuit court of the United States for the southern district of Mississippi, by the defendant in error, as the indorsee of a promissory note, made in Mississippi, of which the plaintiff in error, Martin, was the payee, and the plaintiff, Gibson, the maker; both maker and payee being citizens of the state of Mississippi, when the note was made.

The jurisdiction of the court is denied, and the plea should have been sustained in the court below, as the circuit courts of the United States have not cognisance of any suit to recover the contents of any promissory note or other *choses in action*, in favor of an assignee, unless a suit might have been prosecuted in such court, to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange. See the 11th section of the act to establish the judicial courts of the United States. (1 U. S. Stat. 78.) The judgment of the court below is reversed.

Judgment reversed.

*317] * *MARTHA BRADSTREET*, demandant, Plaintiff in error, *v.* *WILLIAM F. POTTER*, tenant, Defendant in error.

Practice on appeal.—Costs.

The questions presented to this court on the writ of error, being the same with those in *Bradstreet v. Thomas*, 12 Pet. 174, the judgment of the circuit court, in favor of the defendant in error, was reversed.

The counsel for the plaintiff and defendant in error having applied to the court to hear the case upon other points presented in the briefs of the plaintiff and the defendant, in order to obtain the judgment of the court upon these points, for the direction of the circuit court on the further trial of the cause; the court said: The court cannot give any opinion upon points not properly before it, those points not being in the bill of exceptions filed in the record to the