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 *chose 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

ruling of the circuit court; the proper functions of a court on a writ of error is to pass judgment upon the points excepted to in the opinion of the court below; and not to decide the law of the case, in anticipation of its trial in the circuit court.

The rule as to costs has been established by the 47th rule of this court. In all cases of reversal of any judgment or decree in the supreme court, except where the reversal shall be for want of jurisdiction, costs shall be allowed for the plaintiffs in error or appellants, as the case may be, unless otherwise ordered by the court.

ERROR to the Circuit Court for the Northern District of New York. The case had been tried in the circuit court for the northern district of New York, on a writ of right, sued out by the demandant, the plaintiff in error, for the recovery of certain lands in the county of Oneida, in the state of New York. After various proceedings in the case, the court gave judgment for the tenant, and this writ of errer was prosecuted by the demandant. The whole of the questions in this writ of error were the same with those presented to the supreme court in the case of Bradstreet *v.* Thomas, 12 Pet. 174.

Jones, for the demandant, and plaintiff in error: and *Beardsley*, for the defendant; it having been agreed by them, that the judgment of the circuit court must be reversed, on the authority of the case of *Bradstreet* v. *Thomas*, 12 Pet. 174; they united in an application to the court to take up the case on the merits, in order to obtain the decision of the court upon
*318] the *whole case; to be used in the circuit court on the trial of the cause, when it should be remanded under the order of this court.

Beardsley also presented to the court a question whether the defendant in error should be subjected to costs, if no judgment was given by this court on the merits of the cause.

WAYNE, Justice, delivered the opinion of the court.—It is admitted by the counsel for the defendant in error, that the case presents upon the record no other exceptions than such as were before this court, in the case of *Bradstreet* v. *Thomas*, 12 Pet. 174. That case then rules it, and the judgment in the court below must be reversed.

But it is now suggested, that both parties desire to obtain the opinion of the court upon ulterior points in the case, as stated in their respective briefs, so as to have those points settled for the new trial of the cause, when remanded, for the errors of procedure adjudicated in the former case of *Bradstreet* v. *Thomas*; because, from the terms of this court's opinion in that case, it seems doubtful, if the court could regularly consider and determine those questions, upon the bill of exceptions, as now framed; though it be the mutual desire of the parties to get the court's opinion upon those questions. It is only necessary to say, in reply to this suggestion, that the court cannot give any opinion upon points not properly before it, from those points not being in the bill of exceptions filed in the record to the court's ruling below. The proper function of a court, on a writ of errer, is to pass its judgment upon the points excepted to in the opinion of the court below; and not to decide the law of the case, in anticipation of its trial in the court below.

In respect to costs upon cases brought to this court, the rule is, as may be seen in the 47th rule of the court prefixed to 8 Peters's reports; that in all cases of reversals of any judgment or decree in this court, except where the reversal shall be for want of jurisdiction, costs shall be allowed in this court for the plaintiff in error, or appellant, as the case may be, unless other-

wise ordered by the court. The question as to costs in the circuit court is not before us. The judgment in the court below is reversed.

Judgment reversed.

---

*319] *James Roach, Administrator of Philip Roach, Plaintiff in error, *v.* David W. Hulings, Defendant in error.

Error.—Process act.—Exceptions.

The jury, in rendering their verdict, failed to respond separately to the distinct issues they were sworn to try. The defendant had pleaded three pleas: 1. Covenants performed: 2. Payment: 3. Set-off, greater in amount than the claim of the plaintiff. On these three pleas, the jury gave a general verdict of damages in favor of the plaintiff, on which judgment was entered; in the circuit court, no exception waa taken to the verdict. The counsel for the plaintiff contended, that this was error in the circuit court, which was properly to be corrected in the supreme court. Objections of this character, that are neither taken at the usual stage of the proceedings, nor prominently presented on the face of the record, but which may be sprung upon a party, after an apparent waiver of them by his adversary, and still more, after a trial on the merits, can have no claim to the favor of the court; but should be entertained in obedience only to the strict requirements of the law. The three issues were joined on affirmative allegations by the defendant, and the verdict was for the plaintiff on these issues; admitting that this verdict is not affirmatively responsive to these issues, it virtually answers and negatives them all; for if all or either of them had been true, the verdict was untrue; should the judgment, then, be arrested, this would be done neither from a necessity to guard the merits of the controversy, nor from the principles of sound inductive reasoning; but solely in obedience to an artificial and technical rule, which, however it may be founded in wisdom and promotive of good in general, yet, like all other rules, is capable of producing evil when made to operate beyond the objects of its creation.

The third section of the act of congress of 1789, to establish the judicial courts of the United States, which provides that no summary writ, return of process, judgment or other proceedings in civil cases, in the courts of the United States, shall be abated, arrested or quashed, for any defect or want of form, &c., although it does not include verdicts, *eo nomine*, includes judgments; and the language of the provision, "writ, declaration, judgment or other proceedings in civil causes," and further, "such writ, declaration, pleading, process, judgment or other proceeding whatsoever," is sufficiently comprehensive to embrace every conceivable step to be taken in a cause, from the emanation of the writ down to the judgment. Both the verdict and the judgment in this case are within the terms and intent of the statute, and ought to be protected thereby.[1]

In trials at law, while it is invariable true, that decisions on the weight of the evidence belong exclusively to the jury, it is equally true, that whenever instructions upon evidence are asked from the court to the jury, it is the right and duty of the former to judge of the relevancy, and by necessary implication, to some extent, upon the certainty and definiteness of the evidence proposed. Irrelevant, impertinent or immaterial statements, a court cannot be called upon to admit, as the groundwork of instructions; it is bound to take care that the evidence on which it shall be called upon to act is legal, and that it conduces to the issue on behalf of either the plaintiff or the defendant.

*320] *Error to the Circuit Court of the district of Columbia, and county of Washington. The defendant in error instituted an action of covenant, in the circuit court of the county of Washington, against Philip Roach, upon certain articles of covenant. Before the trial of the cause, the defendant died, and his administrator became the defendant in the suit, a verdict and judgment were rendered for the plaintiff, and the defendant prosecuted this writ of error.

---

[1] And see Parks *v.* Turner, 12 How. 39; Downey *v.* Hicks, 14 Id. 240; Railroad Co. *v.* Lindsay, 4 Wall. 650.