and without informing us what questions had been raised in the Circuit Court, upon which they differed.

Neither can this omission in the certificate be supplied by the causes of demurrer assigned by the defendant. The judges do not certify that they differed on the points there stated, or on either of them, and indeed the third ground there taken is as vague and indefinite as the certificate itself, and could not therefore help it, even if it could be invoked in its aid.

But we are bound to look to the certificate of the court alone for the question which occurred, and for the point on which they differed, and as this does not appear, we have no jurisdiction in the case, and it must be remanded to the Circuit Court.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Michigan, and on the point and question on which the judges of the said Circuit Court were opposed in opinion, and which was certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel; and it appearing to this court, upon an inspection of the said transcript, that no point in the case, within the meaning of the act of Congress, has been certified to this court, it is thereupon now here ordered and adjudged by this court, that this cause be and the same is hereby dismissed, and that this cause be and the same is hereby remanded to the said Circuit Court, to be proceeded in according to law.

JOHN C. SHEPPARD AND OTHERS, PLAINTIFFS IN ERROR, *v.* JOHN WILSON.

Where a writ of error was allowed, the citation signed, and the bond approved, by the chief justice of the Territorial court of Iowa, it was a sufficient compliance with the statutes of the United States.

Under the acts of 1789 and 1792, the clerk of the Circuit Court where the judgment was rendered may issue a writ of error, and a judge of that court may sign the citation, and approve the bond.[1]

*The act of 1838, providing that writs of error, and appeals from the final decision of the Supreme Court of the Territory, shall be allowed in the same manner and under the same regulations as from the Circuit [*211

[1] For a further decision in this case, see 6 How., 260.

Court of the United States, gives to the clerk of the Territorial court the power to issue the writ of error, and to a judge of that court the power to sign the citation, and approve the bond.

Mr. Grant moved to dismiss the writ of error in this case, upon two grounds.

1st. Irregularity in the allowance of the writ of error, and the citation.

2d. That since the rendition of the judgment Iowa had become a State, and cited 3 How., 534; 4 Id., 590.

Mr. C. Coxe opposed the motion. He stated that the writ of error had been allowed, the citation signed, and bond approved, all by a judge of the Supreme Court of the Territory of Iowa. He then referred to the acts of 1792 and 1838, and contended that there was no irregularity.

Mr. Hastings controverted these views, and sustained the motion to dismiss.

Mr. Chief Justice TANEY delivered the opinion of the court.

This case is brought up by a writ of error to the Supreme Court of the Territory of Iowa.

A motion has been made to dismiss it, upon the ground that the writ of error was allowed, the citation signed, and the bond approved, by the chief justice of the Territorial court, and not by one of the justices of a Circuit Court of the United States, or a justice of the Supreme Court, as required by the act of 1789, ch. 20, §. 22.

The act of 1838, ch. 96, § 9, under which this writ of error is brought, provides that writs of error and appeals from the final decision of the Supreme Court of the Territory shall be allowed and taken to this court in the same manner and under the same regulations as from the Circuit Court of the United States, where the value in controversy shall exceed one thousand dollars. And the act of 1789, which regulates writs of error from the Circuit Court, requires the citation to be signed by a judge of the Circuit Court in which the judgment was rendered, or by a justice of the Supreme Court; and that the judge or justice signing the citation shall take good and sufficient security for the prosecution of the writ of error, and the payment of the damages and costs if the plaintiff in error shall fail to make his plea good. And the act of May 8, 1792, ch. 36, § 9 (1 Stat. at L., 278), authorizes the clerks of the Circuit Court to issue writs of error in

the same manner as the clerk of the Supreme Court might have issued them under the act of 1789.

Under these two last-mentioned acts of Congress, the judgment of a Circuit Court may be brought up for reëxamination to the *Supreme Court, by a writ of error, issued by the clerk of the court in which the judgment was rendered, and the citation may be signed and the bond approved by a judge of the said court. And as the district judge is a member of the Circuit Court when sitting for his district, he may sign the citation and approve the bond. The act of 1838 having declared that writs of error may be prosecuted from the judgments of the Supreme Court of the Territory of Iowa to this court, in the same manner and under the same regulations as from Circuit Courts of the United States, it would seem to be very clear that the writ of error may be issued by the clerk of the Territorial court, and the citation signed and the bond approved by one of the judges. This is the plain import of the words of the law; and we think they cannot justly receive any other interpretation. There is certainly nothing in the object and purpose of the act of Congress calculated to create any doubt upon this subject, or to call for a different construction. For it can hardly be supposed that Congress intended to deny to suitors in the Territorial courts the conveniences and facilities which it had provided for suitors in the courts of the United States when sitting in a State, and to require them to apply to the clerk of the Supreme Court for a writ of error, and to a justice of the Supreme Court to sign the citation and approve the bond, when these duties could be more conveniently performed by the clerk and a judge of the court of the Territory,—and indeed far better and more safely performed, as regards the approval of the bond, since the judge of the Supreme Court would have frequently much difficulty in deciding upon the sufficiency of the sureties in a bond executed in a remote Territory. The construction contended for would in its results be very nearly equivalent to an absolute denial of the writ of error. We think it cannot be maintained, and that the writ of error in this case was lawfully issued by the clerk of the Supreme Court of the Territory, and the citation and bond properly signed and approved by the chief justice of the court. [*212

Another objection was taken upon the motion to dismiss. It was insisted, that, Iowa having been admitted into the Union as a State since the writ of error brought, the act of 1838, regulating its judicial proceedings as a Territory, is necessarily abrogated and repealed; and consequently there

is no law now in force authorizing this court to reëxamine and affirm or reverse a judgment rendered by the Supreme Court of the Territory, or giving this court any jurisdiction over it. This difficulty has, however, been removed by an act of Congress, passed during the present session (and since this motion was made), which authorizes the Supreme Court to proceed to hear and determine cases of this description.* And as this objection no longer exists, and the writ of error, citation, and bond appear to have been regularly issued, signed, and approved, the case is legally and properly in this court, and the motion to dismiss must be overruled.

*213] *ORDER.

On consideration of the motion made by *Mr. Grant*, on a prior day of the present term, to dismiss this writ of error, and of the arguments of counsel thereupon, had as well against as in support of the said motion, it is now here ordered by this court, that the said motion be and the same is hereby overruled.

MINERS' BANK OF DUBUQUE, PLAINTIFFS IN ERROR, *v.* THE UNITED STATES EX REL. JAMES GRANT.

A judgment of a court, sustaining a demurrer under the following circumstances, is not a final judgment which can be reviewed by this court.

Information in the nature of a *quo warranto*, calling upon the President, Directors, and Company of the Miners' Bank of Dubuque to show by what warrant they claimed the right to use the franchise.

Plea, referring to an act of incorporation.

Replication, that the act of incorporation had been repealed.

Rejoinder, that the repealing law was passed without notice to the parties, and without any evidence of misuse of the franchise.

Demurrer to the rejoinder.

Joinder in demurrer.

Sustaining the demurrer, without any further judgment of the court, did not

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* This is an error. The court refrained from pronouncing its opinion in this case, and also in one from Florida, until Congress might pass an act to supply the omission of previous legislation in relation to writs of error and appeals from their Territorial courts upon judgments and decrees rendered before their admission into the Union as States. An act was passed as the court understood, with this view, and then the above opinion was given. But it appears, that, owing, it is supposed, to some misapprehension, the act provides for Florida and Michigan, and Iowa is not included in it. Act of Feb. 22, 1847, ch. 17. There is, therefore, no law relating to Iowa.

This note has been shown to and approved by the Chief Justice, who delivered the opinion of the court.