article is a wrong which he is not permitted to take advantage of, and besides, there is no hardship in the case, for if he desired to remove any particular article, the covenant permits it on replacing goods of equal value.

The removal of the goods took place on the 18th of May, 1857, some year and five months before the expiration of the lease, so that practically the reservation of the rent in advance, on the event in the lease happening, works but simple justice to all parties. It became the substitute for the rent reserved payable monthly. If the tenant had brought about the event by the removal of the goods within a year of the termination of the lease, whether or not he might have had a remedy to abate the excess, we need not discuss.

JUDGMENT REVERSED, and cause remanded for a *venire de novo*.

RYAN *v.* BINDLEY.

1. Where a declaration claims a sum not sufficiently large to warrant error to this court, but where the plea pleads a set-off of a sum so considerable that the excess between the sum claimed and that pleaded as a set-off would do so,—the amount in controversy is not the sum claimed but the sum in excess, in those circuits where by the law of the State adopted in the Circuit Court, judgment may be given for the excess as aforesaid.

   For example: A declaration in assumpsit claimed *one* thousand dollars damages,—a sum insufficient to give the Supreme Court jurisdiction: more than *two* thousand being required for that purpose. The plea pleaded a set-off of *four* thousand, and by the laws of Ohio, adopted in the Federal courts sitting in that State, judgment might be given for the *three* thousand in excess, if the set-off was proved. *Held*, that *three* thousand, and not one thousand, was the amount in dispute; and accordingly, that the jurisdiction of the Supreme Court attached.

2. The rules of evidence prescribed by the laws of a State being rules of decision for the Federal courts while sitting within the limits of such State, they must be obeyed even though they violate the ancient laws of evidence so far as to make *the parties to the action* witnesses in their own cause; herein adopting a practice in opposition to a specific rule by the Federal court for the circuit.

THE Judiciary Act provides * that final judgments and decrees in civil actions and suits in equity in a *Circuit* Court, when

* § 22.

the matter in dispute exceeds the sum or value of *two* thousand dollars, exclusive of costs, may be re-examined and reversed or approved in the *Supreme* Court. With this law in force, Bindley had sued Ryan in assumpsit in the *Circuit* Court for the Southern District of Ohio, and laid his damages at *one* thousand dollars. Ryan, however, put in a plea, insisting that Ryan owed *him four* thousand dollars, which sum he claimed a right to set off against Bindley's demand, and to have judgment against Bindley for the excess: a sort of defence and judgment allowed by the laws of Ohio and the practice of the Circuit Court of the United States for its districts, which herein by rule of court had adopted the practice of the State tribunals. The verdict found $575.85 for the plaintiff.

In the course of the trial the *defendant offered himself* as a witness; not being competent of course by the general laws of evidence which prevail in the Federal courts, and indeed being, by rule of the Circuit Court where the case was tried, made, as a party, specifically incompetent, but claiming to be competent by virtue of the Ohio code of civil procedure; one section of which* declares that "No person shall be disqualified as a witness in any civil action or proceeding by reason of his interest in the event of the same, *as a party* or otherwise."

The Circuit Court, holding to its own rule, rejected the witness; and on error here two questions were raised.

1. Did the sum involved exceed $2000 in such a sense as that the *Supreme* Court had jurisdiction?

2. Was the defendant in this suit rightly rejected as a witness?

Messrs. Lee and Fisher for the plaintiff in error.

Mr. Justice DAVIS delivered the opinion of the court:

1. The allegation in the declaration must be taken, generally, as fixing the amount or value for the purposes of jurisdiction. But the subsequent pleadings may so change the original character of the suit as to involve an amount or

* § 310.

value in excess of two thousand dollars, and when this is done, the judgments and decrees of the court below are subject to be reviewed here.

In this case Ryan interposed a notice of set-off, and insisted that Bindley owed him four thousand dollars, for goods sold and money lent, which he claimed the right to set off against Bindley's demand, and to recover against Bindley a judgment for the excess. By the laws of Ohio such a defence is permitted, and if the defendant succeeds in proving his set-off, and it is larger than the plaintiff's claim, he is entitled to a judgment for the excess. The parties are concluded by the judgment, and cannot again litigate the same subject-matter, unless the judgment should be reversed, on appeal or writ of error to the Supreme Court. This law of set-off, or counter claim, and the practice under it, has been adopted as a rule of court, by the Circuit Court of the United States for the districts of Ohio. The plea in this case was therefore proper, and after it was interposed the matter in dispute rightfully exceeded the sum of two thousand dollars, exclusive of costs, and as the plaintiff had judgment, it is plain that the defendant had the right to sue out his writ of error.

2. A reversal of the judgment is claimed, because the Circuit Court refused to permit the defendant to testify as a witness. In Ohio a party to the suit is a competent witness on his own behalf. The rules of evidence prescribed by the laws of a State are rules of decision for the United States courts, while sitting within the limits of such State, under the 34th section of the Judiciary Act.* The court having rejected the witness, when he was competent, the judgment below must be reversed, and a *venire de novo* awarded.

JUDGMENT ACCORDINGLY.

* Vance *v.* Campbell, 1 Black, 430; Wright *v.* Bales, 2 Id., 535.