mining the jurisdictional sum or amount it is obvious that neither interest on the judgment nor costs of suit can enter into the computation, for costs form no part of the matter in dispute, and interest on the judgment can only arise after rendition, while the jurisdictional amount, if determined by the judgment, is fixed at rendition. And this was settled in *Knapp* v. *Banks.** In that case some expressions in the opinion and in the order seem to support the idea that if the amount of the matter in controversy is precisely two thousand dollars a writ of error will lie. But the attention of the court was not directed to such a case, and we are not aware that such a case until now was ever before the court. But there is nothing doubtful in the rules applicable to it. This court has no appellate jurisdiction, except such as is defined by Congress. The act of Congress limits this jurisdiction to cases where the matter in dispute *exceeds* two thousand dollars. We can no more take jurisdiction where the matter does not exceed than we can where it is less than that sum. The amount in controversy in the case before us, ascertained in conformity with the settled principles of the court, does not exceed two thousand dollars. We have, therefore, no jurisdiction of the writ of error, and it must be

DISMISSED.

BROWN v. WILEY.

1. Under the act of March 3d, 1863, establishing the Supreme Court of the District of Columbia, the action of that court can be examined here in no case in which like action in the Circuit Court of the district, whose place it supplies, could not be re-examined.
2. Hence, it can be examined only in those cases where there has been a final judgment, order, or decree.
3. The certificate of the finding of a jury on certain issues involving paternity, marriage, and legitimacy, sent from the Orphans' Court to the Supreme Court of the district, which certificate of finding is transmitted

* 2 Howard, 73.

by the Supreme Court to the Orphans' Court, is not such a final judgment, order, or decree as this court can re-examine on error.

4. Nor where the finding of the jury was at special term held by a single judge of the Supreme Court of the District of Columbia, under instructions by such judge, and a motion for new trial on exception to such instructions and other grounds has been heard at general term by all the judges and overruled, is such overruling a final judgment, order, or decree, reviewable on writ of error by this court.

A PETITION was filed in the Orphans' Court of the District of Columbia, by John Wiley and Emily his wife, setting forth that the said Emily was the child of Tillotson Brown, deceased, and his sole heir and distributee; that her mother, Elizabeth Brown, the widow of the said Tillotson, had duly administered upon his estate; that a surplus was left in her hands from the assets of the estate, and praying that such portion of the same as the petitioner was entitled to might be paid over to her.

Marshall Brown filed an answer to the petition, setting forth that he was the brother of said Tillotson, and alleging that the said Tillotson was never married to the said Elizabeth Brown, and that if he ever was so married, the petitioner, Emily Wiley, was not his child.

Thereupon the Orphans' Court, on the 10th of February, 1863, sent the following issues to the Circuit Court of the District of Columbia:

1st. Whether the petitioner, Emily Wiley, was the child of the said Tillotson?

2d. Whether the said Tillotson was ever married to the mother of said Emily?

3d. Whether, after the said marriage, the said Tillotson ever acknowledged the said Emily to be his child?

After this, that is to say, March 3d, 1863, an act of Congress abolished the Circuit Court, and established in its stead the Supreme Court of the District of Columbia.*

The issues were submitted to a jury, at a special term of this Supreme Court, November, A.D. 1865, and a verdict rendered thereon in the affirmative on all the questions.

* 12 Stat. at Large, 763.

A motion for a new trial was made, on exceptions taken at the trial, which was heard before all the four judges at a general term of the Supreme Court of the District of Columbia, in the manner prescribed by the statute constituting the court.* The motion was overruled, and the cause remanded with directions that the same should be proceeded in according to law.

Thereupon an order was entered by the court, before which the issues had been tried, directing that the finding of the jury on the issues sent from the Orphans' Court be certified by the clerk to said Orphans' Court.

The writ of error in this case was sued out, that the foregoing *order* might be brought up to this court.

It is proper here to remark that, by the eleventh section of the act of March 3d, 1863, abolishing the Circuit Court of the district, and establishing in its stead the Supreme Court, "*any final judgment, order, or decree* of said court may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, *in the same cases* and *in like manner as is now provided by law* in reference to final judgments, orders, or decrees of the Circuit Court of the United States for the District of Columbia;" and that in the Circuit Court referred to, as was provided by the law establishing it (an act of 1801), "*any final judgment, order, or decree,*" . . . wherein the matter in dispute exceeded the value of $100, might "be re-examined, reversed, or affirmed in this court." It may also be mentioned, that by the eighth section of the act of 1863, it is enacted, "that if upon the trial of any cause an exception be taken, . . . it may be stated in writing in a case, or in a bill of exceptions, with so much of the evidence as may be material to the questions to be raised. . . . The justice who tries the cause may in his discretion entertain a motion to set aside a verdict and grant a

* The Supreme Court of the district, by the act constituting it, had four justices, before any one of whom any issues of fact triable by a court or jury might be tried (§ 7), it being enacted (§ 9), "that a motion for a new trial, &c., shall be heard, in the first instance, at a general term;" or court in banc.

new trial, upon exceptions, or for insufficient evidence, or for excessive damages."

A motion having been previously made and argued by *Mr. Bradley*, for a *certiorari* to supply an alleged diminution of the record, and by *Mr. Merrick*, *contra*—*Messrs. Brent* and *Merrick* now moved to dismiss the case for want of jurisdiction.

In support of the motion. The right of appeal from the Supreme Court of the district is no greater under the act of 1863 constituting it, than was the right of appeal from the old Circuit Court, under the act of 1801, constituting it. In either case the writ of error lay only to "a *final* judgment, order, or decree." Now, the matter in contest in the Orphans' Court was the right to a certain surplus. The suit between the parties has to remain pending until a decree in the Orphans' Court is pronounced, giving it to one party or to the other. The certificate from the Supreme Court is nothing more than evidence of the finding of a jury upon the trial of the issue. It but certifies a fact; that is to say, that the jury had so found. The case is like *Van Ness* v. *Van Ness*,* A.D. 1848, in which,—on an issue sent out of the Orphans' Court to the old Circuit Court, whose place the Supreme Court of the district supplies, to ascertain whether a certain Mary Ann Van Ness was the wife of J. P. Van Ness, a case, therefore, much like this,—Taney, C. J., says: "The order of the Circuit Court directing a fact to be certified to another court to enable it to proceed to judgment, can hardly be regarded as a judgment order or decree, in the legal sense of these terms as used by the act of Congress. Certainly, it is not a final judgment; for it does not put an end to the suit in the Orphans' Court, as that court alone can dismiss the petition of the plaintiff which is there pending; and no other court has the power to pass a judgment upon it."

Messrs. Bradley and Davidge contra:

Neither the act of 1801 nor of 1863 requires the final judg-

* 6 Howard, 62.

ment or order to be rendered in a suit pending in a court as required by the Judiciary Act of 1789, § 22. Whilst under that act only final judgments or decrees can be re-examined, the jurisdiction as respects this district is broader and embraces all final judgments, orders, or decrees.

The only matters in controversy in the Orphans' Court were those embraced in the issues sent for trial into the court below. The verdict of the jury destroyed the claim of Marshall Brown to the succession.

The judgment of the Supreme Court of this district, overruling the exceptions and remanding the cause to the judge holding the Circuit Court to be proceeded in according to law, was, in substance, a judgment or order that the certificate should issue. The inferior tribunal had no discretion. There is a judgment to the effect that there is no error in the exceptions, and ordering the issue, by a subordinate tribunal, of a certificate to another court, upon receipt of which, that court must pronounce a judgment which destroys the claim of the plaintiff in error.

Such a judgment is a final judgment or *order* within the meaning of the act of February 27th, 1801.

As the law stood when *Van Ness* v. *Van Ness* was tried, the Circuit Court had not the power to enter judgment. It could, after the verdict was rendered, grant a new trial, but it could do nothing more. A new trial was not applied for; but, had it been, a mere application to the discretion of the court would not have supported a writ of error.* The Circuit Court had no power to do more than certify the finding of the jury. That really was no judgment or order in any legal sense. It was simply a certificate of a physical fact of record, and is so treated in *Van Ness* v. *Van Ness*.

By the eighth section of the act of 1865, at the trial of any cause, the right to except is allowed. And under that clause the right to a new trial is absolute, if any exception be sustained. The right is not addressed to the discretion of the

* Sparrow v. Strong, 3 Wallace, 97–105.

court. To put any such construction upon it, would necessarily destroy the right of appeal to this court.

The distinction, then, between *Van Ness* v. *Van Ness* and the present case is, that in the former the Circuit Court had no control over the verdict, save simply to grant, in its discretion, a new trial, which was never applied for; and the refusal to grant which, if asked, could not support a writ of error. Whilst in this case the verdict was in the keeping of the Supreme Court of the district, whose duty it was, for any error duly excepted to at the trial, to order a *venire de novo.*

Any other construction of the first clause of the eighth section of the act of March 3, 1863, would deprive a party aggrieved of redress of writ of error from this court, which was not the intention of Congress, and expressly declared by the eleventh section of that act.

The CHIEF JUSTICE delivered the opinion of the court.

This cause is before us upon a motion to dismiss the writ of error.

On the 10th of February, 1863, certain issues of fact were sent by the Orphans' Court of Washington County, District of Columbia, to the Circuit Court of the district to be tried by a jury.

These issues were transferred, by the act of Congress of March 3, 1863, to the Supreme Court of the District of Columbia, and were brought to trial in November, 1865, before that court, held by a single judge, in special term. All the issues were determined in the affirmative by the jury, under the rulings of the judge. Exceptions were taken to the rulings, and a motion for new trial was made in general term, before all the judges, and was overruled. Subsequently, an order was made at special term certifying the finding of the jury on the issues to the Orphans' Court.

The record of these proceedings is brought here by writ of error.

The case, in almost every particular, is identical with that

of *Van Ness* v. *Van Ness.** In that case, as in this, an issue of fact was sent out of the Orphans' Court to the Circuit Court to be tried by a jury; was tried and found in the negative. Exceptions were taken to the rulings upon the trial, and an order was made certifying the finding to the Orphans' Court. The proceeding was brought into this court by writ of error, which was dismissed for want of jurisdiction.

It is true that in the case before us the exceptions were taken to the rulings at special term; and that a motion for new trial was heard at general term, and was denied, whereas it does not appear that there was any motion for new trial in the case of Van Ness, and it was insisted in argument that this difference in proceeding distinguishes the two cases, so that the latter cannot be regarded as an authority in the decision of the former.

We are unable to perceive that the difference is material. The order certifying the finding to the Orphans' Court, in the case of Van Ness, was identical in effect with the two orders overruling the motion for new trial, and certifying the finding in the case before us. In each case the exceptions taken at the trial before the jury were overruled, and nothing was left for action in the court before which the issues were tried; but the cause went to the Orphans' Court for final judgment.

In that case it was held that the order was not one which could, under the act, be re-examined on writ of error, and we see no reason for a different ruling in this.

It was argued that the act organizing the Supreme Court of the district gives this court jurisdiction of this case by writ of error. We do not think so. That act expressly provides that any final judgment, order, and decree of the District Supreme Court may be re-examined upon writ of error or appeal, "in the same cases and in like manner as provided by law in reference to the final judgments, orders, and decrees of the District Circuit Court." It is clear, therefore, that the action of the former court can be re-examined here

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* 6 Howard, 62.

in no case in which like action in the latter court could not be re-examined.

The only real difference between the two statutes is that the latter gives an appeal from a decision of the single judge at special term, on a motion for new trial, to the whole court at general term, or secures an original hearing of the motion in general term. This is an advantage to the unsuccessful party not formerly enjoyed, but it makes no changes as to re-examination upon appeals or writs of error in this court.

The court has considered the motion for a *certiorari* to supply alleged defects in the record; but, after a careful comparison of the suggestions of counsel with the record before us, and the act establishing the Supreme Court for the District of Columbia, we are satisfied that the granting of the motion would avail nothing to the plaintiff in error. It must, therefore, be overruled. And the writ of error must be

DISMISSED FOR WANT OF JURISDICTION

LOCKE *v.* NEW ORLEANS.

1. A statute which simply authorizes the imposition of a tax according to a previous assessment is not retrospective.
2. Every retrospective act is not necessarily an *ex post facto* law.
3. Such laws embrace only such as impose or affect penalties or forfeitures.

THE legislature of Louisiana enacted, A.D. 1850—

"That each of the municipalities of said city shall be and is hereby empowered to levy a tax on capital on the assessment roll for the year 1848, and a tax on capital on the assessment roll for the year 1849: *Provided*, that the taxes on capital on said assessment rolls, for the years 1848 and 1849, shall not exceed the amounts already imposed by existing ordinances of the said municipalities."

Under the authority of this act the City of New Orleans, having levied a tax on capital owned and employed during