Syllabus.

be found in the record, was a judgment rendered in favor of plaintiff for the recovery of a sum of money. There was no question raised on the pleadings; no bill of exceptions; no instructions or ruling of the court.

There was what purported to be a statement of facts, signed by the judge, found in the record. It was filed more than two months after the writ of error was allowed and filed in the court, and nearly a month after the citation was issued by the judge. It did not appear to have been filed by consent of parties.

The case was submitted by *Mr. Janin for the plaintiff in error, and by Mr. Durant, contra*, pointing out the peculiarity of the record.

Mr. Justice MILLER delivered the opinion of the court.

To permit the judge to make a statement of facts, on which the case shall be heard here, after the case is removed to this court by the service of the writ of error, or even after it is issued, would place the rights of parties who have judgments of record, entirely in the power of the judge, without hearing and without remedy. The statement of facts, filed without consent of the parties, must be treated as a nullity; and, as there is nothing on which error of the court below can be predicated, the judgment must be

AFFIRMED.

LABER v. COOPER.

1. The fact that no replication is put in to two of three special pleas, raising distinct defences, is not a matter for reversal; the case having been tried below as if the pleadings had been perfect and in form.
2. Nor, that such pleas have concluded to the court instead of to the country; the matter not having been brought in any way to the attention of the court below.
3. Nor, under similar omission, that the language of the verdict in such a case is, that we find the "issue," &c., instead of the "issues."
4. The fact, that testimony was objected to and received, does not oblige this

court to consider it; the record not showing that the objection was overruled, and exception taken.

5. It is not error to refuse to give instructions asked for, even if correct in point of law, provided those given cover the entire case, and submit it properly to the jury.

6. The overruling of a motion for a new trial cannot be made the subject of review by this court.

ERROR to the Circuit Court for the Northern District of Illinois.

Cooper sued Laber in the court below. His declaration contained two counts upon a promissory note, made by Laber to a certain railroad company, or its order, and indorsed, as was alleged, to the plaintiff. It contained also the common counts.

The defendant pleaded the general issue, and three special pleas.

The first averred that there was no consideration for the note, and that it was obtained from the defendant by fraudulent misrepresentations; and that these facts were known to the plaintiff when he took it.

The second denied the indorsement of the note, as averred in the first count.

The third was to the same effect, as to the indorsement averred in the second count.

All the special pleas, though thus denying only what the plaintiff alleged, and not containing either new matter or a special traverse, concluded with a *verification;* and not to the country.

To the first of them the plaintiff replied, denying his alleged knowledge of fraudulent misrepresentations. To the second and third, no replications were filed. With the pleadings in this state, the case went to trial, and was tried as if the pleadings had been in form and perfect.

Among the testimony given by the defendant relating to both the allegation of fraudulent misrepresentation and to the matter of indorsement, was that of one Durand. The admission of part of this (not necessary to be stated, in view of the decision of this court, that it was not properly

brought before it), was objected to by the defendant; but it was, nevertheless, admitted; and this was all that the bill of exceptions disclosed about the matter. No exception to it appeared on the bill.

A request for certain specific instructions, as the record showed, was made by the defendant. The court refused to give them, but charged the jury clearly upon the whole case; fully presenting in the charge its views upon both the subjects presented by the special pleas, and which were, in fact, the only grounds of the controversy. It is not necessary for the reporter to state the case at large on which the charge was given, nor the instructions asked, nor the charge itself; this court considering* that the report would shed no new light on any legal principle.

The language of the verdict was thus:

"We, the jury, find the *issue* for the plaintiff, and assess his damages to the sum of $7192."

A motion for a new trial was made, and overruled, and judgment entered upon the verdict.

The defendant excepted to the refusal to charge as prayed, to different passages in the charge as given, and to the overruling of his motion for a new trial.

The record contained a hundred and seventy-five pages, of which more than four-sevenths was taken up by the bill of exceptions.

Mr. Carpenter, for the plaintiff in error, contended:

1. That the court had manifestly proceeded in the trial as though all the facts set forth in the defendant's *three special pleas* were put in issue, while no replication had been put in to the two pleas, denying the indorsement.

2. That even assuming that these matters were all in issue, the verdict did not cover them; being only upon the issue, some one issue; but upon what one did not appear.

3. That Durand's testimony was inadmissible.

* See *infra*, p. 571.

Recapitulation of the case in the opinion.

4. That the court, instead of charging upon the instructions asked, and so upon points, charged upon general principles; thus not presenting the matters in issue in the best way for the jury to understand them.

[The learned counsel then analyzed the charge, endeavoring to show its error.]

Mr. Umlauf, contra.

Mr. Justice SWAYNE delivered the opinion of the court.

In this case the bill of exceptions furnishes the same ground of complaint, which was remarked upon in *Lincoln* v. *Claflin*,* heretofore decided at this term. In the case before us, it fills an hundred and twenty-seven printed pages. The points arising for our consideration could have been better presented in a very small part of this space. Such a mass of unnecessary matter has a tendency to involve what is really important in obscurity and confusion. Its presence is a violation of the fourth rule of this court. Its examination consumes our time, increases our labor, and can subserve no useful purpose. The subject was so fully considered in the case referred to, that we deem it unnecessary to pursue it further upon this occasion.

Winnowing away the chaff, we find the questions left for our examination neither numerous nor difficult of solution.

The declaration contains two counts upon a promissory note, made by Laber to the Racine and Milwaukee Railroad Company, or order, for $3700, dated the 6th of May, 1856, payable five years from the 10th of May, in that year, with interest at the rate of ten per cent. per annum, payable annually, on the 10th of May; principal and interest payable at the office of the company, in the city of Racine, in the State of Wisconsin, and indorsed by the payee, by H. S. Durand, its president, to the plaintiff. The declaration contains also the common counts.

The defendant pleaded the general issue, and three special pleas.

* *Supra*, p. 132.

The first special plea avers that the note, and a mortgage securing its payment, were given to the railroad company for thirty-seven shares of its capital stock; that there was no consideration for the note; that it was obtained from the defendant by false and fraudulent representations; and that these facts were known to the plaintiff when the note came into his possession. The second special plea denies the indorsement of the note to the plaintiff, as averred in the first count. The third special plea is to the same effect, as to the indorsement averred in the second count. All the special pleas conclude with a verification.

To the first of the special pleas, the plaintiff replied denying knowledge of the alleged false and fraudulent representations, before and at the time of the indorsement and transfer of the note. To the second and third special pleas, no replications were filed.

The cause proceeded to trial. The record shows that a large mass of testimony was given by the defendant relating to both the defences set up by the special pleas. A prayer for instructions was submitted by the defendant. The court refused to give them, but charged the jury fully upon the whole case. Both the subjects presented by the special pleas were fully discussed. Indeed they were the only grounds of the controversy between the parties. The case was tried, in all respects, as if the pleadings had been formal and perfect. The jury found for the plaintiff. The language of the verdict is: "We, the jury, find the *issue* for the plaintiff, and assess his damages," &c. The defendant moved for a new trial. The motion was overruled, and judgment entered upon the verdict. The defendant excepted to the refusal to charge as prayed, to twelve passages in the charge as given, and to the overruling of his motion for a new trial.

1. It is objected, as an error, that no replication was put in to the pleas denying the indorsement of the note.

The plea of the general issue would have made it incumbent upon the plaintiff to prove the indorsement as averred in the declaration, but that the statute of Illinois, adopted

by the Circuit Court as a rule of practice, dispenses with such proof, unless the fact is denied by the defendant under oath. The oath of the defendant was affixed to both the pleas, raising the question. As they only denied what the plaintiff had alleged, contained no new matter, and no special traverse, they should have concluded to the country, and not to the court. The defect was one of form, and could have been reached by a special demurrer. The trial proceeded as if they had concluded to the country, and a similiter had been added by the plaintiff. To the objection now taken, there are several answers. The irregularity is cured by the trial and verdict.* The objection comes too late; not having been made in the court below, it cannot be made here. It is within the thirty-second section of the Judiciary Act of 1789, which forbids a judgment to be reversed for any want of form in the proceedings, except such as shall have been specially pointed out by demurrer.

2. It is said that, conceding the issues intended to be made by the defendant were in fact submitted to the jury, the verdict does not respond to them; that it finds "the issue"—but one—and not designating which one, for the plaintiff.

It was competent for the court to amend the verdict by changing the term "issue" from the singular to the plural. This would have removed the ground of the objection. A verdict, unless it be a special one, is always amendable by the notes of the judge.† The proper amendment would doubtless have been made below, if the attention of the court had been called to the subject. Like the preceding objection, it is made here too late, and is within the act of Congress referred to, upon the subject of jeofails.

3. Upon looking through the testimony of Durand, as set out in the bill of exceptions, it appears that the admission

* Coan *v.* Whitmore, 12 Johnson, 353; Brazzel & Hawkins *v.* Usher, Breese, 14; Stone *v.* Van Curler, 2 Vermont, 115; Sullivan *v.* Dollins, 13 Illinois, 88; Coutch et al. *v.* Barton, 1 Morris, 354.

† 1 Chitty's Pleading, 411; Roulain *v.* McDowall, 1 Bay, 490; Norris *v.* Durham, 9 Cowen, 151; Sayre *v.* Jewett, 12 Wendell, 135; Paul *v.* Harden, 9 Sergeant & Rawle, 23.

of a part of it was objected to by the defendant, but it does not appear that the objection was overruled, and exception taken. It only appears that the testimony was admitted after the objection was made. *Non constat*, but that the objection was waived, or the decision acquiesced in. In order to make such a point available, it is necessary that an exception should be distinctly taken, and placed upon the record.

4. It was not error for the court to refuse to give the instructions asked for by the defendant, even if correct in point of law, provided those given covered the entire case, and submitted it properly to the jury. The defences of false and fraudulent representations to the defendant, and of the non-indorsement of the note, involved mixed questions of law and fact. We think the law was properly stated by the judge, and the facts fairly submitted to the jury. The charge was full and able. It would throw no new light upon any legal principle, and could be productive of no benefit, to examine in detail, each of the numerous passages taken from the charge, and made the subject of exception. It is sufficient to say that, after a careful examination of all of them, in the light of the context of the charge, and of the evidence, as it was before the jury, we have found nothing which we deem erroneous.

5. An exception to the overruling of the motion for a new trial is found in the record, but is not adverted to in the argument submitted for the plaintiff in error. Such a decision cannot be made the subject of review by this court.

The judgment below is

AFFIRMED.

THE ALICIA.

1. This court cannot acquire jurisdiction of a cause through an order of a Circuit Court directing its transfer to this court, though such transfer be authorized by the express provision of an act of Congress. Such provision must be regarded as an attempt, inadvertently made, to give to this court a jurisdiction withheld by the Constitution.