of the bills are sufficient to give the Circuit Court jurisdiction under the Judiciary Act of 1789; and all were filed subsequent to the 13th of July, 1866.

When these suits were brought, therefore, there was no act in force giving jurisdiction, in cases such as those made by the records, to the courts of the United States. The Circuit Court was obliged, therefore, to dismiss the bill in each case for want of jurisdiction, and the judgment of that court in the several cases must be

AFFIRMED.

INSURANCE COMPANY v. BARTON.

The granting or refusing to grant a motion for a new trial resting wholly in the discretion of the court where it is made, the action of such court is not ground for error.

ERROR to the Circuit Court for the District of Missouri.

Mr. M. H. Carpenter, for the plaintiff in error; Mr. F. A. Dick, contra.

Mr. Justice SWAYNE stated the case and delivered the opinion of the court.

The suit was brought by Barton upon a policy of insurance. Upon looking into the record we find that the case was tried by a jury; that evidence was adduced by both parties; that the court instructed the jury, and that they found a verdict for the plaintiff, upon which judgment was duly entered. All this was done without any exception being taken by the defendant. The assurers then moved the court to set aside the verdict and grant a new trial upon the following grounds:

That the verdict was against the evidence; that it was against the law and the instructions of the court; because the verdict was uncertain and insufficient. The court over-

ruled the motion. To this the assurers excepted, and in their bill of exceptions have set out all the evidence given in the case. The only point to which our attention has been called by their counsel in this court is, that, according to the evidence thus set out, the plaintiff was clearly not entitled to recover.

The granting or overruling of a motion for a new trial in the courts of the United States rests wholly in the discretion of the court to which the motion is addressed. This is so well settled that it is unnecessary to remark further upon the subject.*

JUDGMENT AFFIRMED.

DOOLEY v. SMITH.

1. A plea which states that the sum due on a promissory note is a certain amount, on a certain day, and avers a tender on that day of the sum due in legal tender notes of the United States, is a good plea of tender.
2. In a suit on such note an order of court made by consent that the money might be withdrawn from court, without prejudice to the validity of the tender, cannot be supposed to be the reason why the court held the plea bad on demurrer.
3. As the record in this case showed no other reason why the Court of Appeals of Kentucky sustained a demurrer to the plea than that it was made in legal tender notes of the United States, it sufficiently appeared that the question of the validity of these notes as a tender was made and decided in the negative.
4. This court, therefore, has jurisdiction to review the judgment; and though the note sued on was made before the passage of the legal tender statutes by Congress, *held* that the tender was a valid tender, and that the judgment of the court below must be reversed.

MOTION by *Mr. W. H. Wadsworth, for the defendant in error* (*Mr. G. Davis, opposing*), to dismiss a writ of error to the Court of Appeals of the State of Kentucky, taken on the assumption that the case came within that provision of the

* Henderson *v.* Moore, 5 Cranch, 11; Barr *v.* Gratz's Heirs, 4 Wheaton, 220; Doswell *v.* De La Lanza, 20 Howard, 29; Schuchardt *v.* Allens, 1 Wallace, 371.