

## Statement of Facts.

then there is now no infamous punishment other than capital." *Jones v. Robbins*, 8 Gray, 329, 349. In the same case, Mr. Justice Merrick, while dissenting from the rest of the court upon the question whether under the words "the law of the land" in the Constitution of Massachusetts an indictment by a grand jury was essential to a prosecution for a crime punishable by imprisonment in the State prison, and taking a position upon that question more accordant with the recent judgment of this court in *Hurtado v. California*, 110 U. S. 516, yet concurred with the other judges in holding that such imprisonment at hard labor was an infamous punishment. 8 Gray, 370-372.

Imprisonment at hard labor, compulsory and unpaid, is, in the strongest sense of the words, "involuntary servitude for crime," spoken of in the provision of the Ordinance of 1787, and of the Thirteenth Amendment of the Constitution, by which all other slavery was abolished.

Deciding nothing beyond what is required by the facts of the case before us, our judgment is that a crime punishable by imprisonment for a term of years at hard labor is an infamous crime, within the meaning of the Fifth Amendment of the Constitution; and that the District Court, in holding the petitioner to answer for such a crime, and sentencing him to such imprisonment, without indictment or presentment by a grand jury, exceeded its jurisdiction, and he is therefore entitled to be discharged.

*Writ of habeas corpus to issue.*

A similar decision was made April 13, 1885, in UNITED STATES v. PETIT, submitted by *Mr. Solicitor-General* without argument April 7, 1885, on a certificate of division from the Circuit Court of the United States for the Eastern District of Missouri.

This was an information on Rev. Stat. § 5457, for the offence of passing a counterfeit half dollar, punishable by fine of not more than \$5,000 and imprisonment at hard labor not more than ten years. The Circuit Judge and the District Judge certified that upon the determination of a plea to the jurisdiction they were opposed in opinion, "the question being whether the United

## Syllabus.

States could proceed by information instead of indictment to try a defendant charged under section 5457 of the Revised Statutes with the violation thereof; that is to say, whether the offences declared in said section are infamous crimes to be prosecuted solely through indictment pursuant to Article V of the amendments to the Constitution of the United States." 11 Fed. Rep. 58.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The first question certified in this case is answered in the negative, and the second in the affirmative, on the authority of *Ex parte Wilson*, decided at the present term.

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### DODGE & Another' v. KNOWLES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Submitted January 9, 1885.—Decided April 13, 1885.

Neither the liability for provisions supplied at a dwelling house where a husband and wife and their children are living together, nor a promissory note given by the husband, describing himself as trustee for the wife, in payment for such supplies, can be charged in equity upon the wife's separate estate, without clear proof that she contracted the debt on her own behalf, or intended to bind her separate estate for its payment.

When the decree below is for a sum which gives this court jurisdiction on appeal, and the appellee makes no appearance here, but expressly declines to do so, after notice to him by order of court, it is too late to offer proof that the amount involved does not give jurisdiction.

An appeal bond is essential to the prosecution of a suit in this court, if it is demanded, but not to the taking of the appeal in the court below.

When security on appeal is not furnished until after the term at which the appeal is taken, failure to cite the appellee does not deprive this court of jurisdiction.

Bill in equity. The facts are stated in the opinion of the court.

*Mr. J. Holdsworth Gordon* for appellants.

No appearance for appellee.