

Opinion of the Court.

through Mr. Justice Gray, "that at the present day imprisonment in a state prison or penitentiary, with or without hard labor, is an infamous punishment."

That case is decisive of this, and the order appealed from must be

Affirmed.

PACIFIC POSTAL TELEGRAPH CABLE COMPANY
v. O'CONNOR.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

No. 1282. Submitted November 12, 1888.—Decided November 19, 1888.

A remittitur, in a judgment on a verdict, of all sums in excess of \$5000, made on the day following entry of the judgment, on motion of plaintiff's counsel, in the absence of defendant or his counsel, is no abuse of the discretion of the court.

MOTION TO DISMISS for want of jurisdiction. The case is stated in the opinion.

Mr. D. M. Delmas for the motion.

Mr. Andrew Wesley Kent opposing.

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

This was an action to recover damages for personal injuries, which resulted, August 29th, 1888, in a verdict for \$5500. Upon the return of the verdict the court directed, as minuted by the clerk, judgment to be entered thereon. On the 30th day of August the plaintiff below, by his counsel, asked leave in open court to remit the sum of \$500, which was granted, and judgment rendered for \$5000 and costs, "and now so appears of record."

Subsequently the defendant below moved to set aside the allowance of the remittitur and to correct the judgment, which motion was denied by the court, and defendant ex-

Counsel for Plaintiff in Error.

cepted, and by bill of exceptions brought the court's direction to the clerk of August 29th into the record, and the fact that the judgment of August 30th was rendered in the absence of defendant and his counsel.

A writ of error having been subsequently prosecuted to reverse the judgment, defendant in error moves to dismiss it for want of jurisdiction.

We cannot hold upon this record the action of the Circuit Court to have been in abuse of its discretion, and as the judgment as it stands is for \$5000 only, the motion to dismiss must be granted. *Ala. Gold Life Ins. Co. v. Nichols*, 109 U. S. 232; *First Nat. Bank of Omaha v. Redick*, 110 U. S. 224; *Thompson v. Butler*, 95 U. S. 694.

Writ of error dismissed.

CLARK *v.* COMMONWEALTH OF PENNSYLVANIA.

SAME *v.* SAME.

ERROR TO THE COURT OF QUARTER SESSIONS OF THE PEACE FOR THE COUNTY OF ALLEGHANY, STATE OF PENNSYLVANIA.

Nos. 1189, 1190. Argued November 5, 1888. — Decided November 19, 1888.

The petition for a writ of error forms no part of the record of the court below.

In error to a state court, to review one of its judgments, this court acts only upon the record of the court below, and, in order to give this court jurisdiction it is essential that the record should disclose, not only that the alleged right, privilege or immunity, was set up and claimed in the court below, but that the decision of that court was against the right so set up or claimed.

These records do not disclose whether the refusal of the court below to give the instructions requested amounted to a denial of the claim of the plaintiff in error to immunity, and the writs of error are therefore dismissed.

THE case is stated in the opinion of the court.

Mr. W. L. Bird for plaintiff in error.