

Opinion of the Court.

TEXAS AND PACIFIC RAILWAY COMPANY *v.*
HORN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF TEXAS.

No. 163. Argued and submitted December 13, 1893.—Decided January 3, 1894.

A verdict being returned for plaintiff for \$11,000, on suggestion of the court a remittitur of \$6001 was entered. As recorded, the terms of the judgment were: "It is, therefore, ordered and adjudged by the court that the plaintiff, Henry Horn, do have and recover of the defendant, the Texas & Pacific Railway Company, the sum of eleven thousand dollars and all costs in this behalf expended. And it appearing to the court that on this day the plaintiff filed, in writing, a remitter of \$6000.00: It is, therefore, ordered and adjudged by the court that execution issue for the sum of \$4999.00 only, and all costs herein." The order of allowance of the writ of error declared that the judgment was rendered for \$4999, and the bond and citation so described it. *Held*, that, upon the entire record, the judgment must be held to be for no larger sum than \$4999.

THE case is stated in the opinion.

Mr. John F. Dillon and *Mr. Winslow S. Pierce* for plaintiff in error.

Mr. C. A. Culberson for defendant in error submitted on his brief.

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

Upon the trial of this cause a verdict was returned for the plaintiff in the sum of eleven thousand dollars, and upon the suggestion of the court the plaintiff entered a remittitur of six thousand and one dollars, and prayed that the same be allowed, and judgment entered for four thousand nine hundred and ninety-nine dollars. The bill of exceptions states that judgment was rendered for that amount, although as recorded the

Opinion of the Court.

terms of the judgment, after reciting the return of the verdict, were:

"It is, therefore, ordered and adjudged by the court that the plaintiff, Henry Horn, do have and recover of the defendant, the Texas and Pacific Railway Company, the sum of eleven thousand dollars and all costs in this behalf expended.

"And it appearing to the court that on this day the plaintiff filed, in writing, a remitter of \$6000.00:

"It is, therefore, ordered and adjudged by the court that execution issue for the sum of \$4999.00 only, and all costs herein."

The writ of error bore date June 24, 1890, and was made a supersedeas, the order of allowance declaring that the judgment was rendered for \$4999.00, February 13, 1890, and that a motion for new trial was filed, but not acted on until June 5, 1890. The bond and citation describe the judgment as for \$4999.00.

Although the judgment was entered immediately upon the return of the verdict in accordance with the practice in that jurisdiction, and, therefore, for the amount of the verdict, it was within the power of the court to allow the remittitur; and while the order to that effect might have been more accurately worded, we are of opinion that, upon the entire record, plaintiff in error cannot be permitted to insist that the judgment as it stands is for a larger sum than \$4999, nor can it be hereafter held liable as on judgment for any other amount. Hence this case is not within our jurisdiction, unless it falls within the act of Congress of February 25, 1889, 25 Stat. 693, c. 236, which, for the reasons given in *Texas and Pacific Railway v. Saunders*, *ante*, 105, we do not think it does. The railway company, in this case, as in that, filed a plea based upon the order of October 26, 1888, of the Circuit Court of the United States for the Eastern District of Louisiana, and in this case, as in that, the matter set up was in bar and not in abatement. The jurisdiction of the Circuit Court for the Eastern District of Texas was not thereby questioned.

Writ of error dismissed.