

ROBOSTELLI *v.* NEW YORK, N. H. & H. R. CO.

*Circuit Court, S. D. New York.*

March 27, 1888.

JUDGMENT—RENDITION AND ENTRY—POWER OF CLERK.

The clerk of a United States circuit court has no authority to enter judgment for any other sum than the verdict and statute call for.

At Law. On motion to set aside judgment.

The action was for damages for personal injuries causing death of intestate. The state statute provides that in entering judgment upon verdict in such cases the clerk shall add to the amount of the verdict interest from the date of the death. Plaintiff having filed a waiver with the clerk, that officer entered judgment for the amount of verdict without interest.

*Chas. H. Noxon*, for complainant.

*Wm. E. Barnett*, for defendant.

LACOMBE, J. The clerk should not have entered judgment for any sum other than what the verdict and statute called for, and his action in that respect must be set aside. The court undoubtedly possesses the power to regulate the amount of its own judgments, even though by so doing the recovery is reduced below the amount to which appellate jurisdiction attaches, (*Bank v. Redid*, 110 U. S. 224, 3 Sup. Ct. Rep. 640, and cases cited;) but that function is to be exercised by the court, not by the clerk. The judgment entered upon the verdict is set aside, with leave to plaintiff to move before the judge who tried the case for permission to enter judgment without interest or costs.