

Syllabus.

Pacific's prospective right of selection prevented the passing of title to the Southern Pacific.

The decrees in both cases will be reversed, and the cases remanded with instructions to enter decrees in favor of the government for the relief sought.

MR. JUSTICE FIELD, (with whom concurred MR. JUSTICE GRAY,) dissenting.

In these cases I dissent from the judgment of the court equally as from that in the cases just decided. It is now held that not only the lands within the granted limits of the Atlantic and Pacific Railroad Company passed to that company beyond the power of Congress to assign any portion of them for the construction of the Southern Pacific Company, although no work was done by the former corporation, and the grant to it was forfeited, but the indemnity lands also. The objections urged to the judgment in the other cases just decided possess greater force in these cases, for indemnity lands do not vest in any company until they are selected. Even if the Atlantic and Pacific Railroad Company had built the road, it would have had no indemnity lands until selection was made; much less can it be held that title vested in that company before any attempt was made to exhaust the lands within the granted limits.

I think the judgment in these cases should also be affirmed, and I am authorized to state that MR. JUSTICE GRAY concurs with me in this dissent.

BROWN v. BAXTER.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 1123. Submitted December 12, 1892. — Decided December 19, 1892.

A writ of error to the Court of Appeals of a State, to review a judgment of that court dismissing an appeal and remanding the case for further proceedings in the state court below, is dismissed for want of jurisdiction.

Syllabus.

THIS was an action begun and prosecuted to judgment in a Circuit Court of the State of Kentucky. From that judgment appeal and cross-appeal were taken to the Court of Appeals of the State. That court, after hearing, ordered "that said judgment be reversed on the original appeal and affirmed on the cross-appeal and cause remanded for further proceedings consistent with the opinion herein, which is ordered to be certified to said court."

The case was brought here by writ of error, to review a Federal question.

Mr. T. L. Burnett and *Mr. H. M. Lane* for plaintiff in error.

Mr. W. J. Lisle for defendant in error.

THE CHIEF JUSTICE: "The writ of error is dismissed upon the authority of *Meagher v. Minnesota Co.*, 145 U. S. 608; *Rice v. Sanger*, 144 U. S. 197; *Johnson v. Keith*, 117 U. S. 199.

MEANS *v.* BANK OF RANDALL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

No. 63. Submitted December 2, 1892. — Decided December 19, 1892.

L. desiring to purchase cattle from P., a bank paid the purchase money for L. to P., and P. delivered the cattle to the bank, and they were shipped by rail to M., in six cars, to sell, accompanied by P. and L. and one G. A bill of lading for four of the cars was issued in the name of L. A bill of lading was to be issued for the other two cars in the name of G., as a pass could be issued to only two persons on one bill of lading. G. had no interest in the cattle. The cattle in the six cars were delivered to M. A draft was drawn by L. against the shipment on M., and endorsed and delivered by L. to the bank, with the bill of lading for the four cars. The draft and bill of lading were presented to M., but the draft was not accepted or paid. Three hours afterwards M. sold the cattle but kept the proceeds because he claimed that L. was indebted to him on an old