

## 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.

