# CASES ADJUDGED

IN THE

# SUPREME COURT OF THE UNITED STATES,

AT

## OCTOBER TERM, 1895.

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## INDIANA *v.* KENTUCKY.

ORIGINAL.

No. 2. Original. Submitted October 15, 1895. — Decided October 21, 1895.

The court appoints commissioners to run the disputed boundary line in accordance with its decision, announced May 19, 1890, 136 U. S. 479.

At October Term, 1889, this court decided a case of disputed boundary between the State of Indiana and the State of Kentucky. 136 U. S. 479. At the present term the parties presented the following petition:

"*To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:*

"The plaintiff, The State of Indiana, and the defendant, The State of Kentucky, show to your honors that they have agreed upon and submit herewith the accompanying draft of an order in conformity to the opinion and order of

the Court herein and move for an order in accordance therewith.

"THE STATE OF INDIANA,
By *William A. Ketcham,*
*its Attorney General.*
"THE STATE OF KENTUCKY,
By *Richard H. Cunningham,*
*its Solicitor.*

"WASHINGTON, D. C., *October* 15, 1895.

"IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1895.

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| "THE STATE OF INDIANA *vs.* THE STATE OF KENTUCKY. | Original, No. 2. |

"On this 15th day of October, 1895, comes The State of Indiana, by its attorney general, and also comes The State of Kentucky, by its solicitor, Richard H. Cunningham, and said parties advise and inform the Court that in accordance with the opinion and order hereinbefore entered in that behalf they have agreed upon the following-named gentlemen to be suggested to this Court as commissioners, as stated and set forth in said opinion and order, viz.: Gustave V. Menzies, of Mount Vernon, Ind.; Gaston M. Alves, of Henderson, Ky., and Col. Amos Stickney, of the Engineer Corps of the United States Army; and the Court, being fully advised in the premises, does now order and decree that the above-named Gustave V. Menzies, Gaston M. Alves, and Amos Stickney be, and they are hereby, appointed commissioners to ascertain and run the boundary line between the said States of Indiana and Kentucky as designated in the said opinion of this Court heretofore entered herein, and to report to this Court with all reasonable dispatch their doings in that behalf. It is further ordered by the Court that duly certified copies of this order shall be forthwith issued by the clerk of this Court, under his hand and seal, to each of the above-named commissioners, and before entering upon the discharge of their duties as such commissioners, they and

each of them shall be and appear before either the clerk of this Court or the clerk of the United States Circuit Court within and for either the district of Indiana, Kentucky, or Ohio and take an oath faithfully to discharge the duties required of them as such commissioners, which oaths shall be transmitted to and filed with the clerk of this court and in this cause."

*Mr. William A. Ketcham*, Attorney General of the State of Indiana, for plaintiff.

*Mr. Richard H. Cunningham* for defendant.

THE CHIEF JUSTICE.

This cause coming on on the application of the State of Indiana, by its attorney general, and of the State of Kentucky, by its solicitor, Richard H. Cunningham, for the appointment of commissioners herein, in accordance with the opinion, judgment, and decree hereinbefore filed and entered, and the court being advised and informed by said parties that they have agreed upon the following-named gentlemen to be suggested to this court for such appointment, viz.: Gustave V. Menzies, of Mount Vernon, Indiana; Gaston M. Alves, of Henderson, Kentucky; and Col. Amos Stickney, of the Engineer Corps of the United States Army; and the court, being fully advised in the premises, does now order and decree that the above named Gustave V. Menzies, Gaston M. Alves, and Amos Stickney be, and they are hereby, appointed commissioners to ascertain and run the boundary line between the said States of Indiana and Kentucky as designated in the said opinion of this court heretofore filed, and judgment and decree heretofore entered herein, and to report to this court with all reasonable dispatch their doings in that behalf. It is further ordered by the court that duly certified copies of this order shall be forthwith issued by the clerk of this court, under his hand and the seal of the court, to each of the above-named commissioners, and before entering upon the discharge of their duties as such commissioners they, and

each of them, shall be and appear before either the clerk of this court or the clerk of the United States Circuit Court within and for either the District of Indiana, Kentucky, or Ohio and take an oath faithfully to discharge the duties required of them as such commissioners, which oaths shall be forthwith transmitted to and filed with the clerk of this court and in this cause.

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## SIMMONS *v.* BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY.

## BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY *v.* SIMMONS.

Nos. 11 and 12. Argued November 1, 1894. — Decided October 21, 1895.

When a junior mortgagee is a party defendant to a foreclosure bill in which there is a prayer that he be decreed to redeem, and when the priority of the plaintiff's mortgage is found or conceded, and a sale is ordered in default of payment, declaring the right of the debtor to redeem to be forever barred, a similar order as to right of redemption by the junior mortgagee is not substantially, or even formally, necessary.

In such case a junior mortgagee, who stands by while the sale is made and confirmed, must be deemed, in equity, to have waived his right to redeem.

A decree in such a suit that the sale is to be made subject to the rights of the junior mortgagee and of intervening creditors, and reserving to the court the right to make further orders and directions, and providing that no sale shall be binding until reported to the court for its approval, and a subsequent order that the property shall be sold subject to the future adjudication as to such rights, and the property conveyed subject thereto, while it warrants a contention that the court intended to make a future disposition of the claims of such parties, does not authorize the junior mortgagee to wait for a period of seven years before attempting to enforce his alleged rights; and such delay deprives him of the right to ask the aid of a court of equity in enforcing them.

THE Burlington, Cedar Rapids and Minnesota Railway Company was a corporation organized under the laws of the State of Iowa, and, in pursuance of its granted powers, had, prior to the litigation which brought the case here, con-