

THE
SUPREME COURT REPORTER,
VOLUME 16.

CASES ARGUED AND DETERMINED
IN THE
UNITED STATES SUPREME COURT.
OCTOBER TERM, 1895.

PERMANENT EDITION.

OCTOBER, 1895—AUGUST, 1896.

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JUSTICES
OF THE
UNITED STATES SUPREME COURT.

OCTOBER TERM, 1895.

CHIEF JUSTICE:

HON. MELVILLE W. FULLER.

ASSOCIATES:

HON. STEPHEN J. FIELD.

HON. JOHN M. HARLAN.

HON. HORACE GRAY.

HON. DAVID J. BREWER.

HON. HENRY BILLINGS BROWN.

HON. GEORGE SHIRAS, JR.

HON. EDWARD D. WHITE.

HON. RUFUS W. PECKHAM.¹

ATTORNEY GENERAL:

HON. RICHARD OLNEY.²

HON. JUDSON HARMON.³

SOLICITOR GENERAL:

HON. LAWRENCE MAXWELL, JR.³

HON. HOLMES CONRAD.³

¹Commissioned December 9, 1895.

²Hon. JUDSON HARMON was commissioned June 8, 1895, to succeed Hon. RICHARD OLNEY, appointed Secretary of State.

³Hon. HOLMES CONRAD was commissioned February 6, 1895, to succeed Hon. LAWRENCE MAXWELL, JR., who resigned January 30, 1895.

ALLOTMENT OF THE JUSTICES
OF THE
SUPREME COURT OF THE UNITED STATES.
FEBRUARY 3, 1896.

FIRST CIRCUIT.

Comprising Maine, Massachusetts, New Hampshire, and Rhode Island.

JUSTICE HORACE GRAY, of Massachusetts. Appointed December 20, 1881, by President Arthur.

SECOND CIRCUIT.

Comprising Connecticut, New York, and Vermont.

JUSTICE RUFUS W. PECKHAM, of New York. Appointed December 9, 1895, by President Cleveland.

THIRD CIRCUIT.

Comprising Delaware, New Jersey, and Pennsylvania.

JUSTICE GEORGE SHIRAS, JR., of Pennsylvania. Appointed July 26, 1892, by President Harrison.

FOURTH CIRCUIT.

Comprising Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

CHIEF JUSTICE MELVILLE W. FULLER, of Illinois. Appointed July 20, 1888, by President Cleveland.

FIFTH CIRCUIT.

Comprising Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.

JUSTICE EDWARD D. WHITE of Louisiana. Appointed February 19, 1894, by President Cleveland.

SIXTH CIRCUIT.

Comprising Kentucky, Michigan, Ohio, and Tennessee.

JUSTICE JOHN M. HARLAN, of Kentucky. Appointed November 29, 1877, by President Hayes.

SEVENTH CIRCUIT.

Comprising Illinois, Indiana, and Wisconsin.

JUSTICE HENRY BILLINGS BROWN, of Michigan. Appointed December 29, 1890, by President Harrison.

EIGHTH CIRCUIT.

Comprising Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wyoming.

JUSTICE DAVID J. BREWER, of Kansas. Appointed December 18, 1889, by President Harrison.

NINTH CIRCUIT.

Comprising California, Idaho, Montana, Nevada, Oregon, and Washington.

JUSTICE STEPHEN J. FIELD, of California. Appointed March 10, 1863, by President Lincoln.

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CASES
ARGUED AND DETERMINED
IN THE
UNITED STATES SUPREME COURT.

OCTOBER TERM, 1895

(159 U. S. 278)

SIMMONS et al. v. BURLINGTON, C. R. &
N. RY. CO.

BURLINGTON, C. R. & N. RY. CO. v.
SIMMONS.

(October 21, 1895.)

Nos. 11 and 12.

RAILROAD FORECLOSURES—RIGHT OF REDEMPTION
BY JUNIOR MORTGAGEE—EFFECT OF
DECREE—LACHES.

1. Where a junior mortgagee is a party defendant to a foreclosure bill in which there is a prayer that he be decreed to redeem, and a sale is ordered in default of payment, declaring the senior mortgagee's right to redeem forever barred, a similar order as to the right of redemption by the junior mortgagee is not substantially or even formally necessary. He will have a right to redeem without such order, but, if he fail to assert the right, and stand by while the sale is made and confirmed, he must be deemed, in equity, to have waived his right.

2. A decree of sale upon the foreclosure of a senior railroad mortgage contained language apparently reserving the rights of a junior mortgagee, who was a party to the suit, for future disposition before the sale was had. He failed to take any action in pursuance thereof, and the sale was made "without redemption or appraisal," and for seven years thereafter he took no steps to assert his claim. *Held*, that he and those whom he represented were thereafter debarred from invoking the assistance of a court of equity as against the purchasers at the sale.

Appeals from the Circuit Court of the United States for the Southern District of Iowa.

Charles A. Clark, for Simmons and others.
J. M. Woolworth and E. E. Cook, for Burlington, C. R. & N. Ry. Co.

Mr. Justice SHIRAS delivered the opinion of the court.

The Burlington, Cedar Rapids & 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 brings the case before us, constructed a main line and three branches, known as "the Milwaukee Extension," "the Pacific Extension," and "the Muscatine Western." It had at different times executed mortgages,—one upon the main line, covering the railway, rolling stock, and franchises held or thereafter to be acquired, securing bonds to the amount of \$5,400,000; one, subsequent in date, upon the Milwaukee extension, securing bonds to the amount of \$2,200,000; one, later in date, upon the Muscatine Western extension, securing bonds to the amount of \$800,000; and one, still later in date, upon the Pacific extension, securing bonds in the sum of \$1,800,000; and, finally, one known as the "Income and equipment mortgage," which was a second mortgage upon the railway and branches, and purporting to be a first mortgage upon the income and upon certain rolling stock not covered by the first mortgages.

On the 15th day of May, 1875, Charles L. Frost, as surviving trustee in the "main-line" mortgage, filed in the circuit court of the United States for the district of Iowa an original bill against the Burlington, Cedar Rapids & Minnesota Railway Company, as sole defendant, to foreclose the mortgage on the main line. By amendment the Farmers' Loan & Trust Company was made a party defendant upon an averment that said company were trustees in a mortgage executed subsequent to the plaintiffs' mortgage, and praying that "their lien on the income and equipment of said road may be declared subsequent to that of the plaintiffs", and they may be decreed to redeem plaintiffs' mortgage, or their equity be barred and foreclosed, and for such other relief as the plaintiffs' case may require." A demurrer