

Northern Pacific Railway v. Duluth in which it was held that a railway was not deprived of its property without due process of law by being obliged to rebuild a viaduct over streets of a city.

Mr. Rome G. Brown, with whom *Mr. Charles S. Albert* and *Mr. William R. Begg* were on the brief, for plaintiffs in error.

Mr. Frank Healy, with whom *Mr. Albert E. Clarke* was on the brief, for defendant in error.

Per Curiam: Judgment affirmed on authority of *Northern Pacific Railway Company v. State of Minnesota ex rel. Duluth*, 208 U. S. 583.

FIDELITY & CASUALTY COMPANY OF NEW YORK *v.*
SOUTHERN RAILWAY NEWS COMPANY.

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

No. 165. Argued April 20, 1909.—Decided April 26, 1909.

Writ of error to review judgment of the Court of Appeals of Kentucky dismissed without opinion, for want of jurisdiction, notwithstanding the contention of plaintiff in error that where a state court in construing a contract departs from its established and applicable mode of procedure theretofore applied under similar circumstances due process and equal protection of the law are denied.

THIS was a writ of error to review a judgment of the Court of Appeals by which plaintiff in error contended that he had been deprived of his property without due process of law.

Mr. William H. Field for plaintiff in error.

Mr. Charles F. Taylor for defendant in error.

214 U. S.

Statement of the Case.

Per Curiam: Writ of error dismissed for want of jurisdiction. *Central Land Company v. Laidley*, 159 U. S. 103; *Sayward v. Denny*, 158 U. S. 180; *Bacon v. Texas*, 163 U. S. 207; *Burt v. Smith*, 203 U. S. 135; *Barrington v. Missouri*, 205 U. S. 485; *Tracy v. Ginzberg*, 205 U. S. 170; *Thompson v. Kentucky*, 209 U. S. 430.

DONOHUE v. EL PASO & SOUTHWESTERN RAILROAD
COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF
ARIZONA.

No. 516. Motion to dismiss or affirm.—Submitted April 19, 1909.—Decided April 26, 1909.

Judgment of the Supreme Court of Arizona holding that ejectment should not be maintained against a railroad company where the owner had remained inactive and permitted the construction of the track affirmed without opinion on authority of *Roberts v. Northern Pacific Railroad Company*, 158 U. S. 1, and *Northern Pacific Railroad Company v. Smith*, 171 U. S. 260.

THE court below held that ejectment could not be maintained, saying in its opinion: "The only question requiring our attention, upon the record, as presented, is whether ejectment or trespass may be maintained, and we have no hesitancy in holding that they may not be. This has been determined so authoritatively that discussion by us is wholly unnecessary. In *Northern Pacific Railroad Co. v. Smith*, 171 U. S. 260, it is said:

"This subject was fully considered by this court in the case of *Roberts v. Northern Pacific Railroad*, 158 U. S. 1, where, upon the foregoing authorities and others, it was held that if a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having complied with a statute requiring either payment by agree-