

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.

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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-

ment or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages. See also *City of New York v. Pine*, 185 U. S. 93.' "

*Mr. A. B. Browne, Mr. Alexander Britton and Mr. E. E. Ellinwood* for the appellee in support of the motion.

*Mr. Charles F. Ainsworth* for the appellant in opposition thereto.

*Per Curiam:* Judgment affirmed. *Roberts v. Northern Pacific Railroad Co.*, 158 U. S. 1; *Northern Pacific Railroad Company v. Smith*, 171 U. S. 260.

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## LOGAN *v.* FARMERS' DEPOSIT NATIONAL BANK OF PITTSBURGH.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FOURTH  
CIRCUIT.

No. 745. Motion to dismiss or affirm.—Submitted April 19, 1909.—Decided April 26, 1909.

An appeal from the Circuit Court of Appeals in a bankruptcy matter dismissed without opinion on authority of *Coder v. Arts*, 213 U. S. 223.

THIS case came up on motion to dismiss or affirm a final decree or judgment of the Circuit Court of Appeals for the Fourth Circuit modifying a decree of the District Court of the United States for the Northern District of West Virginia in the bankruptcy proceedings of the Morgantown Tin Plate Company and rejecting all of a claim of \$100,000, except \$22,500.

*Mr. B. M. Ambler and Mr. A. Leo Weil* for the appellees in support of the motion.