

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.

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.

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Statement of the Case.

Mr. Hector M. Hitchings for the appellants in opposition thereto.

Per Curiam: Appeal dismissed for want of jurisdiction on authority of *Coder, Trustee, v. Arts*, 213 U. S. 223.

Ex parte ISAAC HELLER, PETITIONER.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS.

No. —. Original. Submitted April 27, 1909.—Decided May 3, 1909.

Petition for leave to file petition for mandamus to compel the Circuit Court of Appeals to take jurisdiction of a writ of error to the Circuit Court to review an order fining petitioner for contempt denied without opinion.

PETITIONER having been by decree of the Circuit Court of the United States for the Southern District of New York enjoined in an action in which the National Waistband Company was plaintiff from using the trade-mark "Excelsior" and also from stamping waistbands "Extension" and "Waistband" in a certain manner, was adjudged by the same court to be in contempt for violating the terms of the decree and fined \$500. To this order in contempt petitioner sued out a writ of error from the Circuit Court of Appeals of the Second Circuit which was dismissed with the following opinion:

"It is well settled that when an order imposing a fine for violation of an injunction is substantially one to reimburse the party injured by the disobedience, it is to be reviewed only by appeal. Writ of error will lie only when the fine is clearly punitive and in vindication of the authority of the court, as is the case where the fine is made payable in whole or in part to the United States. *Matter of Christensen Eng. Co.*, 194 U. S. 458. The writ of error is dismissed; defendant's remedy is by appeal."