

A motion for rehearing was denied, with the following opinion:

"We see no reason to order a rehearing, nor to certify the questions to the Supreme Court. The decisions in *Bessette v. W. B. Conkey Co.*, 194 U. S. 334; and *Matter of Christensen Eng. Co.*, 194 U. S. 458, cover the case now presented. The decision of the Circuit Court of Appeals in the First Circuit (*Wilson v. Colculagraph Co.*, 163 Fed. Rep. 901), indicates that this order at the heel of the final decree might be reviewed by appeal."

Whereupon petitioner, asserting that the order of the Circuit Court is, notwithstanding such opinions, reviewable only by writ of error, applied to this court for a writ of mandamus to compel the Circuit Court of Appeals to take jurisdiction thereof and decide the same.

Mr. Abraham A. Berman for petitioner.

Mr. Arthur v. Briesen submitted a brief for the respondent, contending that a contempt order in an equity suit is not reviewable by writ of error if the fine be purely compensatory and not penal in its nature, as such orders are only reviewable, if at all, by appeal.

Per Curiam: Motion for leave to file petition for a writ of mandamus denied.

MISSOURI, KANSAS & TEXAS RAILWAY CO. *v.*
KENNEDY.

ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME
JUDICIAL DISTRICT OF THE STATE OF TEXAS.

No. 817. Motion to dismiss or affirm.—Submitted April 26, 1909.—Decided May 3, 1909.

Writ of error to review the judgment of the state court in a suit for damages for injuries caused by negligence of plaintiff in error dismissed without opinion for want of jurisdiction, notwithstanding contention

of plaintiff in error that its claim that the act of April 24, 1905, ch. 163, of Texas legislature was unconstitutional as depriving it of the fellow-servant defense had been duly set up at the proper time in the state court.

THE nature of this case appears above.

Mr. C. A. Culberson for the defendant in error in support of the motion.

Mr. James Hagerman, Mr. J. M. Bryson and Mr. A. B. Browne, for the plaintiff in error in opposition thereto.

Per Curiam: Writ of error dismissed for want of jurisdiction.

YADKIN RIVER POWER CO. v. WHITNEY CO.

ERROR TO THE SUPREME COURT OF THE STATE OF NORTH
CAROLINA.

No. 835. Motion to dismiss or affirm.—Submitted May 3, 1909.—Decided May 17, 1909.

Writ of error to review judgment of the state court in a condemnation proceeding dismissed without opinion for want of jurisdiction.

THIS was a special proceeding commenced by plaintiff in error to condemn land on which to establish a water power and erect an electric light plant. The state court dismissed the proceedings, and among other things as stated in its opinion, held, construing its own statutes and basing its decision upon one of a similar case in the Supreme Court of the United States, *Denver Co. v. Alling*, 99 U. S. 480, that the plaintiff in error has not the power of eminent domain; but, that in accepting its new charter from the legislature, it accepted it in the status in which