

ATCHISON, T. & S. F. RY. V. DUGAN, 1921-NMSC-010, 26 N.M. 611, 195 P. 514 (S. Ct. 1921)

ATCHISON, T. & S. F. RY. CO.

vs.

DUGAN, et al.

No. 2320

SUPREME COURT OF NEW MEXICO

1921-NMSC-010, 26 N.M. 611, 195 P. 514

January 15, 1921

Appeal from District Court, McKinley County; Reynolds, Judge.

Action by the Atchison, Topeka & Santa Fe Railway Company against Sarah Dugan and others. Judgment for plaintiff, and defendants appeal.

SYLLABUS

SYLLABUS BY THE COURT

Dugan v. Montoya, 24 N.M. 102, 173 P. 118, followed.

COUNSEL

H. B. Jamison, of Albuquerque, and A. T. Hannett and E. A. Martin, both of Gallup, for appellants.

C. M. Botts, W. C. Reid, and George S. Downer, all of Albuquerque, for appellee.

JUDGES

Roberts, C. J. Parker, J., concurs. Reynolds, J., having heard the case below did not participate in this opinion.

AUTHOR: ROBERTS

OPINION

{*611} {1} OPINION OF THE COURT. The decision of this court in the case of Dugan v. Montoya, 24 N.M. 102, 173 P. 118, is controlling in this case, and requires the affirmance of the judgment of the lower court. The law and facts are the same in both

cases. Appellants argue that the court in that case did not consider and decide the question as to whether the grantees of the quarter section of land involved were the owners of the reversion of the 27.72 acres claimed by the railroad as station grounds, and as such had a right to litigate out with the railroad the question as to whether it required the land claimed, or had forfeited {612} the same by nonuser. In the case referred to we said:

"In the case of Oregon Short Line v. Stalker, 14 Idaho 362, 94 P. 56, it was stated that the only person who was in a position to take advantage of the forfeiture of the right of way was the United States government."

{2} We there clearly held that they had no such right, and this view is, we believe, supported by all the authorities.

{3} The judgment is affirmed.