

Decision No. 14308

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
on the Commission's Own Motion of)
the Safety and Necessity of the sev-)
eral public grade crossings over the)
tracks of the Northwestern Pacific)
Railroad Company, in the Town of Mill)
Valley, County of Marin, State of)
California.)

Case No. 1983.

George Earlan for Casper J. Gardner, Property Owner.
E. C. Symonds, Town Attorney, for Town of Mill Valley.
Henry F. Marshall, in propria persona.
Walter E. Robins, for Mill Valley Chamber of
Commerce and Ladies Outdoor Club.
R. W. Palmer, for Northwestern Pacific Railroad Company.

WHITTLESEY, Commissioner:

OPINION

This proceeding was instituted on the Commission's own motion after the receipt of several informal complaints from the authorities of the Town of Mill Valley with reference to certain crossings over the tracks of the Northwestern Pacific Railroad Company along Miller Avenue in said town.

Public hearings were held in Mill Valley on March 31, 1924, and in San Francisco on October 16, 1924, at which times all parties interested were present and heard.

Miller Avenue is one of the principal public streets in the Town of Mill Valley. It is traversed longitudinally by the tracks of the Northwestern Pacific Railroad Company, upon which steam and electric interurban trains are operated. The avenue is composed of 30-foot paved road-ways on each side of the railroad's 30-foot right of way, and it is the crossings

from one side of the avenue to the other over the said tracks and right of way that were the subject of this investigation. No intersecting street crosses Miller Avenue or the tracks or right of way of the railroad at any of the points in question, although several of the crossings are opposite the ends of abutting streets. At the hearing held on October 16, 1924, the Town of Mill Valley receded from its original position in this matter stating frankly that further investigation on its part had convinced it that the fee title to the strip of land upon which the tracks of the railroad are constructed was in the Town of Mill Valley, and that this Commission had no jurisdiction over the crossings in question. The Northwestern Pacific Railroad Company also claimed fee title to said strip of land, and Casper J. Gardner, a property owner, claimed a private perpetual easement in the entire length and breadth of said Miller Avenue, including the strip upon which the railroad tracks are constructed.

Without at this time determining the jurisdiction of this Commission in the premises, we are of the opinion that, for other reasons, this proceeding should be dismissed. This Commission cannot undertake to adjudicate adverse property rights, and until the several interests of the respective parties in and to the property in question have been judicially determined in the proper tribunal, no order will be made concerning these crossings. As there appears to be no immediate prospect of such a determination, this proceeding will be dismissed.

ORDER

Investigation, as above entitled, having been instituted by this Commission, public hearings having been held, the Commission being now fully advised in the premises, and for the reasons

stated in the foregoing opinion,

IT IS HEREBY ORDERED that this proceeding be, and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28 day of November, 1924.

Chas. Leavy

Egerton Shore

J. T. Whitney
Commissioners.