

Decision No. 14544

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Antone Rilovich,
Complainant,

-vs-

Mary Perkins Raymond,
Defendant.

ORIGINAL

Case No. 2016

Anthony Jurich, for Antone Rilovich,
Hollingsworth and Henderson, by
J. C. Hollingsworth, and Clarke and Bowker, by Don Bowker,
for Defendant.

BY THE COMMISSION:

O P I N I O N

In the above-entitled case, Antone Rilovich complains against Mary Perkins Raymond, alleging that in 1910 he purchased 20 acres of land in the vicinity of the Town of Ojai, Ventura County, from her predecessors, S. E. and Martha A. Stuart; that at the time of such purchase an agreement was made by said Stuarts to furnish complainant with water for agricultural and domestic purposes upon said lands; that said Stuarts were the owners of a water system located near said lands; that they conducted a public utility water works and pipe lines, serving domestic and agricultural con-

sumers for compensation in the vicinity of complainant's lands; that the defendant is the successor in interest of said Stuarts, and as such has been operating the alleged public utility water system; that complainant has purchased and utilized such water for a period of approximately 14 years; that it is necessary and essential for him to have water upon his said lands, and that he has received a notice from the defendant to the effect that she intends to discontinue such water service to him unless otherwise ordered by the Railroad Commission. Complainant prays for an order requiring defendant to continue furnishing him with water.

In her answer, defendant alleges that the agreement for water service mentioned by complainant is nudum pactum and void for lack of consideration and mutuality. She denies that the Stuarts ever conducted a public utility water system or that the successors of said Stuarts, including herself, have been operating a public utility. As a separate defense she alleges that the Railroad Commission possesses no jurisdiction over such service as may have been rendered by her upon the ground that such service has never been of a public utility character.

This matter came on for hearing before Examiner Wheat at Ojai on September 2, 1924, at which time it appeared that complainant and several other persons not parties to this case had purchased land from Mr. and Mrs. Stuart, the purchased tracts being subdivisions of a portion of a large ranch then owned by the Stuarts. It further appeared that the Stuarts

agreed to serve these purchasers with water, and that for a period of time such water service was in fact rendered both for domestic and irrigation purposes, but that, with the single exception of complainant, such water service has been discontinued for several years, and that all of the land purchasers, save complainant, have entered into agreements releasing the Stuarts and their successors from any obligation to continue such service to them.

It appears that the water originally delivered by the Stuarts to these purchasers came from what is known as the "upper well" or "creek," a small pump having been located in a canyon some distance above these lands, a four-inch pipe conveying the water to the point of use. Complainant received water for his ranch and the orchard and nursery stock thereon from this source, a two-inch pipe conveying it over his own land, from 1910 to 1919, except for a short period, to be referred to below, but since that time defendant has practically abandoned the "upper well" and has installed a more efficient plant, known as the "lower well," upon the ranch itself, and from this has served complainant since 1919. No meter was ever installed to measure complainant's water use, but he testified that he paid "whatever he (the seller) said." The payment was frequently "taken out" in labor. There appeared to be some contention upon the part of defendant that no charge had been made for water during 1924, but this, we feel, can have no bearing upon the present proceeding.

It was evident from the testimony that the upper well was abandoned because of flood hazard and consequent likelihood of frequent heavy maintenance and repair expenses. In fact, this source was largely destroyed by flood in 1914, but was repaired in 1916 and used until final abandonment in 1919. In the interim between 1914 and 1916 complainant received water as an accommodation from one Fordyce, but this source of supply does not appear to be now available.

At the close of complainant's testimony counsel for defendant moved for a dismissal, urging as ground therefor that the original agreement for water service to complainant lacks mutuality, is uncertain, and is void because it was not signed by complainant. It appears, however, that complainant was actually served with water for a period of years at a fixed compensation. If this was a service of a public utility character, it was so because of facts and circumstances other and apart from this agreement, and while defendant's contention might possibly possess significance if the claim was for a private contract water right, it cannot in our opinion, be the criterion in the present case as to the nature of this service. Nor can the fact of a change in the source of water supplied by defendant be the criterion. If the service was of a public utility character, no mere change in source or mechanism of supply made for the convenience of the seller could affect the status already obtaining.

We must, therefore, consider the situation apart from these circumstances. Dr. Stuart testified that the

several purchasers of portions of his ranch would not have purchased without assurance of water service, and that he agreed to furnish water to them. There can be no question but that his intent was for this to be a continuous service for an indefinite period, and a pump was installed at the upper well and at times proved useful and necessary.

The records of the Commission show that in 1916 a former owner of the Raymond property filed an application with the Commission requesting authority to discontinue service to the present complainant and be relieved of public utility obligations. A hearing was held thereon, but at request of said former owner the matter was dismissed without prejudice.

It seems evident that both by intent and by practice there was a dedication of this system to public use upon the lands purchased from Stuart, and that such service was in fact of a public utility character. Service has been discontinued by agreement with all purchasers save this complainant, who has persistently claimed a right to continued service, and while it may appear somewhat anomalous, we know of nothing to prevent the status of public utility and consumer obtaining where only one consumer remains under circumstances as existing in this case. It seems evident to us that the service heretofore rendered complainant has from its inception been impressed with a public use, and is therefore of a public utility character. We are therefore of the opinion that said complainant is rightfully entitled to continued service from defendant herein.

The testimony, however, tended to show, and we recognize that it may well be, that it is not economically feasible for defendant to render service to a single consumer under the existing rates, and it is possible that such service can no longer be rendered except at a rate which would be prohibitive. If such be the case the proper remedy lies in an application to this Commission on behalf of the defendant herein for the fixing of a proper rate for such service or for authority to discontinue public utility operations, as the facts may warrant.

O R D E R

Complaint having been made that the defendant named herein threatens to discontinue water service to complainant, the matter having come on for hearing, evidence having been taken, the case being submitted and ready for decision, and it being our opinion that defendant Mary Perkins Raymond and her predecessors in interest have supplied this complainant with water as a public utility, and that this service to complainant should be continued,

IT IS HEREBY ORDERED that defendant Mary Perkins Raymond be and she is hereby directed not to discontinue water service to this complainant.

The effective date of this order shall be twenty (20) days from and after the date thereof.

Dated at San Francisco, California, this 9th day of February, 1925.

H. M. Brundage
C. Seavey
Egerton Shore
George D. Squires
Frederick C. ...
Commissioners.