

ORIGINAL

Decision No. 14948.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application  
of HAL R. CLARK, for the con-  
struction of a Private Crossing  
over Railroad Right of Way.

Application No. 10980.

Hal R. Clark, en propria persona.  
C. W. Cornell for Pacific Electric Railway  
Company and for Southern Pacific  
Company, Protestants.

SHORE, COMMISSIONER.

O P I N I O N.

In this application, under Section 485-A of the Civil Code, authority is asked to construct a private crossing over Pacific Electric Railway Company's right-of-way and track, and also across Southern Pacific Company's right-of-way, at a point about one-quarter of a mile southeast of the city of Huntington Beach, Orange County, California. A public hearing was held in this matter in Los Angeles, April 15, 1925.

Applicant is the owner of a tract of land containing about 7.2 acres. This property is located between Pacific Electric Railway Company's right-of-way and the Pacific Ocean, extending along the railroad for a distance of about 1500 feet. The depth of the property varies from 150 to 250 feet. The tracts of land adjoining applicant's property at either end are

privately owned. There is no road leading to applicant's property, from any direction.

The State Highway Department has recently completed the paving of a 20-foot strip within its 100-foot right-of-way between Huntington Beach and Newport Beach. This is a link in the new state highway between Oxnard and Capistrano. Applicant's property is separated from the state highway by Southern Pacific Company's 40-foot right-of-way and the adjoining 60-foot right-of-way of Pacific Electric Company.

Pacific Electric Railway Company operates upon a private right-of-way its so-called "Newport Line", a single track electric railroad over which high speed interurban service is maintained, with a total of 30 normal train movements per day. Prior to 1916 Southern Pacific Company operated a single track line over its right-of-way between Newport Beach and Huntington Beach, but during the high water of 1916 this track was washed out opposite applicant's property, and has not, to date, been replaced. Southern Pacific Company made a connection to the Pacific Electric line at either end of the section washed out, and has subsequently been operating over about one-half mile of Pacific Electric Railway Company's track. The record shows, however, that the Southern Pacific Company plans to restore its track, in the near future. At present there is only one freight movement per day over the Southern Pacific line. This train travels at a slow rate of speed in the vicinity of the proposed crossing.

Applicant proposes to construct a beach resort on his

property, for the accommodation of an organized club. The proposed crossing is to afford a means of ingress to or egress from the property, for applicant and members of the club only. Applicant offers to bear the cost of constructing the crossing and proposes to erect gates and maintain a watchman at the crossing at his expense. The use of the crossing is to be restricted to admit only applicant and members of the club. When the watchman is off duty the gates will be closed to traffic over the railroad, and locked. There is no definite limit as to the number of members of the club at this time.

Applicant claims that verbal application was made to the railroad companies for the construction of this crossing, and that verbal assurance was given that there would be no objection on their part to the construction of such a crossing, and that thereafter applicant constructed over his property up to the right of way line of Pacific Electric Railway Company a wooden roadway, but that after that was done the verbal permit was withdrawn and the applicant notified in writing to that effect. The Pacific Electric Railway Company represents that at no time was authority given to the applicant for the construction of this crossing, but that applicant was advised that his application to the Railroad would require investigation, and that if the crossing were permitted, certain conditions would be required by the railroad.

The application prays for an order directing the Southern Pacific Company to permit applicant to use the crossing heretofore constructed by him across its right-of-way, and directing the Pacific Electric Railway Company to complete the

crossing over its right of way so as to enable him to connect his wooden roadway with the state highway adjoining said right of way on the north. The application also prays that the Commission order said companies to construct and at all times maintain such private grade crossing in a good, safe and passable condition.

The Southern Pacific Company and the Pacific Electric Company appeared at the hearing and protested the issuance of such an order by the Commission on the ground that the Commission has no jurisdiction. They filed a joint brief wherein it is claimed that under sections 2681-2698, Political Code, sole jurisdiction over the opening of both public and private roads is vested in the board of supervisors of the county wherein the road in question is located; that all roads are public and that there is no distinction between a public and a private road; and that section 485a Civil Code has been superseded by section 2698, Political Code, as amended.

I am not impressed with the protestants' contention that all roads must be deemed public roads. In certain instances, as where one attempts to condemn the land of another for his own private purpose, the cases cited by protestants (Sherman v Buick, 32 Cal. 241; Monterey v. Cushing, 83 Cal. 507) indicate clearly that the distinction does not prevail, but to say that a road constructed solely upon one's own land, with a mere right to cross a railroad right of way to afford ingress and egress, is not a private road seems to me to fall by the weight of its own contradiction. It could not be questioned that title, possession and control of such a road is as much in private ownership

as the land upon which it is located, nor that the owner might not at will obstruct the way and deny passage to all. And this, I believe, is the distinction to be made between the different rights outlined in sections 2681-2698, Political Code, and section 485a, Civil Code. The proceeding set forth in the Political Code is clearly designed to enable the public authorities at the request of certain individuals to alter or discontinue an existing road or to lay out a new road for the use of the public generally. Section 485a, Civil Code, simply grants to one owning property along or through which a railroad passes, a means of ingress to or egress from such property; it grants nothing but the right to cross the right of way, and vests in this Commission the authority to determine the necessity for such crossing, the place, manner and conditions under which it shall be constructed and maintained, and to fix and assess the cost and expense thereof.

From the evidence presented, I am of the opinion that the application should be granted, and the following form of order is recommended:

O R D E R.

Application having been filed by Hal R. Clark for permission to construct a private crossing over the right of way tracks of Pacific Electric Railway Company and over right of way of Southern Pacific Company in Orange County, a public hearing having been held, the Commission being apprized of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that permission be, and it is hereby granted to Hal B. Clark to construct a private crossing at grade across the right of way and tracks of Pacific Electric Railway Company and across the right of way of Southern Pacific Company in the County of Orange, the center line of said crossing to be located approximately at Engineer's Station 1855 of the surveyed line of said Pacific Electric Railway Company's track. Said private crossing to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing and maintaining the crossing shall be borne by applicant.

(2) The crossing shall be constructed not less than twenty (20) feet in width and at an angle of seventy (70) degrees to the railroad and with grade of approach not greater than six (6) per cent; shall be protected by a suitable private property sign and shall in every way be made safe for the passage thereon of vehicles and other road traffic.

(3) Applicant shall erect suitable gates on each side of said crossing, and shall keep said gates closed and locked at all times except when a watchman is maintained at the expense of applicant for the protection of the crossing and the prevention of its use by unauthorized persons.

(4) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing.

(5) If said crossing shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

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.

For all other purposes this Order shall become effective twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 20<sup>th</sup>  
day of May 1925.

H. V. Burdick  
C. Seaver  
Ernest Shore  
George D. Squires  
Ernest Scott  
Commissioners