

EMR.

Decision No. 15672

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ANTON RILOVICH,

Complainant,

vs.

Case No. 2016.

MARY PERKINS RAYMOND,

Defendant.

Anthony Jurich for Complainant;

Vincent S. Brown for State Immigration Commission and Complainant;

Hollingsworth & Henderson, by J. C. Hollingsworth, and Clarke & Bowker, by Robert M. Clarke, for Defendant.

DECOTO, Commissioner.

OPINION ON REHEARING.

It appears that one S. L. Stuart was the owner of a portion of Section 5, Township 4 North, Range 22 West San Bernardino Base and Meridian, and that in October, 1910, he subdivided his holdings and sold them in parcels to four or five people, one of whom was Anton Rilovich, giving to some of them a certain agreement concerning water.

On the 27th day of October, 1910, he deeded to Anton Rilovich a part of Lots 3 and 4 of Section 5, Township 4 North, Range 22 West San Bernardino Base and Meridian, consisting of approximately twenty acres and at the same time and place he made, executed and delivered to Rilovich the following agreement:

"THIS AGREEMENT, Made and entered into this 27th day of October, A. D. 1910, by and between S. L. Stuart, the party of the first part, and ANTONE RILOVICH, the party of the second part, WITNESSETH:

"WHEREAS, the party of the first part is the proprietor of a system of water works and pipe lines for the purpose of furnishing water for the irrigation of certain lands in Section 5, T. 4 N., R. 22 W., S. B. M., and,

"WHEREAS, the party of the first part has conveyed to the party of the second part 20.00 acres of land in Lot 3, Section 5, T. 4 N., R. 22 W., S. B. M. by deed of even date herewith, and intended to be forthwith recorded in the office of the County Recorder of Ventura County, State of California,

"NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the party of the first part hereby agrees to furnish the party of the Second Part, for the price or sum of twenty cents (20¢) for each one thousand gallons of water used by said party of the second part upon the land particularly described in said deed of even date herewith.

"It being understood that said water is to be supplied from the system of water pipes as now constructed and maintained by the party of the first part, and that all expense in making connections to and with said system of pipes and conducting said water to said land, including all tanks, measuring devices or meters for measuring said water, shall be at the sole cost and expense of the party of the second part. And it is also understood that the party of the first part reserves the right and privilege of remodeling, changing and reconstructing said system of water pipes at his option.

"IN WITNESS WHEREOF, the said party of the first has hereunto set his hand and seal the day and year first above written.

"S. L. Stuart (Seal)

"Martha A. Stuart."

The deed of Anton Rilovich was recorded January 11, 1911, in Volume 142 of Deeds at page 142, Ventura County Records, and the agreement hereinabove set forth was recorded January 11, 1911, in Book 124 of Deeds, at page 105, Ventura County Records.

Thereafter water was furnished to Rilovich from an old well in the canyon, which had been originally a spring. After the pipe line wore out and the spring partially ceased to flow, this system was abandoned, being worn out and useless. A new well was put down on another portion of the property and at different times water for irrigation and domestic use has been furnished to Rilovich.

Mary Perkins Raymond, the Defendant, succeeded to the title of S. L. Stuart in the lands in question. During June, 1924, Mary Perkins Raymond refused to deliver water to Anton Rilovich and on the 16th day of June, 1924, Anton Rilovich filed a com-

plaint with this Commission, setting forth the facts herein set forth and asking for an order of the Commission compelling Mary Perkins Raymond to continue furnishing him with water.

On the 14th day of July, 1924, Mary Perkins Raymond filed her answer to the complaint of Rilovich and the matter was set for hearing and heard at Ojai September 2, 1924.

The Commission rendered its opinion declaring Mary Perkins Raymond was conducting a public utility and directing that she not discontinue the water service to Rilovich.

The Defendant on February 27, 1925, filed her application for re-hearing, which was granted for the purpose of presenting further evidence and the argument of certain points of law raised by the defendant.

Upon the re-hearing additional facts were presented for the consideration of the Commission and a full and thorough discussion of the law of the state affecting dedication of property to public use was had by all the parties. The further question was raised by the defendant as to whether or not the defendant had ever submitted to the jurisdiction of the Commission, a question which was not raised nor discussed at the original hearing. Both plaintiff and defendant argued both these matters in full and each was given the privilege of filing a brief with the Commission. The plaintiff afterwards waived his right to file such brief in support of his application.

I am of the opinion, after full consideration of the additional evidence produced and the new questions raised by defendant that the evidence in this case does not show that Mary Perkins Raymond, or her grantors, ever conducted a public utility within the meaning of the law of this state. S. L. Stuart conveyed the land to his few grantees and executed the document above set forth, but it is well settled in this state that by so doing he did not become

a public utility. Whether or not he conveyed any private right to the water is for the courts to determine and not this Commission.

"The test to be applied in determining whether a person engaged in the business of supplying water is engaged in a public utility business is whether or not he holds himself out expressly or impliedly as engaged in the business of supplying water to the public as a class or a limited portion of it as contradistinguished from holding himself out as serving or ready to serve only particular individuals either as a matter of accommodation or for reasons peculiar and particular to him."

Van Hoosier v. Railroad Commission, 184 Cal. 552.

Before it can be declared that any private owner is a public utility, it must appear that there was an "unequivocal intention" to become such and no such unequivocal intention is shown here.

"To hold that property has been dedicated to a public use is not a trivial thing and such dedication is never presumed without evidence of unequivocal intention".

Ellen v. Railroad Commission, 179 Cal. 69.

Klatt v. Railroad Commission, 69 Cal. Dec. 19;

Thayer v. California Development Company, 164 Cal. 117.

I suggest the following form of order:

O R D E R .

Complaint having been made that the Defendant named herein threatened to discontinue water service to Complainant, the matter having come on for hearing and evidence having been taken and the case being submitted upon re-hearing and ready for decision and it being our opinion that Defendant, Mary Perkins Raymond, and her predecessors in interest, never have operated as a public utility and are not now a public utility,

IT IS HEREBY ORDERED that the complaint and application of Complainant herein, Anton Rilovich, for an order compelling Mary Perkins Raymond to furnish him with water for agricultural and domestic purposes be denied.

The foregoing Opinion and Order are approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

For all other purposes the effective date of this order shall be November 29th 1925.

Dated at San Francisco, California, this 7th day of November, 1925.

C. Bennett
George D. ...
Edward ...

COMMISSIONERS.