

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ELLA MELCHER HOKE, MRS. W. THOM-  
ASON, G. A. TAYLOR, IGNACIO GUER-  
RERO, LILLIAN SANFORD and ANDY M.  
FARIAS,

Complainants,

vs.

E. FRANCIS LEO and EDWARD STRONG  
MERRILL,

Defendants.

ORIGINAL

Case No. 2119.

G. A. Taylor, for complainants.

C. Ibeson Sweet, for defendant E. Francis Leo.

Chas. E. Hobart, for defendant Edward Strong  
Merrill.

BY THE COMMISSION:

O P I N I O N

In the above entitled proceeding Ella Melcher Hoke, Mrs. W. Thomason, G. A. Taylor, Ignacio Guerrero, Lillian Sanford and Andy M. Farias allege, in effect, that E. Francis Leo in about 1905 subdivided certain lands known and designated as the Venice Del Rey Tract, Los Angeles County, and in connection with the sale of lots promised and agreed to supply and thereafter actually did supply water to certain purchasers of said lots, charging therefor varying rates based upon a minimum charge of \$2.75 per month for each residence; that E. Francis Leo on or about December 1st, 1923, sold the property containing the water system to Edward Strong Merrill, who continued to supply water but in amounts entirely

inadequate until July 5, 1924, when water service was entirely discontinued; that upon complaint of complainants herein, water service was continued without cost until about March 20, 1925, at which time the said Merrill refused to render further water service. Wherefore the complainants request that defendants be ordered to furnish them with an adequate and sufficient water supply immediately.

E. Francis Leo in his answer admitted having subdivided that tract of land known as the Venice Del Rey Tract, in conjunction with his wife, Martha E. Leo; that in connection therewith they became owners in common of a 10-acre tract known as Cypress Grove and lying adjacent to said Venice Del Rey Tract; that in connection with the development of Cypress Grove they dug a well to supply water for domestic and irrigation purposes and that as a matter of accommodation only sold surplus water to a few residents of Venice Del Rey Tract upon their request. Said Leo denies that either he or his wife promised or agreed to furnish water to the Venice Del Rey Tract. He states that on September 1, 1923, Cypress Grove was sold to Edward Strong Merrill, and all consumers who were obtaining water from the well located thereon were notified that service would be discontinued on December 1, 1923.

Edward Strong Merrill, by way of answer, alleges in effect that in December, 1923, he purchased from E. Francis Leo that certain tract of land known as Cypress Grove, which contained thereon a water system, but denies that complainants have any right or interest or are entitled to water from said water system. He affirms that a dispute arose over the rights of complainants, and at the request of this Commission he has continued the service of water to complainants without cost.

A public hearing in this matter was held before Examiner Williams at Los Angeles after all interested parties had been notified and given an opportunity to appear and be heard.

The testimony introduced at the hearing shows that complainants for many years have received water from the well located on the tract known as Cypress Grove, for which service they have paid Martha E. Leo amounts varying from \$1.25 per month to \$2.75 per month. This service continued until about September, 1923, when notice was given by Mrs. Martha E. Leo, first, that water service would be discontinued on December 1, 1923, and further notice at a later date to the effect that water bills should in the future be paid to Edward Strong Merrill. Since taking over this property Mr. Merrill has made no charge for the water service, which although discontinued in July 1924 he has since continued to furnish at the request of the Commission pending final decision of this case.

Although the answer of defendant Leo alleges joint ownership with Martha E. Leo of the Cypress Grove tract on which the water plant and system involved herein is located, the evidence shows that this tract was the separate property of Martha E. Leo before her marriage and continued so thereafter, and that defendant Leo had no interest whatsoever in this property. It appears that E. Francis Leo divorced his wife in the year 1910 and that the said Martha E. Leo has conducted her business affairs herself, which included the operations of the water plant, until her health entirely broke down in 1923. Her physical condition is such that she is now confined to bed, being wholly incapacitated and unable to carry on business of any nature whatsoever, and the property involved herein has been sold to defendant Merrill.

Cypress Grove was used originally for bee culture and as a chicken ranch, and from time to time alfalfa was also raised.

According to the testimony of defendant Leo, the pumping plant and pipe lines were installed for the purpose of irrigating the grove and other adjacent properties; and as there was usually a surplus of water over and above that required for their own use, that as a matter of accommodation this extra water was delivered to a certain few neighbors, for which a charge was made. Apparently all of the neighbors residing in this area were not served by this system. Some of the residents had installed their own wells. There is no evidence in this case which tends to show that Martha E. Leo held herself out to serve water to all members of the public generally who resided in this area. While it is apparent to the Commission that purchasers of lots in the Venice Del Rey Tract were promised or led to believe by sales agents that their lots would be served with water from the Cypress Grove well, yet nevertheless only a few of the lot purchasers were given water from this plant and most of the residents put down their own wells and furnished their own water supply.

Under the facts as set out above the Commission is of the opinion that the evidence presented in this proceeding is insufficient to warrant the finding that the service heretofore rendered by the Cypress Grove system has been public utility in character and that the system has been dedicated to the public use. The complaint must therefore be dismissed. In fairness to the consumers now receiving water from defendant Merrill, the Commission believes that he should continue the present service for such a reasonable period of time as will permit said consumers to acquire other sources of supply. The attitude shown by defendant Merrill throughout this proceeding is such that the Commission has the fullest confidence that this consideration will be given by him to the complainants herein.

O R D E R

Complaint having been made against E. Francis Leo and Edward Strong Merrill as entitled above, a public hearing having been held thereon, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY ORDERED that the above entitled complaint be and the same is hereby dismissed.

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

Dated at San Francisco, California, this 30<sup>th</sup> day of November, 1925.

H. B. Brundage  
C. Leamy  
George D. Squires  
Ernest West  
Leon Whitell  
Commissioners