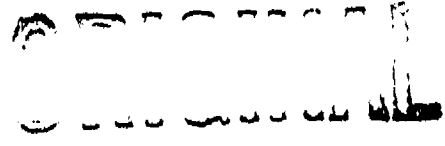


Decision No. 18445.



BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application  
of NOEL NEGLEY for the continuance  
of a private crossing over the  
right of way of the Tidewater &  
Southern Railway.

Application No. 13466.

Noel Negley, in propria persona.  
George Scruggs, for Tidewater Southern Railway  
Company.

BY THE COMMISSION:

O P I N I O N

This is an application filed by Noel Negley, under Section 485A of the Civil Code, for a private crossing over the main line track of Tidewater Southern Railway Company to serve his property near the town of Escalon, San Joaquin County, California.

A public hearing was held in the matter at Escalon on April 14, 1927 before Examiner Gannon.

The railroad involved and an adjacent parallel county highway run due east and west in the vicinity of Escalon along the south line of Township 1, Range 8 East, M.D.B. and M, the highway being on the north side of the track. Noel Negley is the owner of farm property, located to the west of the town, which is divided by the County Highway and railroad right of way, one 20 acre field of his holding being located south of the right of way of the railroad.

It appears that prior to 1922 the main county road which is known as the French Camp Highway, was located about 1500 feet south of the railroad. During this year the existing new road was constructed and paved along the north side of the railroad right of way, the old road, however, remaining open to some local travel.

Mr. Negley's house and farm buildings and the greater part of his farm at Escalon lie north of the Tidewater Southern Railway track and prior to the construction of the new road just referred to it was necessary for him, in entering or emerging from this portion of his farm, onto the main county highway as it then existed, or in passing from his main holdings to the 20 acre field located south of the railroad, to cross the track at one or the other of two private crossings which were provided for in the railroad right of way deed. One of these crossings is opposite the northerly end of California Avenue, a dedicated but little traveled county road along the easterly side of Negley's 20 acre field, and the other opposite another dedicated road known as Irwin Avenue, 360 feet east of California Avenue. The construction of the new road made unnecessary the further use of this latter crossing as a means of ingress to and egress from his house property, but the other crossing opposite California Avenue is still used by him in passing between the separated portions of his farm.

In connection with his farming operations, on the detached 20 acre parcel, which is for the greater part planted to alfalfa and has a small vineyard in the southern portion, it is necessary for Mr. Negley to cross the railroad track. This he has accomplished, as before stated, by means of the private crossing opposite California Avenue, and he has also been accustomed to

use a makeshift crossing located about 878 feet west of California Avenue connecting the western side of the 20 acre field with the main county road.

It is this latter crossing which is in dispute in the present proceeding, applicant contending that it was constructed by the railroad upon his application for a farm crossing and the railroad maintaining that while this point is used by Mr. Negley in entering his field, the so-called crossing was originally constructed for the purpose of providing a place to set off hand and push cars.

In 1924 Mr. Negley took up with the Tidewater Southern Railway Company the matter of having a fence constructed along the north side of his twenty acre parcel in order to separate it from the railroad and the highway, and two years later, in November 1926, after he had informally appealed to the Commission, it appears that the railroad company agreed to construct the desired fence and assembled the material at Escalon for that purpose. Mr. Negley then requested the railroad company to provide a gate in this fence opposite the disputed crossing. This the Tidewater Southern Railway Company refused to do and on January 12, 1927, Mr. Negley made formal application for the continuance of this private crossing under Section 485A of the Civil Code.

It is claimed by Mr. Negley that, because of two ditches extending north and south across the greater part of the field and because of some low ground adjacent to the railroad track which is frequently flooded, he cannot reach all parts of this twenty acre field from the one existing private crossing over the railroad connecting with California Avenue at the easterly side of the property, and that a crossing near his westerly line is also required. It is admitted, however, that a bridge, or bridges, could be con-

structed across the ditches at a nominal expenditure, of probably not over \$35.00, which would enable him to reach the westerly portion of his property.

It appears that previous to the construction of the new county road he did not use the crossing which is the subject of the present application although at that time the railroad alone separated the two parts of Mr. Negley's farm, and it would appear that if applicant's property was supplied with sufficient private crossings to meet his needs at that time no additional crossing is now necessary since the relocation of the main county road has materially improved the accessibility of his property although it may be that the crossings are not now in the proper location.

Section 485A of the Civil Code provides that the owner of land along any railroad shall have the right to such farm or private crossing as may be reasonably necessary or convenient for ingress to or egress from such lands, and that the Railroad Commission shall have authority to determine the necessity for such crossing and the place, manner and conditions under which such crossing shall be constructed. We do not believe it is the intent of this section that such owner should be entitled to a private crossing at each and every point where he may find it convenient to cross the tracks. Every crossing, whether public or private, is a source of hazard not only to the persons using the crossing, but also to the public using the transportation facilities provided by the railroad.

There is also a possibility that crossings of this nature might become public through use and many times such crossings are not situated at points where they best serve the public need. In the instant case the property to the south of the railroad has been subdivided into town lots and several houses have

been erected which are conveniently reached by Irwin Avenue and less directly by California Avenue. The crossings opposite these roads, which were originally installed as private crossings, now connect the subdivision with the new county road, and are used by the public at the present time, although the more westerly of the two crossings, that opposite California Avenue, is apparently used almost exclusively by Mr. Negley. It is clear from the record in this proceeding that, since the public had no occasion to use these crossings prior to the opening of the new road, they are not now public crossings and the railroad should at once take steps to insure that they do not become so unless formally authorized by this Commission.

The application will be denied.

O R D E R

Noel Negley having made application to the Commission for permission to maintain a private crossing at grade over the track of Tidewater Southern Railway Company at a point 878 feet west of an existing private crossing, opposite California Avenue, in the vicinity of Escalon, County of San Joaquin, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that permission to construct said private crossing requested in the above entitled proceeding be and it is hereby denied.

Dated at San Francisco, California, this 12<sup>th</sup> day of June, 1927.

H. B. ...

C. ...

Thos. S. ...

Commissioners.

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