

Decision No. _____.

ORIGINAL

Decision No. 3402

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

MARY E. PEDROTTI,

Complainant,

vs.

SAN FRANCISCO, NAPA & CALISTOGA
RAILWAY, a corporation,

Defendant.

Case No. 944.

Frank M. Silva for complainant.
John T. York for defendant.

BY THE COMMISSION.

O P I N I O N.

This is a case brought by Mrs. Mary E. Pedrotti against San Francisco, Napa and Calistoga Railway, a corporation, for the purposes of preventing said company from abandoning^a station adjoining complainant's land and from closing a run-way underneath its tracks connecting two portions of complainant's ranch.

A public hearing was held in Napa on May 19, 1916. From the evidence it appears that the defendant, a common carrier of freight and passengers, and its predecessors in interest have for more than ten years last past maintained upon their right of way running from the City of Napa to the City of Vallejo a flag station, commonly known as Pedrotti, for taking on and discharging passengers, said station being about three and one-half miles from the City of Napa. The right of way at this point runs

through complainant's land which formerly belonged to one V. Hathaway.

The complainant alleges that defendant's predecessor in interest, Vallejo, Benicia and Napa Valley Railroad Company, obtained a deed to said right of way from said Hathaway, part of the consideration for which was an agreement by the railroad company that it and its successors and assigns would forever maintain a station, on that portion of the right of way included in deed, for the taking on and discharging of passengers and would also establish and maintain a run-way under its right of way so as to connect the two portions of the Hathaway ranch; that in pursuance of said agreement said defendant's predecessors in interest did establish and maintain the above mentioned station and the said run-way, and that the same have been and still are maintained by defendant. The complaint further alleges that defendant now intends to abandon said station and said run-way; that said station is necessary to the patrons of said defendant living at or in the vicinity of said station, and that said run-way is necessary for the use of complainant and her tenants in obtaining ingress and egress to and from her property through said right of way.

Complainant introduced considerable testimony in substantiation of her claim that the Vallejo, Benicia and Napa Valley Railroad Company had obtained its deed to the right of way through Hathaway's property by the promise of Captain John Cross, then president of the railroad company, to install and maintain the necessary cattle guards, gates, road crossings, the aforementioned subway or run-way, to give to said Hathaway an annual pass for life and to install a station at the Hathaway ranch. Apparently, both Hathaway and the company's president felt that the stopping of the trains at the Hathaway ranch was part of the consideration

for the deed of the right of way; but, on the other hand, none of complainant's witnesses had any knowledge or even any clear idea as to whether the conversations which they had heard referred to an agreement which was later to be reduced to writing, or to a written agreement, or merely to an oral agreement, nor were they able to state the terms of the agreement with sufficient definiteness to enable this Commission to determine whether a stopping place at the Hathaway ranch was a covenant which would run with the land, or whether it was simply a personal agreement with V. Hathaway which would terminate at his death just as did the obligation to give him an annual pass. We doubt if any agreement as to the installation of the station was ever reduced to writing; for, according to the testimony, neither complainant, her witnesses, nor any of the witnesses or officers of the defendant had ever seen or heard of any written agreement. The deed to the right of way, in addition to mentioning a consideration of \$1.00, contains the following clause:

"As further consideration for this conveyance, said party of the second part (the railroad company) agrees to fence said strip of land in a good and sufficient manner and to put in all necessary cattle guards, gates, road crossings, culverts, and subways."

No reference is made to any other consideration.

As to the need of this station, commonly known as Pedrotti, the evidence clearly shows that the public, including the complainant, would be adequately served by the stations on either side. The station now maintained and which will be continued at the point commonly known as Lone Tree is approximately half a mile north, while the station known as Soscol is the same distance south of Pedrotti. Moreover, the main highway between Napa and Vallejo as well as between Napa and Suisun, runs directly in front of, and parallel to, defendant's railroad, past Lone Tree, Pedrotti and Soscol and within a few feet of com-

plainant's house, so that complainant at all times will have easy access to either of the other stations above named.

The evidence further shows that the only people living in the vicinity of Pedrotti and practically the only people using the same are complainant, the members of her immediate family, and their guests, and that no one else now lives or has for a number of years past lived within half a mile in either direction of said station. Even complainant's tenants can, according to the testimony, use the Soscol station more advantageously than that of Pedrotti.

The evidence further shows that 300 feet south of Pedrotti there commences a 2% grade, which runs for a distance of 300 feet and then increases to a 3.44% grade for a distance of 1,700 feet; that if defendant's south-bound trains stop at Pedrotti it is often difficult for them in the short distance of 300 feet to attain sufficient headway to surmount the grade, and in every case the car or train consumes a great deal more power if it stops at Pedrotti than if it does not. Moreover, according to defendant's testimony, on account of this grade, if a south-bound train stops at Pedrotti it requires over two minutes longer to run to the top of the grade than would be required if it did not stop. According to defendant's testimony its predecessor, the Vallejo, Benicia and Napa Valley Railroad Company a short time after the construction of its road from Vallejo to Napa sold out its property to the San Francisco, Vallejo and Napa Valley Railroad Company, a new corporation, which had constructed a road from Napa to the Town of St. Helena. Subsequently, the San Francisco, Vallejo and Napa Valley Railroad Company defaulted in the payment of interest upon its bonds and the property was put up for sale in accordance with the terms and conditions of the deed of trust, and purchased by a committee of the bond-

holders. The defendant company was then formed and purchased the property from the reorganization committee. Defendant's officers testified that they had never heard of any agreement, either oral or written, to maintain^a station at Pedrotti having been made by any of defendant's predecessors in interest and that they never knew defendant claimed any such right until a short time before the commencement of this action. They further testified that they are endeavoring to eliminate as many unnecessary stations as possible and that this is merely one of six stations which they desire to eliminate at this time.

After carefully considering all the evidence, including the operating difficulties at this point, we are of the opinion that public convenience and necessity do not require the continued maintenance of the station at Pedrotti.

As to complainant's request for an order preventing defendant from closing the subway or run-way above referred to, we are of the opinion that this is a matter over which this Commission has no jurisdiction, the subway being a private one and complainant's claim to its continuance being based purely on an alleged contractual obligation.

O R D E R.

MARY E. PEDROTTI having filed a complaint with the Railroad Commission against San Francisco, Napa and Calistoga Railway, a corporation, asking this Commission to order defendant to continue stopping its trains at the station known as Pedrotti, and to refrain from closing that certain subway or run-way referred to in the opinion which precedes this order, a public hearing

having been held at which both oral and written evidence was introduced, and the Commission finding for the reasons set forth in the foregoing opinion that the relief prayed for should be denied,

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

Dated at San Francisco, California, this 5th
day of June, 1916.

H. S. Loveland

W. J. G. Smith

Edwin O. Edgerton

Frank R. Decker

Commissioners.