

ORIGINAL

Decision No. 4222

GEM

Decision No.

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

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STEVINSON WATER USERS' ASSOCIATION,)
JOHN D. CARLSON and J. E. MOUNT,)

Complainants,)

-vs-

Case No. 855

JAMES J. STEVINSON, a Corporation,)
and THE EAST SIDE CANAL AND IRRI-)
GATION COMPANY, a Corporation,)

Defendants.)

L. L. Dennett for Complainants.

James F. Peck for The East Side
Canal and Irrigation Com-
pany, Defendant.

BY THE COMMISSION.

O P I N I O N

The complainants in this case, consisting of two individuals and an unincorporated association of land owners in the community known as Stevinson, Merced County, allege in their complaint that they are supplied with water for the irrigation of their lands from the irrigating canals and ditches of defendants.

The complaint further states that the lands now owned and occupied by complainants were originally owned by defendant, James J. Stevinson, a corporation, hereinafter designated and referred to as the Stevinson Corporation, and that said defendant constructed, for the purpose of conducting and furnishing water

to said land for irrigation purposes, the main canal and also distributing canals and ditches, and that said land was sold to complainants and their predecessors in interest upon the express representation that water would be furnished, supplied and delivered to such land for the irrigation thereof through such canals and ditches; that payment was made for such service through said defendants; that defendants thereafter, for a long period of time and until July 15, 1914, maintained said canals and ditches and furnished and delivered water through the same for the irrigation of said lands. That said lands are arid or semi-arid in character and require irrigation, which cannot be obtained from any other source except the canals and ditches of defendants; that on or about July 15, 1914, defendants without cause or justification, ceased to furnish or to deliver water through said laterals or distributing ditches to the lands of complainants, that they have ever since failed or refused to maintain said canals or laterals, or to deliver water through the same, and that they have also failed to maintain the main canal in a proper and adequate manner.

Complainants further allege that the owners of the Stevinson Corporation formed The East Side Canal and Irrigation Company, hereinafter designated and referred to as the East Side Company, and owned and controlled the same, that the main canal and diverting works and the lateral or distributing ditches are all part of the same system, owned and controlled by the same people, and that said East Side Company is merely an agency of the Stevinson Corporation.

The complaint concludes with a prayer that defendants be compelled to maintain said laterals or distributing ditches from the main canal to the lands of the users of water and to run and deliver through the same to said lands water for the irrigation thereof, and for such further order as may be necessary for complainants' adequate relief.

The answer of the East Side Canal Company puts in issue most of the allegations of the complaint, while the Stevinson Corporation failed to appear either by answer or at the hearings, presumably upon the theory that it is not a public utility.

Public hearings were held in Stevinson on October 4, 1916 and in Turlock on February 15, 1917, before Examiner Bancroft.

This is not the first time that complaints have been made against the treatment which the inhabitants of Stevinson have been receiving at the hands of the defendants.

Early in 1914, by Decision No. 1391, (Vol. 4, Opinions and Orders of the Railroad Commission of the State of California, p. 597) the Commission reviewed the conditions of the East Side Company and the grievances of its consumers at some length, as well as the status of the Stevinson Corporation. In the opinion in that case, to which reference is hereby expressly made, and in which case the East Side Company was referred to as the Canal Company, Commissioners Edgerton and Gordon stated:

The Stevinson corporation sold, under contract, approximately 8407 acres of land, and under an agreement between it and the Canal Company, defendant herein, the Stevinson Company agreed with the purchaser of the land that upon the carrying out of the terms of the contract by the purchaser, the Canal Company would con-

vey to him a water right, and from the time of entering into the contract the purchaser was to pay the Canal Company \$1.00 per acre per annum in advance for the amount of water specified in the so-called water right.

"The testimony shows that the Stevinson corporation added to the price of the land sold under the contracts as aforesaid the sum of \$25.00 per acre for this so-called water right * * * .

"The Stevinson corporation at its own expense constructed the laterals leading from the main ditch of defendant and has always, and does now, maintain and operate these laterals at its own expense. As far as the evidence shows, no conveyance has ever been made of these laterals by the Stevinson corporation."

At the hearing of the present application considerable evidence was introduced to the effect that the managers of the Stevinson Corporation had represented to the purchasers of land, and were still representing, that the land being sold and the irrigation system supplying the same with water were owned by the same people. Complainants' Exhibit No. 2 is a pamphlet issued by "The Stevinson Colony, Howard H. Hogan, General Manager", which describes in glowing terms the alleged advantages of owning land in the Stevinson Colony. On the last page of the pamphlet in bold face type appears the statement, "We are the sole owners of both the land and the canal supplying the water". Complainants' Exhibit No. 4 consists of the letter-head of the Stevinson Colony, which, according to the testimony is being regularly used by defendants. This letter-head contains the printed statement that "We are the sole owners of the canal supplying our colony with water", while the printed matter on defendants' envelopes, introduced as complainants' Exhibit No. 5 contains the state-

ment "Under irrigation from our own canal".

The evidence in this case, ^{however} will not support a finding that James J. Stevinson, a corporation is a public utility. Therefore, the complaint should be dismissed in so far as it involves said corporation.

The ninth paragraph of the complaint alleges that defendants have also failed to maintain the main canal in a proper and adequate manner. The evidence introduced under this head showed that The East Side Company's canal was badly clogged with weeds and tules, and also that from its intake at the San Joaquin River for a distance of three-quarters of a mile or more the canal is obstructed by a deposit of sand, varying in depth from a few inches to a maximum of from $3\frac{1}{2}$ to 4 feet.

The East Side Company introduced evidence to the effect that its canal was large enough to carry several times as much water as the company could procure, and that, accordingly, it could carry all the water obtainable, even though it might be badly filled with weeds and tules. The evidence showed unmistakably, however, that the deposit of sand above referred to materially reduced the amount of water which flowed into the ditch from the river at the time of the year when most needed, and there is no question in our minds but that if the canal be cleared of this sand, and kept clear, the water users of Stevinson Colony would receive a more adequate supply. Under existing conditions, the evidence showed, there was often a shortage of water, especially during dry seasons.

There was a distinct conflict of evidence as to whether the canal would fill again immediately if cleaned out

by mechanical means, the East Side Company's witnesses contending that it was impracticable to clear the sand by mechanical means, and that if it were so cleared, it would fill up again to its present height within ten days of two weeks. Complainants' witnesses offered contrary evidence and Milo H. Brinkley, one of the Commission's engineers, who had made an examination of the canal, testified that in his opinion it was entirely feasible to clean out the canal by means of a drag scraper, and that if the canal were so cleaned out, it would not fill up in a single season, and, accordingly, the water supply available for the East Side Company's consumers would be materially improved.

Considering all the evidence, we find that the East Side Company's efforts to clean out the sand by running the flood waters through the canal two miles to Sand Slough are decidedly uncertain and inadequate and have not kept the canal clear in the past; and we are of the opinion that the East Side Company's water users should not be required to depend upon such a questionable method of removing this obstruction, but that the East Side Company should be required to remove the sand by means of a drag scraper or some other suitable mechanical process within sixty days from the date of this order. There is no means of determining with certainty whether or not sand will again fill up the canal as soon after being removed as to render its removal in the manner suggested impracticable, except by actually removing the sand and observing the results; and in view of the conflict of testimony and the fact that the East Side Company's method of dealing with this problem has not been satisfactory or adequate, and as the cost of the removal of the sand, as above suggested, is by no means pro-

hibitive, we feel that the following order will impose no undue burden upon the East Side Company.

O R D E R

Public hearings having been held in the above-entitled proceeding and the case having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that the complaint be dismissed in so far as it involves James J. Stevinson corporation.

IT IS HEREBY FURTHER ORDERED that The East Side Canal and Irrigation Company be and the same is hereby directed to remove, within sixty (60) days from the date of this order, all sand and other material obstructing the Company's main canal between the intake at the San Joaquin River and the slough known as Sand Slough.

IT IS HEREBY FURTHER ORDERED, that The East Side Canal and Irrigation Company shall make to this Commission every fifteen (15) days until the fulfillment of this order, verified reports in detail of the progress of the work herein ordered to be performed.

Dated at San Francisco, California this 31st day of March, 1917.

Manuel J. Keenan

W. H. Brown

Edwin O. Edgerton

Francis R. Keenan

Commissioners.