



West Point to take water, for which defendant has received no payment or benefit, but that such persons using water have paid nominal amounts to a ditch tender for services on the ditch; but that there is no obligation upon defendant, in law or equity, to furnish water.

An informal hearing was held by Examiner West over at West Point, at which testimony offered by complainants was taken. Subsequently a formal hearing was held by him in Los Angeles, at which the testimony offered by defendant was taken. It was stipulated at each hearing that the testimony taken at the other hearing might be considered in evidence as though there were one hearing at which both parties were represented.

The ditch in question was constructed to serve mines on the Mokelumne River about four miles west of West Point. The mines and ditch were owned for many years by the Farrington Gold Mining Company. For about 25 years preceding his death in March, 1919, the ditch was cared for by Wm. Reynolds, who was originally employed by the mining company upon a monthly salary as ditch tender.

Surplus water not needed for mining purposes was sold by the company to ranchers along the ditch for irrigation at a measured rate, and to consumers in West Point upon monthly flat rates. This arrangement continued until the mines and ditch were acquired by defendant through foreclosure proceedings late in 1909.

Mr. Reynolds at all times had charge of and operated the ditch. He acted as the employee and agent of the mining company up to the time of the foreclosure proceeding, but after that he acted for himself alone under an arrangement made about February 5, 1910, by which Mr. Purdy authorized him to use the ditch and make what he could out of it, in return for maintain-

ing it at his own expense for labor and repairs. Under this arrangement ranchers along the ditch aided Mr. Reynolds in cleaning and repairing it, in places where such work was most needed, in return for which they were permitted by Mr. Reynolds to take water for irrigation, without further payment. There were some ten or twelve consumers in West Point who used water for domestic purposes under flat rates. The collections made by Mr. Reynolds for domestic service were retained by him pursuant to his agreement with Mr. Purdy, who never asked nor received nor expected any accounting for revenues collected. During this time, Mr. Reynolds was aiding Mr. Purdy by showing the mining property to prospective purchasers, and by selling from time to time various portions of the machinery and equipment from the mines, for which service he was paid a commission on the sales. Mr. Purdy on several occasions contributed materials for repairing the ditch, at Mr. Reynold's request, his evident purpose being primarily to keep the ditch in operating condition as an adjunct to the mines, which he was endeavoring to sell. It appears that he took no part at any time in operating the ditch, and never received any revenue from it.

Since the submission of the case, Mr. Porteous has authorized a dismissal so far as he personally is concerned, but he does not assume to act for the other fifteen

complainants, of whom the evidence shows that twelve are not consumers.

From the facts above stated, it appears that complainants failed to establish by the evidence that defendant that there is ever operated the ditch, or any resulting obligation upon him to serve water. The complaint must therefore be dismissed.

O R D E R.

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

IT IS HEREBY ORDERED that the complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 16<sup>th</sup> day of July, 1919.

H. S. Portland

H. N. Brundage

Dwight Martin  
Commissioners.