

Decision No. 8637

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

George W. Kennedy and
William J. Kennedy,
Complainants,

Vs.

O. C. Abbott and Jane Doe Abbott,
his wife,
Defendants.

Case No. 1503.

Reginald W. Clapp for Complainants.

O. C. Abbott for Defendants.

BY THE COMMISSION.

O P I N I O N

The complaint alleges that complainant, G. W. Kennedy, purchased land from defendant, O. C. Abbott, about May 1, 1919, as agent for the owner, upon the representation and assurance that Mr. Abbott would furnish water for domestic purposes and for poultry at the rate of \$1.50 per month from his well upon adjoining land, but that said defendant has failed and refused to furnish water since June 1, 1920. The answer admits the allegations, but says that the water was to be furnished only so long as defendant had water to spare and that it was so furnished until July, 1920, when the well went dry.

A public hearing on the matter was held by Examiner Westover at Los Angeles.

It appears from the undisputed testimony that defendants began furnishing water about five years ago to E. E. Kidder, a neighbor across the road from their ranch near Newhall, at an agreed rate of \$1.50 per month, it being expressly agreed that the service would continue only so long as defendants had water to spare. Subsequently defendants furnished water, under the same terms and conditions, for a comparatively short time to W. E. Voorhies, another neighbor, under the express agreement that the service would continue only so long as defendants had water to spare. The only other water sold by defendants for use on property other than their own was that sold to complainants for use on their fifteen acre ranch near defendants' property. It appears that defendants have made no effort to sell water to the public; have not held themselves out as a water utility, and have not at any time intended to dedicate the water from their well or any part of it to public use.

It further appears that complainants, relying upon their ability to get water from defendants' well, have made a considerable investment in the property and improvements.

We are satisfied that the testimony does not show a dedication of water to public use and that, under the decisions of the Supreme Court, defendants are not operating a public utility and are, therefore, not subject to the jurisdiction of the Railroad Commission,

ORDER

A public hearing having been held on the above entitled case, the matter being submitted and ready for decision, and it appearing from the testimony that the Commission is without juris-

diction to order any relief,

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

Dated at San Francisco, California, this 21st day of February, 1921.

H. D. Loveland

Frank D. Weller

H. A. B. Wendig

Erving Mattson

Charles H. Rowell

Commissioners.