

Decision No. 8721

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MARY ANNIE UPTON, et al.,)

Complainants,)

Vs.)

AMOS E. STINSON, et al.,)

Defendants.)

Case No. 1465.

A. H. Upton for Complainants.
Edgar T. Zook for Defendants.

BY THE COMMISSION.

OPINION ON PETITION FOR REHEARING

Defendants petition for a rehearing in the above entitled case upon the ground that the testimony does not warrant a finding that defendants or their predecessors in interest have dedicated all their waters to use to all the public residing in the vicinity of the lands of defendants at Stinson Beach, Marin County.

A public hearing upon the petition was held by Examiner Westover at San Francisco. The parties submitted further testimony and argument after stipulation that such further testimony and argument could be considered as addressed to the petition for rehearing, and also as in the determination of the rehearing if the Commission should conclude that defendants' petition for rehearing should be granted. The matter is, therefore, ready for final decision.

Defendants are owners of Stinson Ranch and the unsold portions of subdivisions 1, 2 and 3 thereof, and of a parcel of ground known as Willow Camp which adjoins the Charles Robinson property, owned by complainant Mary Annie Upton. The stream which supplies water for defendants' properties flows through Mrs. Upton's Charles Robinson Tract.

Prior to 1871, when all of the above properties were acquired by Nathan H. Stinson, his grantor had conveyed an adjoining parcel of ground containing three and one-half acres, herein referred to as the Jordan property. At the time Mr. Stinson acquired the above property, water was being diverted from a stream on the ranch for use for a house and barn on the Jordan property. Water was used at the barn for filling a barrel used for watering horses on the property, but not used as a public watering trough. The parties hereto agree that for the purposes of this record the use of water upon the Jordan property is presumed to have been established by a prior grant. They also agree that the use of such water was not paid for to Stinson, nor to his estate after his death in 1910. However, in 1916 or 1917 defendants authorized the tenant upon the Jordan property to take water from their main in Buena Vista Street in Subdivision 2, whereupon he laid a pipe so connecting the house and barn, and abandoned the original service from the stream. Since that time, water service for the house and barn on the Jordan property has been paid for at the regular rates. The Jordan barn and a small strip of the Jordan property are admittedly included in the Charles Robinson Tract. Defendants do not serve water beyond the lines of their subdivisions and Willow Camp referred to in the original decision, except for the service to the house and barn on the Jordan property. The only service by defendants within the lines

of the Charles Robinson Tract is the service at the Jordan barn.

The general policy of defendants and their predecessor, Nathan H. Stinson, has been to restrict water service to their own lands or purchasers of such lands, and to keep the rates low, as an aid in the sale of lands. Their chief interest has been in the land business rather than the water business. Quit claim deeds have been executed and exchanged between the owners of the Robinson Tract and the owners of the Stinson Ranch and subdivisions for the purpose of quieting and strengthening their respective titles, but these deeds contain no reference to water or water service.

Upon the above facts, the defendants admit that they operate a public utility and have dedicated water to public use upon property sold from their subdivision^s and to the house and barn on the Jordan property, but argue that the dedication is limited to those specific areas.

Upon a careful consideration of all the facts now before us and of the law applicable thereto, as declared by the Supreme Court, we conclude that the position of defendants is correct, and that the order complained of should be set aside.

O R D E R

A public hearing having been held upon the above described petition for rehearing, the matter having been submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the order contained in Decision No. 3170 of October 1, 1920, in above Case No. 1465, be and it is hereby vacated and set aside, and that the complaint herein be and the same is dismissed.

Dated at San Francisco, California, this 9th day of March, 1921.

Frank D. Williams
H. J. Loveland
H. B. ...
Robert H. ...
Commissioners.