

Decision No. 8853.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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ORIGINAL

P.S. McNatt, R.V. Griffin, James Kane,)
Mary Dodge and Ludwig Gossman.)

Complainants.)

vs.)

Case No. 1495.

Sycamore Canyon Water Company, a)
corporation, and J. C. Anderson.)

Defendants.)

R. V. Griffin, et al.,)

Complainants.)

vs.)

Case No. 1356.

Sycamore Canyon Water Company,)

Defendant.)

R. V. Griffin in propria persona.
Owen C. Emery for complainants.
Stephens and Stephens, by Albert M.
Stephens, for Mary Dodge, a com-
plainant.
Olin Wellborn and Stephen Monteleone,
by Olin Wellborn, Jr., for defend-
ants.

BY THE COMMISSION.

OPINION AND SUPPLEMENTAL OPINION

The above entitled proceedings involve the service rendered, the adequacy of the water supply, and the practices of the Sycamore Canyon Water Company, owner and operator of a public utility water system which furnishes water to certain residents of Sycamore Canyon in the vicinity of Glendale, Los Angeles County.

This Commission rendered its decision (No. 6872, Volume 17, page 521, Opinions and Orders of the California Railroad Commission.) in Case No. 1556, as entitled above, on November 28, 1919. This decision was rendered after a hearing had been held and as a result of the evidence submitted at that time the **SYCAMORE CANYON WATER COMPANY**, hereinafter referred to as defendant, was directed to proceed to make certain improvements of its system and to secure an additional water supply. Reference is hereby made to the above mentioned decision for a detailed discussion of the complaint and answer thereto and other facts obtaining.

It is sufficient for the present order and decision to recite that the difficulty between this utility and its consumers, many of whom are stockholders in the utility, arose as a consequence of the failure of the consumers to receive an adequate water supply from defendant's system. As a remedial measure, the utility proposed that it be allowed to sell to one J. C. Anderson all its rights, title and interest in and to the waters of Sycamore Canyon and the right to develop same, for the sum of Six Hundred Dollars (\$600), which sum it proposed then to utilize in installing a pipe line connecting with a reservoir of the municipal water system of the City of Glendale.

The evidence taken in the above mentioned proceeding disclosed the fact that this utility was rendering inadequate service and delivering an insufficient quantity of water to its consumers. This Commission in its Decision No. 6872, supra, directed the Sycamore Canyon Water Company in part as follows:

"IT IS HEREBY ORDERED that Sycamore Canyon Water Company proceed immediately to avail itself of additional water supply, this supply to be obtained from the City of Glendale, as outlined in

the complaint and the answer thereto, or in such other manner as will enable the utility to provide at all times an adequate and sanitary supply of water for the needs of its consumers."

After a prolonged construction period had elapsed the utility completed the necessary facilities, and water was delivered to it from the City of Glendale water system. It appears, however, that subsequent to the receipt of this additional water supply from the City of Glendale, defendant transferred the right to the water theretofore used by it to Mr. J. C. Anderson, who is the principal stockholder in and director of defendant company. By so doing the consumers were deprived of the water supply theretofore enjoyed by them and expressed much dissatisfaction with the service rendered. Subsequently the consumers filed formal complaint against defendant and J. C. Anderson. This complaint is Case No. 1495, as entitled above.

The complaint in this case states in effect that complainants P. S. McNutt, R. V. Griffin, James Kane, Ludwig Gossman and Mary Dodge are property owners and stockholders in and consumers of the defendant company; that defendant company is diverting all water belonging to it and originating in Lot 88 of Hodgkins' Subdivision of a part of Rancho San Rafael, to the lands of defendant J. C. Anderson; that this water supply, owned by the company, has been continuously used by the complainants and their predecessors for 33 years, and that such ownership includes all water, water rights and rights of development of same on said Lot 88 of Hodgkins' Subdivision, the ownership of which lot is claimed by said J. C. Anderson; that this supply was sufficient for the needs of consumers up to the year 1919, but that consumers have received an insufficient service in the years 1919 and 1920 during certain periods; that defendant has not properly supervised the physical and financial requirements of the utility; that the defendant com-

pany has sold its water and water rights without authorization from the Railroad Commission or notice to stockholders; that said company made such sale despite the order of the Railroad Commission in Case No. 1356 (Decision No. 6872, supra) and otherwise failed to comply with said order; that though the defendant company did acquire a small water supply from the City of Glendale, consumers have, because of the diversion of the original supply, a less amount of water than they enjoyed before such diversion.

Subsequent to the filing of Case No. 1495, supra, the Commission after a review of the facts obtaining, deemed it advisable to re-open Case No. 1356, supra, and set it for further hearing, consolidating it for hearing and decision with Case No. 1495, in order that the entire matter might be before the Commission. A public hearing in these matters was held in Los Angeles before Examiner Satterwhite, of which all interested parties were notified and given an opportunity to be heard.

It was admitted by defendant company that it did, on December 6, 1919, sell and release all right, title and interest it held "to all waters which are now or may or shall hereafter be developed" in or by means of those three certain tunnels heretofore owned by it on Lot 88, supra, "together with said tunnels and all pipes and appliances used in connection therewith, and all fixtures and appurtenances thereto." This sale is evidenced by an indenture of date December 6, 1919, entered and marked "Complainant's Exhibit 5" in Case No. 1495.

Attention is directed to the fact that this Commission in its Decision No. 6872 stated concerning the transfer of these water rights and appurtenant facilities, as follows:

"The method proposed in the answer to the complaint and by counsel at the hearing in regard to financing the proposed additional supply to be obtained from the City of Glendale, namely, disposing of the company's water rights for the sum of \$600, elicited vigorous protest at the hearing, and it appears that it would be poor policy for the Commission to authorize such a measure."

We further wish to direct attention to the fact that this utility did not secure the authority of this Commission to transfer this operative property as provided in Section 51 of the Public Utilities Act. Such sale is therefore manifestly void and of no effect.

The evidence clearly shows that despite the fact that defendant has secured an additional water supply from the City of Glendale, the transfer of the supply which it theretofore obtained from the so-called water tunnels to Mr. J. C. Anderson and the use of the water from these tunnels upon the lands of Mr. Anderson, so depleted the supply available for use by defendant's consumers, including the complainants herein, that they did not receive adequate service during the summer of 1920, and further, that the quality of the water served was not satisfactory.

At the hearing it was claimed by defendant that Mr. J. C. Anderson held himself ready at any time to divert the water flowing from the tunnels into the company's reservoir by way of the pipe line, thus restoring for the time being the supply as it existed in the past. However, this did not operate in such manner as to provide the consumers with adequate service during the past summer, and different methods should be adopted to remedy existing conditions.

ORDER AND SUPPLEMENTAL ORDER

P. S. McNutt, R. V. Griffin, James Kane, Mary Dodge and Ludwig Gossman having complained against the service rendered and the

practices of Sycamore Canyon Water Company, a corporation, and J. C. Anderson as co-defendants, and the Commission having re-opened Case No. 1356 as entitled above, and public hearings having been held and the matters having been submitted,

IT IS HEREBY FOUND AS A FACT, as follows:

(1) That the purported transfer by Sycamore Canyon Water Company to one J. C. Anderson of all its right, title and interest in and to all waters which are now or may be developed in or by means of those three certain tunnels heretofore owned and operated by it, located upon Lot 88 of Hoagkins' Subdivision of a portion of Rancho San Rafael, which waters and water rights are admitted by defendant company to be those alleged in the complaint herein, together with all pipes, appliances, fixtures and appurtenances used in connection with said tunnels, is an attempt to transfer operative property of a utility to the detriment of its consumers;

(2) That at the time of this alleged sale, and for many years prior thereto, said tunnels and pipes were useful and operative parts of the public utility property of said Sycamore Canyon Water Company;

(3) That said J. C. Anderson has been given control and possession of the tunnels and pipe line above and has diverted the flow of water from and through the same away from the company's reservoir and deprived the consumers of this water supply;

(4) That authorization for such transfer or sale has not been given by the Railroad Commission of the State of California, and such sale is therefore void;

(5) That satisfactory water service has not been rendered at all times by the Sycamore Canyon Water Company since the control of its original supply from the above tunnels was relinquished by said company.

And basing its order upon the foregoing findings of fact,

and upon the further statements of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that the defendants, Sycamore Canyon Water Company, J. C. Anderson as an officer, agent and servant of said Sycamore Canyon Water Company, and its officers, agents and servants, be and they and each of them are hereby directed to restore, within twenty (20) days from the date of this order, the flow from the water tunnels aforesaid to the company's reservoir, and it is further directed that the pipe line between said tunnels and said reservoir be restored to its full carrying capacity throughout its length.

IT IS HEREBY FURTHER ORDERED that Sycamore Canyon Water Company provide adequate service at all times to its consumers, making use to its full capacity of the gravity supply from the water tunnels in Sycamore Canyon hereinbefore described and owned by said company, supplementing the same by water purchased from the City of Glendale through the facilities now installed which said Sycamore Canyon Water Company shall continue in operation, or from such other source or sources of supply as it may have, acquire or make available.

IT IS HEREBY FURTHER ORDERED that Sycamore Canyon Water Company file a certified statement with this Commission within five (5) days of the date when the service from the tunnel supply, as designated hereinbefore, to its reservoir has been restored, as directed herein.

IT IS HEREBY FURTHER ORDERED that Decision No. 6872, dated November 28, 1919, in so far as it conflicts with the decision herein, be rescinded and set aside, and that in all other respects it remain in full force and effect.

IT IS HEREBY FURTHER ORDERED that except as provided herein

