

Decision No. 43387

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FRANK M. DARROW for right to private crossing over tracks of the Trona Railway Company at the crossing existing at South Trona, 100 feet south of the N.E. Corner of Lot 8B, Sec. 31, T. 25 S., R. 43., M.D.M. which is now closed by a gate and lock to which he does not have a key.

Application No. 29613

Frank M. Darrow for applicant; John B. Lonergan and J. L. Robinson for Trona Railway; Wright & Millikan by Charles E. Millikan for American Potash & Chemical Company.

ORDER OF DISMISSAL

Applicant Darrow, relying upon Section 485a of the Civil Code (1), requests an order "authorizing applicant's private Right of Way" over the track of Trona Railway at an existing crossing at South Trona, also known as Burnham, so that both he and American Potash & Chemical Corporation can use such crossing. Applicant alleges that he holds federal prospecting permits covering certain public lands in the Searles Lake area and located east of the railroad right of

(1) Civil Code Section 485a reads as follows:

"The owner or owners of any lands along or through which any railroad is constructed or maintained, shall have the right to such farm or private crossings over such railroad and railroad right of way as may be reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands of such owner or owners; and the owner or operator of such railroad shall construct and at all times maintain such farm or private crossing in a good, safe and passable condition; provided, that the railroad commission shall have the authority to determine the necessity for such crossing and the place, manner and conditions under which said crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof."

way. Public hearing was held before Examiner Hall and the matter was submitted upon briefs.

The right of way, according to the railroad's president, is public domain "allocated to the railroad under a specific lease." A parcel of land west of the right of way at the crossing is the property of American Potash, having been patented to that company in 1938 or shortly thereafter. Earlier, one Burnham, or Burnham Chemical Company, apparently held a "mineral lease," but had defaulted in payments to the government. Burnham had built a road from his camp-site, now known as South Trona or Burnham, across the railroad right of way to mineral lands a distance east thereof. After Burnham's default, American Potash acquired the property referred to in the record as Lot 8 and located west of the crossing. The record indicates that there were then thirteen houses on such property, occupied by employees and their families. From the crossing a road runs westerly through the property of American Potash to a county highway.

The record also indicates that an old crossing was removed when Burnham discontinued operations, and that the present crossing was built by American Potash in 1940. Shortly thereafter, American Potash fenced its property, placed a gate at the crossing, and closed it by a lock. One of the stated reasons for such fence and gate was to prevent children from wandering on the track, and the railroad insisted that the gate be kept locked.

Applicant concedes that the Commission has no jurisdiction to require American Potash to grant applicant a right of way across its land. Applicant also takes the position that whether or not applicant has a right of way of necessity, or otherwise, across the land of American Potash, is not a matter within the jurisdiction or concern of the Commission.

Whether applicant, if permitted to use the present crossing,

and after crossing the railroad right of way, will or will not be barred from crossing the land of American Potash, is asserted by applicant to be a matter for court determination, and not a concern of the Commission.

The railroad urges that the Commission is without jurisdiction, in that applicant neither owns nor leases land adjacent to the right of way, and that Civil Code Section 485a applies only to the "owner or owners of any lands along or through which any railroad is constructed or maintained * * *."

Protestant American Potash takes the position that the Commission does not have jurisdiction to make an order requiring American Potash to unlock its gate or give a key to applicant and allow applicant to use the private roadway over fee-owned land of American Potash.

In his reply brief applicant again concedes that the Commission may not grant him the right to cross over such fee-owned land. He requests action under Section 485a, and the issuance of an order requiring the railroad to permit him to use the present crossing over its right of way, and to make such order effective, to require the railroad to furnish him with a key to the gate which now effectively bars use of the crossing.

Applicant's brief asserts that he holds sodium prospecting permits from the United States Government, covering more than 800 acres of public land east of but not adjoining the railroad right of way. Such permits are not in the record. However, applicant argues that the permits carry with them the right of ingress and egress, and, as an incident thereto, also carry with them the right of his superior owner, the United States, to petition for a crossing under Section 485a.

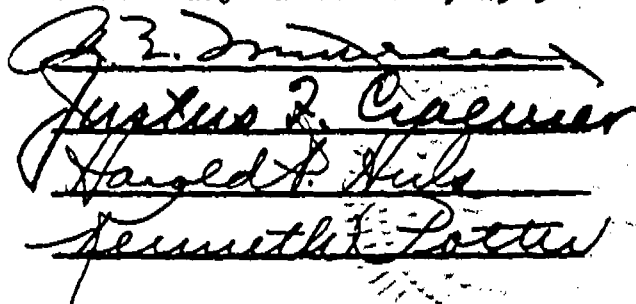
Under Section 485a the owner of land along or through which a

railroad is constructed has a right to such farm or private crossings as may be reasonably necessary or convenient for ingress and egress. The function of the Commission under that section is to determine the necessity for such a crossing and the place, manner, and conditions of construction and maintenance, as well as to fix and assess the cost and expense thereof. Applicant is not an owner of land adjoining a railroad. He does not seek the establishment of a new crossing. He wants an order directing the railroad to permit him to use the existing crossing built by American Potash and also to furnish him with a key to the gate installed by American Potash, thus permitting access to the latter's property. At the same time applicant concedes that the Commission has no power to grant a right of way over private property. In our judgment, Section 485a of the Civil Code does not empower the Commission to grant the relief sought by applicant.

In view of our conclusion on the jurisdictional question, no useful purpose would be served by a discussion of such matters as the reasonableness of the conditions under which the railroad and American Potash indicated a willingness to sanction applicant's use of the present crossing and the roadway through private property, or whether those conditions may be imposed under federal statutes cited by applicant. It should be noted, however, that the present crossing and roadway through the property of American Potash do not appear to constitute the sole physical means of ingress and egress to and from the public lands covered by applicant's prospecting permits.

For the reasons heretofore indicated, IT IS ORDERED that Application No. 29613 is hereby dismissed.

Dated, Los Angeles, California, this 11th day of October, 1949.



Commissioners