

Decision No. 20581 :

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

TOWN OF LOS GATOS, a municipal corporation,  Complainant,  vs.  SOUTH PACIFIC COAST RAILWAY COMPANY, a corporation, and SOUTHERN PACIFIC COMPANY,  Defendants.	Case No. 2547.
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D. T. Jenkins, City Attorney,  
for Complainant.

H. W. Hobbs, for South Pacific Coast  
Railway and Southern Pacific Com-  
pany, Defendants.

BY THE COMMISSION:

O P I N I O N

This is a complaint filed by the Town of Los Gatos, regarding certain matters in connection with three grade crossings of streets in the Town of Los Gatos with tracks of South Pacific Coast Railway Company, the tracks of this company being operated by Southern Pacific Company. Upon failure of the defendants to satisfy the complaint, public hearing was held at Los Gatos on August 25th, 1928, before Examiner Williams and the matter was at that time taken under submission.

The streets involved in this complaint are Royce Street, Gray's Lane and Elm Street. In the vicinity of the proposed cross-

ings the railroad track extends through the blocks lying between Santa Cruz Avenue on the west and University Avenue on the east. The three streets in question are short connecting streets between these two avenues. Gray's Lane is located between Royce Street and Elm Street, a distance of about 300 feet south of the former and 480 feet north of the latter.

The Town of Los Gatos has undertaken a paving project for which a contract has been let. Among the streets to be improved are the three streets involved in this proceeding and there has been included in the contract paving and curb work up to lines two feet outside of the outside rails of the Southern Pacific Company's tracks. It is the desire of the city that the crossings be widened and improved.

Each of these streets has been open to travel across the railroad for more than five years, although apparently the width of such traveled way at the point of crossing with the railroad tracks has not, in one instance at least, been the same as it is now proposed to pave. It is the contention of the city that at Royce Street and Elm Street it will be unnecessary to take any property of the defendants which is not at present dedicated for street purposes, but complainant alleges that at Gray's Lane it will be necessary to take, in addition to that already used and dedicated for street purposes, a strip 5.7 feet wide by 27.6 feet long.

The Southern Pacific Company denies that any of these three streets have ever been dedicated as public highways across the right-of-way and alleges that each of the three streets terminate at its right-of-way lines. For this reason they contend

that the areas to be paved under the contract heretofore mentioned are not wholly within these streets and lane, and that a portion of the work covered by this contract lies upon the private right-of-way of the defendant. They allege that all proceedings in connection with this contract are, therefore, void and have no legal effect.

This Commission does not have jurisdiction to adjudicate the respective property rights involved herein. It must limit its decision to a determination of the safety, convenience and necessity for the construction and maintenance of the physical crossings.

The prayer of the complainant reads as follows:

"WHEREFORE, complainant prays that this Commission determine whether or not the said proposed work and improvement is an alteration or relocation of said crossing and if so that it determine the extent thereof and the property of the defendants taken therefor and proceed to condemn the same and fix the damage due defendants and that it give its consent to such alteration or relocation."

Apparently the Town of Los Gatos is requesting that this Commission order the Southern Pacific Company to convey to the City certain property required for the purpose of widening a publicly traveled way across the railroad right-of-way. This Commission has no such power of condemnation, its only interest in the proceeding being limited to a consideration of the proposed alterations and improvements. It can, as requested in the prayer, determine whether or not this work is alteration or relocation of the crossings and give its consent to such work, but as to the other matters included in the complainant's prayer, it is without jurisdiction. This decision will, therefore, be confined to the

determination of the necessity for the proposed changes, giving its consent to such changes as seem desirable and the apportionment of the costs thereof.

Southern Pacific Company offered no objection to improving the crossing at Elm Street, in accordance with the desires of the city. It is the railroad company's contention, however, that there is no necessity for public crossings at either Royce Street or Gray's Lane, and that the existing crossings could be closed without inconvenience to the public. In support of this contention, traffic counts were submitted, showing the daily traffic over these two crossings to be as follows:

	<u>Royce Street, July 28, 1928,</u>	<u>Gray's Lane, July 27, 1928</u>
Pedestrians and Bicycles,	195	88
Teams,	5	2
Automobiles,	182	107
Trucks,	11	24
Train Movements,	20	19

The distance between the crossings of Royce Street and Gray's Lane is but 300 feet and the chief use of the crossings is merely as a connection between Santa Cruz Avenue and University Avenue; each street has adequate outlet to both of these avenues, and the public would not be greatly inconvenienced by closing one of the crossings. The volume of traffic at both crossings is small and is not in itself sufficient to warrant the installation of an improved type of crossing at either point, but it may be that if all the traffic now using the two streets were concentrated at one crossing, then that crossing should be improved by widening and paving as proposed by the City. Unless, and until, the city can develop some plan whereby the traffic is so concentrated

there does not appear to be sufficient public necessity to warrant the Commission ordering the railroad company to incur any material expenditure at either of these two crossings.

An order will, therefore, be entered granting authority for the desired changes at Elm Street, but dismissing the complaint insofar as it pertains to the crossings at Gray's Lane and Royce Street.

Q R D E R

The Town of Los Gatos, having filed with the Commission a complaint regarding certain crossings of public streets in the Town of Los Gatos with tracks of South Pacific Coast Railway Company, operated by Southern Pacific Company, a public hearing having been held, the matter having been submitted and being now ready for decision, therefore,

IT IS HEREBY ORDERED that permission and authority be, and it is hereby, granted to the Town of Los Gatos and Southern Pacific Company, to widen and improve the crossing of Elm Street with the tracks of the Southern Pacific Company in the Town of Los Gatos, County of Santa Clara, in accordance with the plan attached to the application, subject to the following conditions:

(1) The crossing shall be constructed of a width to conform to the width of said Elm Street, which is to be paved; shall be constructed substantially in accordance with Standard No. 3, as specified in General Order No. 72 of this Commission, and shall be made safe for the passage thereon of vehicles and other road traffic.

(2) The entire cost of constructing and the future maintenance of that portion of the crossing within lines two (2) feet outside of the outside rails shall be borne by Southern Pacific

Company and the cost of construction and the future maintenance of that portion of crossing outside of lines two (2) feet outside of the outside rails shall be borne by the Town of Los Gatos.

(3) Southern Pacific Company shall, within thirty (30) days thereafter, notify this Commission in writing, of the completion of the installation of said crossing.

(4) The Commission reserves the right to make such further orders, relative to the location, construction, operation, maintenance and protection of said crossing, as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

IT IS HEREBY FURTHER ORDERED that the above entitled complaint, in so far as it pertains to the crossings of Gray's Lane and Royce Street, be and it is hereby dismissed.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 6th day of December, 1928.

Leon Whitehall

Clarence

M. M. M.  
Commissioners