

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Investigation)
upon the Commission's own motion into)
the dockage, wharfage, handling, loading,)
and unloading, practices, rates, rules,) Case No. 2523
regulations and operations of M. E. GALVAN)
& SON at San Francisco, California.)

In the Matter of the Application of)
M. E. GALVAN & SON, a corporation, for an)
order authorizing the transfer of a portion)
of its business, and of STATE PRODUCTS) Application No.
TERMINAL, a co-partnership, to accept the) 15,408
transfer of the same.)

Nathan Moran for Applicants in Application
No. 15,408

Carl I. Wheat, for Encinal Terminals Com-
pany and Howard Terminal Company

Markel C. Baer, for Board of Port Commis-
sioners of the Port of Oakland.

William K. Sempey, for Oakland Chamber of
Commerce.

Lloyd B. Hughes, for Montgomery, Ward &
Company.

P. A. Rattazzi, for Pacific Coast Cannery,
Incorporated.

BY THE COMMISSION:

O P I N I O N

Case 2523 was instituted upon the Commission's own motion and ordered respondent to show cause why tariffs should not be filed as a public utility wharfinger. The matter was consolidated for hearing and decision with Cases 2500 and 2501. The latter two cases brought into issue the wharfinger operations of Southern Pacific Company, The Western Pacific

Railroad Company, The Atchison Topeka & Santa Fe Railway Company, Albers Bros. Milling Company, Parr Terminal Company, Howard Terminal and Lawrence Terminal on the Oakland water front and Encinal Terminal on the Alameda water front.

Decision 20,531 (32 C.R.C. 453) in addition to declaring M. E. Galvan & Son a public utility wharfinger, found that the Parr Terminal Company, Howard Terminal and Encinal Terminal were also public utility wharfingers and should file tariffs with this Commission. The proceedings were dismissed as to the Southern Pacific Company, The Western Pacific Railroad Company, The Atchison Topeka & Santa Fe Railway Company, Albers Bros. Milling Company and Lawrence Terminal for the reasons stated in said decision.

Respondent in Case 2523 filed a petition for rehearing which was granted. Rehearing was held before Examiner Geary at San Francisco March 19, 1929, and the matter has been submitted on briefs.

Application 15,408 is a joint application filed by M. E. Galvan & Son, a corporation, and State Products Terminal, a co-partnership consisting of M. E. Galvan, G. F. Galvan and W. C. Marr as general partners and M. S. Dodd and Nathan Moran as special partners, for an order authorizing the corporation to transfer that portion of its operations conducted on Pier 48, San Francisco, to the co-partnership. This application was heard at the same time as the rehearing in Case 2523, upon one record, and in effect seeks the substitution of one party for another. The matters will, therefore, be disposed of in one decision.

In Decision 20,531, respondent M. E. Galvan & Son was found to be a public utility wharfinger within the meaning of Section 2(z) of the Public Utilities Act, and as such was

ordered to file its tariff containing rates, rules and regulations incidental to the receipt and delivery of freight on Pier 48, except tolls for dockage, demurrage and rentals made, prescribed and regulated by the Board of State Harbor Commissioners.

The facts relating to the operations of respondent as developed in the original hearing, and at the rehearing are not in dispute. M. E. Galvan & Son is a California corporation and since 1920 has been engaged in general freight handling, carloading and unloading over the wharves of the San Francisco water front. The original proceeding showed that this corporation was operating Pier 48 (now known as "State Products Terminal" or "China Basin Terminal", but hereafter referred to as Pier 48) under an assignment made by the Board of State Harbor Commissioners. The assignment is in the form of an entry in the minutes of that Board of a resolution granting the privilege sought.

At the rehearing it developed that on or about the 29th day of June, 1927, the principal stockholders of the corporation formed the State Products Terminal, a co-partnership, for the purpose of conducting the business theretofore handled by the corporation on Pier 48. Prior to the original hearing the business of the latter was transferred to the co-partnership in so far as operations on Pier 48 were concerned. Subsequent to the formation of the co-partnership the Board of State Harbor Commissioners directly assigned this wharf to the State Products Terminal. Respondent contends that although this assignment was in effect at the time of the original hearing, the fact that the corporation had relinquished control of Pier 48 was not made clear due to a misunderstanding as to the scope

of the Commission's investigation. It appears clear upon this record that the public utility wharfinger business conducted on Pier 48 in the past by the corporation is now being performed by the co-partnership. Under the circumstances the issues presented for determination are narrowed to considering whether or not the co-partnership should be substituted for the corporation in our original proceeding in Case 2523 and, if so, whether in the light of the record made upon rehearing the co-partnership is a public utility wharfinger within the meaning of Section 2(z) of the Act.

With reference to the contentions herein that the traffic handled over Pier 48 is in interstate or foreign commerce, and that the activities on such Pier are regulated by the Board of State Harbor Commissioners, after a careful perusal of the record and the briefs filed herein, we find no reason for departing from our previous findings. Tolls for dockage, demurrage and rentals are collected by the entity to whom the pier is assigned and transmitted by it to the Board of State Harbor Commissioners. As pointed out in our prior decision, all other charges incidental to the receipt and delivery of freight, such as carloading and unloading, etc., are made directly by and subject to the sole control of the operator. While these latter charges are filed with the Harbor Board, changes are made from time to time by reason of competitive conditions, and it does not appear that that Board does, in fact, regulate such charges.

It is urged that regardless of any jurisdiction which the Commission might possess, it should not exercise such jurisdiction for the reason that from the standpoint of the state and of the public, the business is not of sufficient importance for regulation. As declared in re San Geronio Water Co.,

2 C.R.C. 706, 713 "****we conceive it to be the duty of this Commission to give full force and effect to the solemn act of the people in adopting a constitutional provision and the carrying out of the provisions of such constitutional declaration by a legislative enactment, until the Supreme Court rules otherwise."

Nor may the Commission refuse to take jurisdiction in a case in which it appears proper so to do because of a contention that to subject a particular business to regulation may place it at a disadvantage in competing with unregulated agencies, regardless of the merits of such contention. We are of the opinion, and find as a fact that M. E. Galvan & Son has been operating, and that State Products Terminal is now operating as a public utility wharfinger on Pier 48 within the meaning of Section 2(z).

With reference to Application 15,408, it appears that the transfer of this business to the co-partnership was made upon the assumption that such operations of M. E. Galvan & Son were not those of a public utility, and therefore, that it was not first necessary to obtain authority from this Commission, as required by Section 51 of the Public Utilities Act, before transferring the business.

Under the circumstances, it is our opinion, and we so find, that M. E. Galvan & Son should be authorized to transfer its operations on Pier 48 to the State Products Terminal, and the latter to hereafter conduct the public utility wharfinger business thereon, provided that tariffs containing rates, rules and regulations incidental to the receipt and delivery of freight, except such tolls referred to herein and fixed by and collected for the Board of State Harbor Commissioners, be filed with this Commission on or before June 1, 1929.

O R D E R

The above entitled matters having been duly heard and submitted, full investigation into the matters involved having been made, and basing this order on the findings of fact and conclusions contained in the opinion preceding this order,

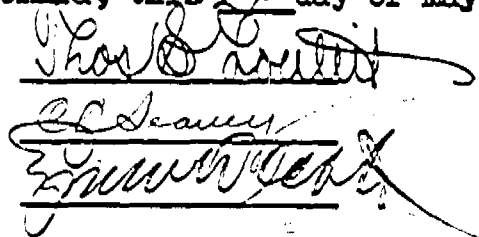
IT IS HEREBY ORDERED that M. E. Galvan & Son, a corporation, be and it is hereby authorized to transfer its public utility wharfinger operations, formerly conducted on Pier 48 to the State Products Terminal, a co-partnership, subject to the following conditions:

1. That State Products Terminal on or before June 1, 1929, shall file its tariff containing its rates, rules, and regulations incidental to the receipt and delivery of freight except the tolls for dockage, demurrage and rentals prescribed and regulated by the Board of State Harbor Commissioners.
2. The consideration to be paid for the business herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing or for any purpose other than the transfer herein authorized.
3. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor services thereunder discontinued, unless and until the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

IT IS HEREBY FURTHER ORDERED that State Products Terminal, a co-partnership, be substituted in the place of M. E. Galvan & Son in our Decision 20,531 issued in Cases 2500, 2501 and 2523, and said decision, as amended, is hereby affirmed and approved.

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

Dated at San Francisco, California, this 24 day of May, 1929.



Commissioners