

LBM

Decision No. 70024.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PHILLIP O'CONNELL, )  
as Receiver in Equity for Kitrick )  
& Hall, Inc., to execute promissory )  
note, together with deed of trust ) Application No. 17851  
on certain property of applicant, )  
as security for the payment thereof. )

DeLancey C. Smith and Francis C. Brown,  
for applicant.

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

This is an application of Phillip O'Connell, as receiver in equity for Kitrick & Hall, Inc., and not individually, for an order authorizing him to execute a deed of trust and to issue a one year seven percent note for \$10,000.00 to refund outstanding indebtedness.

It appears that Phillip O'Connell is the duly appointed, qualified and acting receiver of Kitrick & Hall, Inc. and that he was appointed as receiver on May 9, 1931 in that certain action in equity heretofore brought in the United States District Court in and for the Northern Division of the Northern District of the State of California, entitled Farmers National Grain Corporation, plaintiff, vs Kitrick & Hall, Inc., defendant, No. 586. Since that time Phillip O'Connell, as receiver, has been operating the public warehouses of Kitrick & Hall, Inc., located at Chico,

Durham, Blavo, Shippee and Esquon, all in Butte County.

Prior to the appointment of the receiver it appears that Kitrick & Hall, Inc. under authority granted by the Commission by Decision No. 21251, dated June 18, 1929, executed a mortgage and issued to De Pue Warehouse Company, in payment for warehouse property located at Durham, a seven percent promissory note in the amount of \$15,000.00, payable in monthly installments with a final payment of \$8,100.00 due on August 31, 1931. Under authority granted by Decision No. 15128, dated July 3, 1925, it entered into an installment purchase contract with Sacramento Northern Railroad for the purchase of warehouse properties at Durham, Esquon and Shippee and for 15,000 shares of stock of Northern Warehouse Company, a corporation owning a warehouse at Blavo. This contract provided for the payment of a purchase price of \$52,000.00, of which \$500.00 was payable upon signing of the agreement, \$500.00 on the first day of each and every month from June 1, 1925 to January, 1926, \$700.00 on February 1, 1926 and \$5,200.00 on June first of each and every year from 1926 to 1934, all deferred payments bearing interest at the rate of six percent per annum. Subsequently by supplemental order, Decision No. 24191, dated November 2, 1931, Phillip O'Connell, as receiver, was authorized to enter into a supplemental agreement with Sacramento Northern Railway, successor to Sacramento Northern Railroad, providing for installment payments, as follows: \$1,302.00 on November 1, 1931, represents unpaid payments up to that date; \$260.40 on the first days of December, 1931, and January, February, March and April, 1932; and \$520.80 on the first day of each and every month thereafter.

It appears that \$8,900.00 now is due on the note issued to De Pue Warehouse Company. It is reported that payment of the balance has been demanded, and further, that applicant is in need of funds to pay the installments due Sacramento Northern Railway or risk forfeiture of the equity of the receivership estate in the

contract. It therefore is proposed to issue to E. Salz & Son, Inc. a one year seven percent note for \$10,000.00 for the following purposes:-

1. To refund the outstanding indebtedness due on the De Pue Warehouse Company note amounting to \$8,900.00.
2. To pay the necessary expenses incidental to the loan, including title reports and searches and title insurance.
3. To pay in part the installment due Sacramento Northern Railway on November 1, 1931, amounting to \$1,302.00.

It is planned to secure the payment of the loan by an assignment of storage charges accruing to applicant by reason of the deposit of grain or other goods in the warehouses operated by applicant as receiver, and by a deed of trust on certain properties, in the Town-of Durham, as follows:-

" All that real property situate, lying and being in the County of Butte, State of California, described as follows, to-wit:

A parcel of land situate in Section Thirty (30), Township Twenty-one(21) North, Range Two (2) East, Mount Diablo Base and Meridian, described as follows, to-wit:

Commencing at the northeasterly corner of Lot Numbered One (1), in Block "Q", of the Town of Durham, California, according to the Official map of the said Town of Durham, filed as of record November 1, 1881, in the office of the County Recorder of Butte County, California; thence N. 73° 54' E. 80.00 feet to the point of beginning of the herein described parcel; thence S. 16° 06' E. 891.50 feet; thence on curve to the left, having a radius of 210.5 feet, a distance of 96.90 feet, to a point in the south boundary of Lot No. 21, of THE FRANKLIN SUBDIVISION, as the same is laid down and numbered on the official map of the said THE FRANKLIN SUBDIVISION, filed as of record October 3, 1900 in the office of the County Recorder of said Butte County, California; thence along southerly boundary of said Lot No. 21, N. 73° 54' E. 99.00 feet, to a point, which is fifty feet distant, (measured at right angles Westerly) from the center line of the California and Oregon Railroad; thence parallel to, and fifty feet distant from, the aforesaid center line of the said Railroad, N. 16° 06' W. 985.30 feet; thence at right angles, S. 73° 54' W. 120.00 feet, to the said point of beginning of the herein described parcel."

A copy of the proposed deed of trust is filed with the application as Exhibit "E". It appears to us to be in satisfactory form.

O R D E R

Phillip O'Connell, as receiver in equity for Kitrick & Hall, Inc. and not individually, having made application to this Commission for authority to execute a deed of trust and to issue a note for \$10,000.00, and the Commission being of the opinion that this is not a matter in which a public hearing is necessary, that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the note is reasonably required for the purposes specified herein,

IT IS HEREBY ORDERED, that Phillip O'Connell, as receiver in equity for Kitrick & Hall, Inc., and not individually, be, and he hereby is, authorized, on or before February 29, 1932, to execute a deed of trust substantially in the same form as Exhibit "E", and to issue a note in the principal amount of \$10,000.00, due on or before one year after date of issue with interest at not exceeding seven percent per annum, and to use the proceeds for the purposes set forth in the opinion preceding this order.

The authority herein granted is subject to the following conditions:-

1. Applicant shall keep such record of the issue of the note herein authorized and of the disposition of the proceeds, as will enable him to file within thirty(30) days thereafter a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.
2. The authority herein granted to execute a deed of trust and to issue a note, is for the purpose

of this proceeding only, and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said deed of trust and note as to such other legal requirements to which they may be subject.

3. The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 21st day of December, 1931.

C. C. Seaman  
Leon Whidbey  
M. H. Burr  
W. B. Harris  
Fred G. Cleveland  
Commissioners.