

Decision No. 25453

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
E. R. KETCHUM  
to sell and PROGRESSIVE TRANSPORTATION  
COMPANY, LTD., a corporation, to pur-  
chase an undivided one-half interest  
in an automobile freight transportation  
line now operated between the City of  
Los Angeles and Los Angeles Harbor  
District and intermediate points.

ORIGINAL

Application No. 18291

Libby and Sherwin, by Warren E. Libby,  
for applicants.  
Phil Jacobsen, for Harbor Freight Carriers  
Association, Protestant.  
R. E. Wedekind, for Pacific Electric Railway  
Company and Pacific Motor Transport  
Company, interested parties.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission is asked to enter an order authorizing E. R. Ketchum, doing business under the fictitious name of Atlas Transfer, to sell and transfer an undivided one-half interest in an operative right, to which reference will be made hereafter, to Progressive Transportation Company, Ltd., such sale and transfer to be subject to the terms and conditions of the agreement filed in this matter as Exhibit "B". The Commission is also asked to approve said agreement.

The Commission by Decision No. 14404 dated December 27, 1924, in Application No. 9798 found that E. R. Ketchum did not have to obtain a certificate of public convenience and necessity permitting

him to engage in the transportation of property between Los Angeles and the Los Angeles Harbor, because he was engaged in the transportation of property for compensation between such points prior to May 1, 1917. The testimony shows that E. R. Ketchum is at present engaged in said transportation business and it is contended that applicant Progressive Transportation Company Ltd. is now engaged in a contract hauling business by motor truck between the City of Los Angeles and the Los Angeles Harbor District.

On June 25, 1932, an agreement, styled "Option to Purchase," was entered into by and between E. R. Ketchum and Progressive Transportation Company Ltd., under the terms of which E. R. Ketchum agrees to sell to the Progressive Transportation Company Ltd. an undivided one-half interest in the above mentioned operative right (referred to in the agreement as a franchise) for the sum of \$1,500.00, subject to the following terms, covenants and conditions, to-wit:

1. The purchaser agrees to pay \$500.00 of the purchase price in cash upon the execution of the agreement; \$625.00 on or before July 25, 1932; and \$375.00 within ten days after the approval of the transfer by the Railroad Commission. In the event the Commission does not approve the transfer of the undivided one-half interest, the \$625.00 shall be returned to the Progressive Transportation Company Ltd.

2. Each of the parties agrees to file immediately an application with the Railroad Commission for permission to E. R. Ketchum to sell and transfer said undivided one-half interest in said franchise.

3. E. R. Ketchum shall continue to manage and operate the franchise and shall have all of the proceeds from the operation thereof and shall conduct the same in accordance with the rules and regulations of the Railroad Commission and shall not violate any tariff rates on file with the Commission, provided that all tariffs and supplements shall be required to be approved in writing by the Progressive Transportation Company Ltd. before the same are filed.

4. Each of the parties to the agreement grants to the other the right to buy his undivided one-half interest in said franchise for the sum of \$3,000.00 within two years from the date of the agreement.

5. The parties to the agreement are to stand an equal portion of the cost of legal services and costs in the transfer of said undivided one-half interest in said franchise.

The testimony shows that E. R. Ketchum is to retain full control and management of the transportation business which he is conducting under the certificate of public convenience and necessity recognized by Decision No. 14404, so long as Progressive Transportation Company Ltd. does not exercise its option. E. B. Collinge, president of Progressive Transportation Company Ltd. testified that the corporation was buying only an interest in the operative right and not an interest in the equipment.

We believe that the Commission should consider not only the immediate results of the agreement but also the possible subsequent transactions that may flow from such agreement. Under the terms of the agreement Progressive Transportation Company Ltd. may, for the sum of \$3,000.00, at any time within two years after the date of the agreement, acquire the undivided one-half interest of E. R. Ketchum in said operative right. If the Commission were to approve the agreement, it in effect authorizes the transfer of the said operative right to Progressive Transportation Company Ltd., a corporation engaged in contract hauling between the City of Los Angeles and the Los Angeles Harbor District. We do not believe that an operative right, nor an interest in an operative right, should be transferred to a corporation or an individual engaged in contract hauling between the same points covered by the operative right.

#### ORDER

The Commission having been asked to enter its order, as indicated in the foregoing opinion, a public hearing having been

held on this matter before Examiner Fankhauser and the Commission having considered the testimony submitted and being of the opinion that this application should be denied without prejudice, therefore,

IT IS HEREBY ORDERED, that this application be, and the same is hereby, denied without prejudice.

DATED at San Francisco, California, this 19<sup>th</sup> day of December, 1932.

C. L. Jensen  
Leon Whidell  
W. J. Can  
M. B. Harris  
Fred G. Peterson

Commissioners.