

GEM

ORIGINAL

Decision No. 4989

Decision No. _____.

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA

THE CITY OF EAST SAN DIEGO,
a municipal corporation of
the Sixth Class,

Complainant,

-vs-

SAN DIEGO ELECTRIC RAILWAY
COMPANY, a corporation,

Defendant.

Case No. 1145

F. G. Blood, City Attorney, for
Complainant.

Read C. Dilworth, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that defendant in constructing its tracks in East San Diego did not follow the route provided in its franchise near the intersection of Scott Avenue and Steiner Street, now University Avenue, but acquired private property at the southeast corner of the intersection, abutting on both streets, and constructed its tracks thereon with the result that eastbound traffic

using said streets is compelled to cross defendant's railroad tracks twice at said corner; and that operation over the privately owned ground causes a dangerous condition. It also alleges that defendant paved between its rails laid in University Avenue with a temporary pavement of such character that its tracks have become uneven and dangerous.

The answer is that the tracks were constructed across the corner of the block in question to avoid a reverse curve on a heavy grade, thus improving operating conditions; that a strip of land about fifteen feet in width on the southeasterly side of the tracks has been used as part of the public street since the construction of the tracks in 1907; that it was graded and used with the consent of the former owner; that it was paved by the city and that it is now a public highway or street; that the owner of the adjoining land has placed an obstruction against use of said strip, which obstruction should be removed by the city and the right to the use of the strip as part of a public street asserted by the city.

A public hearing in the matter was held by Examiner Westover at San Diego on December 5th, 1917.

At the hearing the City Attorney stated that the city had no objection to the present location of the tracks if the strip in question could be kept open for public travel; but that the city wanted the obstruction removed, defendant's tracks in University Avenue improved, and the space between the rails and for two feet on each side permanently paved.

As a result of the hearing an agreement by the parties was reached under which the city is to acquire or procure a confirmation of title to the strip in question, the defendant contributing \$100 toward the cost thereof; and the defendant is to improve its tracks as rapidly as its means and other circumstances permit, and relay one mile of one hundred pound rails on said University Avenue at points to be agreed upon by the parties as most in need of such improvement, as soon as suitable materials can be procured. It appears that the rails are on hand but that necessary track fastenings are not available and may not be for a year. The parties agree that an order to the following effect may be entered.

O R D E R

A public hearing having been held in the above entitled case, the matter being submitted and now ready for decision,

IT IS HEREBY ORDERED that as soon as suitable materials can be procured defendant lay in University Avenue in the City of East San Diego one mile of one hundred pound rails at points to be agreed upon between the parties hereto as most in need of said improvement,

said rails to be laid within one year from date.

Dated at San Francisco, California, this 13th
day of December, 1917.

Max Thelen

H. H. Wheeler

Edwin C. Edgerton

Frank R. Kohn

Commissioners.