

ORIGINAL

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA

---000---

In the Matter of the Application of  
 BUTTE AND PLUMAS RAILWAY COMPANY, a  
 corporation, SWAYNE LUMBER COMPANY, a  
 corporation and the SOUTHERN PACIFIC  
 COMPANY, a corporation, for an order  
 of the Railroad Commission of the  
 State of California, authorizing Sou-  
 thern Pacific Company to satisfy a  
 certain mortgage dated June 8th, 1910,  
 executed by Butte and Plumas Railway  
 Company in favor of Southern Pacific  
 Company to secure the payment of  
 \$400,000. with interest thereon at  
 the rate of 4% per annum, and author-  
 izing the Butte and Plumas Railway  
 Company to execute and deliver to  
 Southern Pacific Company a promissory  
 note in the sum of \$250,000. and to  
 also execute and deliver to Southern  
 Pacific Company a mortgage creating  
 a first lien on all property now owned  
 or hereafter acquired by the Butte and  
 Plumas Railway Company to secure the  
 payment of said promissory note in the  
 sum of \$250,000. with interest thereon  
 at the rate of 5% per annum, all in  
 accordance with that certain agreement  
 dated April 27, 1917, entered into be-  
 tween Southern Pacific Company, Swayne  
 Lumber Company and Butte and Plumas Rail-  
 way Company.

Application  
No. 3158.

W. M. Singer for Butte and Plumas Railway Company,  
Swayne Lumber Company and Southern Pacific  
Company.

EDGERTON, Commissioner:

O P I N I O N

Butte and Plumas Railway Company, Swayne Lumber Company  
and Southern Pacific Company join in an application for an order  
authorizing Southern Pacific Company to satisfy and discharge a

mortgage executed by Butte and Plumas Railway Company dated June 8, 1910 and to cancel Truckee Lumber Company's note dated September 1, 1911 and;

Authorizing Butte and Plumas Railway Company and Swayne Lumber Company to execute a mortgage and a promissory note.

Evidence introduced at the hearing clearly shows that the acts for which authorization is requested may be performed without the authorization of this Commission.

Southern Pacific Company has power, without the authorization of this Commission, to cancel promissory notes and discharge mortgages.

The evidence affirmatively shows that while the articles of incorporation of Butte and Plumas Railway Company provide that it shall engage in the business of a common carrier, carrying passengers, personal property, express matter, United States mail and freight for hire, it has never operated as a common carrier. It has been operated entirely as an adjunct of the Truckee Lumber Company and the Swayne Lumber Company. It has had no revenue and has received no compensation for services performed for these lumber companies nor has it ever performed services for hire for any other person or corporation.

The lumber companies have provided the money for maintenance, repairs and operation of the railroad property and have treated the railroad as a part of the machinery of producing lumber.

Furthermore, representatives of Swayne Lumber Company, which company entirely controls this railroad, announced that it was the intention in the future not to enter into the business of performing service for hire. On the contrary, the purpose was and is to use this railroad solely for the convenience and the business of the lumber companies.

As the Supreme Court of this state has made the test of public utility status to be the acts and performance of a person or company, rather than the statement in the articles of incorporation, I recommend that it be declared that Butte and Plumas Railway Company is not a common carrier or a public utility and that therefore it may execute a mortgage upon its property without the authorization of this Commission and that this application be dismissed.

#### ORDER

Application having been made by Butte and Plumas Railway Company, Swayne Lumber Company and Southern Pacific Company as hereinbefore stated and it appearing to the Commission, for the reasons set out in the foregoing opinion that Butte and Plumas Railway Company is not a common carrier nor a public utility and that all of the acts for which authorization is asked in this application may be performed without the authorization of this Commission,

IT IS HEREBY ORDERED BY THE RAILROAD  
COMMISSION OF THE STATE OF CALIFORNIA that the  
foregoing application be and the same is hereby  
dismissed.

The foregoing Opinion and Order are  
hereby approved and ordered filed as the Opinion  
and Order of the Railroad Commission.

Dated at San Francisco, California  
this 31st day of January, 1918.

Max Thelen  
Howard  
W. Gordon  
Edwin O. Edgerton

Commissioners.