

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

W. E. Frazine, individually and as chairman of
Citizens' Committee,
Plaintiffs,

- vs -

Case No. 422.

The Atchison, Topeka & Santa Fe Railway Com-
pany, a corporation,
Defendant.

APPEARANCES:

J.H. Cross, representing plaintiffs;
M.W. Reed, representing defendant;
J. W. Walker, Division Superintendent, The
Atchison, Topeka and Santa Fe Ry. Company.

GORDON, COMMISSIONER.

O P I N I O N

On July 1, 1913, W. E. Frazine, individually and as chairman of Citizen's Committee of the Town of Empire, Stanislaus County, California, filed with this Commission a complaint against The Atchison, Topeka and Santa Fe Railway Company, alleging in effect that The Atchison, Topeka and Santa Fe Railway Company in the conduct and operation of its business as a common carrier, operates a steam railroad through, over and across the townsite of Empire, Stanislaus County, California, and that in the said conduct of its business as a common carrier said railroad intends to construct in the very near future a depot building in, at or near the said town of Empire, and that the location of the said proposed depot will be on a site about one-fourth (1/4) of a mile south of a point where Main Street or what is locally called the Waterford Road intersects the railroad of defendant in the town of Empire. Complainant states that at the present time the said defendant has no depot building at or near the said town of Empire and that the location of the proposed depot on the proposed site would be inadequate and insufficient for the

following reasons:-

- (1) Said site has been selected without regard to the present development of the community to be served by said proposed depot.
- (2) Said site has been selected without regard to the present center of population of the community to be served by said proposed depot.
- (3) Said site has been selected without regard to the present source of freight traffic to be served by said proposed depot.
- (4) Said site has been selected without regard to the proposed source of passenger traffic to be served by said proposed depot.
- (5) Said site has been selected without regard to the future development of the community to be served by said depot.
- (6) Said site has been selected without regard to the future sources of passenger and freight traffic to be served by said proposed depot.

Complainant further alleges that there are several available sites upon which a depot could be built in the town of Empire that would serve public convenience and public necessity, that one of the available sites for the location of said proposed depot which would serve public convenience and necessity is the east half of block 12 of the town of Empire, that said site is centrally located and would in every way satisfy the requirements of public convenience and demands of public necessity and is offered free to complainant if used as the site for proposed depot, that "D" Street, east of said Block 12, would be closed and abandoned and a fifty (50) foot street through said block 12 would be opened.

At the present time Complainant maintains two box car bodies and a small shelter shed which serve the residents of Empire as station buildings. These buildings are located on the east side of Defendant's main line track, approximately two hundred (200) feet south of Main Street or what is known locally as the Waterford Road.

At the hearing stress was laid on the fact that the land south of Main Street or the Waterford Road was not platted and was not a part of the townsite of Empire, but that on the north of Main Street or the Waterford Road the land is platted in city lots and blocks and that the

future development of the town of Empire will be in this platted section. However, I find as a fact that the land south of Main Street or the Waterford Road has also been platted in city lots and blocks but had not at the time of the hearing been recorded.

At the hearing Plaintiff did not appear to testify, but the witness for Plaintiff, who is a stockholder in the Co-operative Colonization Company, which owns most of and did own all of the townsite of Empire, appeared and made all the objections that were made to the location of the depot on the site proposed by Defendant.

The principal street of Empire is Main Street or the Waterford Road and the location of the depot on the site proposed by Plaintiff would be approximately eight hundred (800) feet north from the center line of said Main Street or Waterford Road. Defendant's proposed site is at a point approximately the same distance south of said Main Street or Waterford Road.

In my opinion, in so far as public necessity and convenience is concerned it is immaterial whether the depot be located north or south of Main Street or the Waterford Road, and it is my opinion that the principal reason for the location of the depot on the site desired by Plaintiff is to promote the sale of real estate in the townsite of Empire. I am convinced after consideration that public convenience and necessity demand the establishment of better station facilities at Empire but it remains to be determined where this building shall be located. At the hearing Defendant stated that \$ 10,000.00 had been appropriated for the construction of a combination freight and passenger depot at Empire, together with the necessary track facilities, but owing to the location of said depot being contested no part of this appropriation had been expended, but that Defendant was still willing to expend this amount of money for station building and track facilities at this place as soon as the proper location for same was established. North of Main Street or the Waterford Road Defendant owns a right of way one hundred (100) feet in width, and to accommodate Defendant, provided proposed depot will be located at the point desired by Plaintiff, Plaintiff offers to donate to

Defendant the east half (1/2) of Block twelve (12) and to close "D" Street east of said Block twelve (12), between First and Second Streets; said donation would include all of the land between block twelve (12) and Defendant's westerly right of way line. A depot could be located on this proposed site but would be objectionable from an operating standpoint. In the first place there would not be enough land to allow increased station building and trackage facilities that will come with the development and growth of the town of Empire and surrounding country. In order to gain access to the depot with a house track it would be necessary to construct the house track in "D" Street north of that portion of "D" Street which would be vacated; it would also be necessary to construct said house track on and across Second and possibly First Street. Further, it would not be possible in the future to construct additional tracks in the vicinity of the depot unless they were constructed across the aforementioned streets, and if such tracks were to be constructed in the future they would of necessity have to be spur tracks; they could not be connected at both ends with the main line track of Defendant nor to passing track without Defendant purchasing additional property and securing the further closing and abandonment of portions of "D" Street and First Street. On the other hand south of Main Street or the Waterford Road Defendant has provided station grounds three hundred (300) feet in width, on which there are no buildings nor streets to retard the efficient operation of house tracks and spur tracks. The Grange Company warehouse is located south of Main Street or the Waterford Road a distance of approximately three hundred (300) feet, but inasmuch as the proposed depot should be constructed a sufficient distance from Main Street or the Waterford Road to prevent the stopping of engines or trains on or across Main Street or the Waterford Road this warehouse will not interfere with the operation of trains nor the installation of tracks to the depot. On account of the wide station grounds south of Main Street or the Waterford Road which was provided by Defendant to be used for

station facilities such as is proposed to be installed at this place Defendant will not be subjected to difficulties and interference in the operation of its trains and the construction of its tracks if the depot is located in the vicinity of the site proposed by Defendant.

I am of the opinion that where railroads or other public service corporations have provided for future development and public convenience and necessity that they should be allowed to utilize the facilities so provided, if in the use of the same public convenience and necessity is not impaired.

I, therefore, submit the following order: -

O R D E R

W. E. Frazine, individually, and as Chairman of Citizens' Committee of Empire, Stanislaus County, California, having filed with this Commission a complaint against The Atchison, Topeka and Santa Fe Railway Company in the proceeding entitled as above, and The Atchison Topeka and Santa Fe Railway Company having filed with this Commission its answer, and a public hearing having been held and evidence having been presented by both parties, and the case having been submitted and the Commission finding as a fact that the site for the proposed depot of The Atchison, Topeka and Santa Fe Railway Company north of Main Street or the Waterford Road as desired by Plaintiff is inconvenient and unreasonable as to passenger and freight traffic moving over Defendant's main line and side tracks and that a convenient and reasonable site for said depot would be on the property of Defendant south of Main Street or the Waterford Road on the west side of Defendant's main line track, and that Defendant should erect thereon a passenger and freight depot, and basing its order on the findings contained herein, and the opinion which precedes this order,

IT IS HEREBY ORDERED that Defendant shall within ninety (90) days from the service on it of this Order present to the Railroad Commission for its approval plans for a passenger and freight depot, the

estimated cost of which, together with the necessary track facilities, shall be not less than \$10,000.00, same to be erected on the property of Defendant at least eight hundred (800) feet south of Main Street or the Waterford Road and on the west side of Defendant's main line track, and shall within six (6) months after the approval by this Commission of such plans, build on said property such passenger and freight depot as shall be approved by this Commission.

The Foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of August, 1913.

H. S. Loveland

Alex. Gordon

Max Thelen

Edwin W. Edgerston

Commissioners.