

ORIGINAL

Decision No. 921

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

R. E. KNOX, B. R. EVERETT, FRANK	:	
DECKER, A. G. DU BRUTZ, A. FOURCEY,	:	
E. J. PRAEGER, GEORGE R. GREENLEAF,	:	
J. E. BONE, W. G. CODMAN, B. W.	:	
THAYER and SAMUEL B. McNEEGAN,	:	
property owners and residents of	:	
San Jose East Side District,	:	
	:	Case No. 409.
Plaintiffs,	:	

vs.

SAN JOSE AND SANTA CLARA COUNTY RAIL-	:
ROAD COMPANY, a corporation, and SAN	:
JOSE RAILWAYS, a corporation,	:
Defendants.	:

W. H. Robinson, attorney for Plaintiffs;
 S. F. Leib and Owen D. Richardson, attorneys
 for defendants.

LOVELAND, Commissioner.

O P I N I O N

This case came on regularly for hearing in San Jose, California, August 20, 1913.

Defendants having set forth in pleadings that the San Jose and Santa Clara County Railroad Company had been made defendant in this case through error, and counsel for plaintiffs admitting that such was the fact, complaint was considered amended and as being directed only against the San Jose Railways, a corporation.

It was admitted by defendant that the Southern Pacific Company owns the stock of the San Jose and Santa Clara County Railroad Company, a corporation, and of the San Jose Railways, a corporation.

The case was very thoroughly and ably presented by counsel for plaintiffs and defendant and the testimony disclosed the following facts:-

About twenty years ago, one, R. E. Quincey, obtained, from the Board of Supervisors of Santa Clara county, a franchise permitting him, or his assigns, to construct, maintain and operate a double track street railroad along the highways known as Alum Rock Avenue and Zirk Avenue and along the Penetencia Canyon to the Alum Rock Reservation in the county of Santa Clara, said franchise to run for the period of thirty-five years; That while this franchise appeared to have been forfeited by said Quincey, another franchise was granted to a company organized by him and the road was built. The testimony further showed that, so far as physical operations were concerned, it was operated successfully for a considerable term of years and that it finally passed into the ownership of defendant, San Jose Railways:

That in 1911 that portion of the road in Alum Rock Canyon was practically destroyed by a cloudburst. Instead of rebuilding the portion of the road in the canyon thus destroyed, defendant continued to operate the road from San Jose to Toyon Station, at the mouth of the canyon, although permitting the roadbed and equipment to get in bad condition and to remain in that condition.

Within the past two years, the Peninsular Railway Company (a subsidiary of the Southern Pacific Company) has secured franchises and rights of way and has built a standard gauge road from San Jose to Alum Rock Park, via Berryessa. The distance between the old narrow gauge road comprehended in this complaint and the new standard gauge road thus built is about one and one-half miles. At Toyon Station, which is at the mouth of the Alum Rock Canyon, the new road passes within about two hundred feet of the terminus of the old road, but a creek, known as Penetencia Creek, is between the terminus of the old road and the new road. Passengers going to the park via the old road have to transfer

at the terminus of the old road and walk about three hundred feet over the bridge across Penetencia Creek and take the cars on the new road.

The franchise heretofore mentioned granted to Quincey provided for a continuous trip from San Jose to Alum Rock Canyon, but, as before stated, that ordinance appears to have lapsed and the one under which the road was constructed did not provide for a continuous trip.

Plaintiffs are asking in this case to have the old narrow gauge road converted into a standard gauge road and a proper connection made with the Berryessa line at Toyon and for a continuous passage to Alum Rock Park.

It appears from the testimony that defendant has seriously contemplated the rebuilding of the old road and has secured a franchise from the city of San Jose for a considerable distance in said city along the line of the old road, said franchise disclosing defendant's purpose of building a standard gauge road for the distance covered by said franchise.

The defendant sought to obtain a franchise on the Alum Rock Road to Kirk Avenue, and witnesses for the defendant testified that it has been its intention to reconstruct the Alum Rock line as far as Kirk Avenue as a standard gauge road, but were undecided as to what steps would be taken with reference to that portion of the narrow gauge line beyond the intersection of Kirk Avenue and Alum Rock Road and Toyon Station.

It was alleged by the defendant that the residents along the narrow gauge line protested to the Supervisors against granting a franchise for a standard gauge line only as far as Kirk Avenue; and we can readily understand the motives behind such objection, as it seems apparent that it was the intention of the defendant to secure a franchise and rebuild its narrow gauge line as far as Kirk Avenue and Alum Rock Road and abandon that portion of the

line thence to Toyon Station.

Some of plaintiffs testified that promises had been made by the representatives of defendant that the old road would be rebuilt, but such representatives of defendant denied making definite promises, although admitting that the matter was under consideration.

The case had been brought before the Commission several months before in an informal manner and the Chief Engineer of the Commission, Mr. R. A. Thompson, had made an examination and study of the situation. His report to the Commission was introduced as an exhibit by plaintiffs, and reference is hereby made to it.

When asked why the new standard gauge road via Berryessa had been built by the Peninsular Railway Company, instead of repairing and reconstructing that portion of the San Jose Railways from San Jose to Alum Rock Park, comprehended in this complaint, when the stock of both companies was owned by the Southern Pacific Company, defendant stated that the charter or franchise for that portion of the San Jose Railways' road had but thirteen years longer to run and that said road was constructed on public streets and rights-of-way not owned by the San Jose Railways; That they doubted whether they could secure a renewal of such rights-of-way; in fact, had been notified by the ownership of a considerable portion of the right-of-way that they would be required to remove their track; that for the line via Berryessa the company had secured the title to private rights-of-way and private rights-of-way comprehending a much better route into the canyon.

Considerable testimony was given by both plaintiffs and defendant as to the number of people who would naturally use the old line if properly reconstructed and equipped, there being found considerable conflict in such testimony.

After carefully analyzing all of the testimony submitted

at the hearing of this case, including the report of former Chief Engineer, Mr. R. A. Thompson, and a later report by Mr. Hugh Wilson, Service Expert for the Commission, which it was stipulated at the hearing that the Commission might consider although submitted after the hearing was closed, I am of the opinion and find as a fact that the narrow gauge road from San Jose to Toyon, being a part of the road comprehended in this complaint, should be rebuilt, properly equipped, and conducted as a standard gauge road.

It was testified by Mr. McLenegan- and he also testified that he was satisfied that a neighbor of his would do likewise- that he would probably give to defendant the right-of-way necessary to cross his lands. In fact, he testified that he would do so, the only question being as to the exact location of said right-of-way. From the testimony in the case, I believe that defendant will have little difficulty in renewing its rights-of-way. It is not to be expected that the defendant will encounter difficulty in securing rights-of-way along its present route, and if the property owners who are to be benefited by the reconstruction of this line do not see fit to continue the right-of-way privileges of the defendant for a reasonable length of time, a modification of this Opinion may be necessary.

The testimony shows that the road passes through a section that is susceptible of substantial development in point of population, and it also shows that defendant is under obligation to the people living along its line to furnish them adequate transportation. The parties securing the franchise for the building of this road took upon themselves such obligations, and defendant, in taking over the property, should also take over the obligation. It is unreasonable to expect that every line of road of a large system like defendant will be profitable in its operation, although in this case there was considerable testimony to show that such

development would follow the reconstruction of the line as would make its operation profitable.

The defendant presented, in its Exhibit No. 5, detailed estimate of the cost of reconstruction of that portion of the narrow gauge line between King Road and Toyon Station, such reconstruction comprehending the conversion of the line into a standard gauge single track electric line. This estimate places the cost at about \$80,000.00, but it must be borne in mind that it was apparently the intention of the defendant to reconstruct the line as far as Kirk Avenue and Alum Rock Road and that, according to its estimate presented, the expenditure for this reconstruction would amount to approximately \$50,000.00. The only additional outlay, therefore, which the defendant will be required to make is for that portion of the line beyond Kirk Avenue and Alum Rock Road to Toyon Station, and according to its figures this outlay should not amount to more than \$30,000.00.

If the defendant had not permitted its narrow gauge line to get into such a deplorable physical condition, the cost of standard gauging it would have been very much less than at present. Had this line been properly kept up there would have been no difficulty, after the Alum Rock Canyon line had been washed out, in reconstructing the same via the new route beyond Toyon used by the Peninsular Railway. But, instead of keeping its narrow gauge Alum Rock line in good physical condition, the defendant permitted the same to go to pieces for want of repair.

It may well be that the narrow gauge line in the Alum Rock Canyon could not be rebuilt safely along the same route that was washed out by the floods in 1911, but there was nothing to prevent the defendant locating a higher and safer line which the Peninsular Railway, under the same management and control as the defendant, found no difficulty in locating. If the owners of the

defendant line, through their ownership of other electric properties, care to construct a new route into the Alum Rock Canyon via Berryessa, there appears by this fact no adequate reason for abandoning the line via the Alum Rock Road; and the defendant should be required to not only reconstruct and convert its narrow gauge line into a standard gauge line as far as Kirk Avenue, which was its original intention when applying for a franchise to that point, but also continue on to a connection with the Peninsular Railway beyond Toyon Station.

While I am finding as a matter of fact that that portion of defendant's road in question should be reconstructed as standard gauge road, comprehending an outlay of from \$70,000.00 to \$80,000.00, I am not unmindful of the present financial condition of the country and shall not recommend that defendant be ordered to reconstruct this line within such period of time as would compel it to pay an unreasonable rate of interest for the money necessary for the reconstruction.

While I find as a fact that public convenience and necessity require a connection between that part of defendant's line which I am recommending should be rebuilt and its Berryessa line at Toyon, I do not find as a fact that defendant should, nor shall I recommend that it be required to furnish a continuous trip over this line from San Jose to Alum Rock Park unless the travel via the Alum Rock Road route is sufficient to justify the defendant in operating its cars through to Alum Rock Reservation in connection with the Peninsular Railway beyond Toyon. If an up-to-date standard gauge road is constructed and operated along the line in question, I believe that those who use it may well be satisfied, although required to transfer at Toyon when en route to Alum Rock Park.

I recommend the following Order:-

ORDER

R. E. Knox, et al, having filed a complaint with the Commission alleging that the San Jose Railways, a corporation, operating street car lines and suburban lines in and about San Jose, California, had failed and neglected to reconstruct a portion of one of its lines of railroad in Alum Rock Canyon which was destroyed by cloudburst in 1911, and had permitted another portion of the same line of its road, extending from San Jose to Toyon Station, at the mouth of Alum Rock Canyon, to get in bad condition, both as to track and equipment;

And complaint further alleging that, under the terms of the franchise under which said road was built, the San Jose Railways, successors in interest to the parties who obtained the franchise for said road, are under obligation to repair and put in good condition the road and equipment of that portion still in operation and rebuild that portion in Alum Rock Canyon which was destroyed, as above set forth, and requesting the Commission to order that such repairs be made and such construction be done;

And the Commission having found as a fact, from the testimony introduced at the hearing, and from the report of its former Chief Engineer, Mr. R. A. Thompson, which was introduced and made a part of the record in this case, and also from the report of its Service Expert, Mr. Hugh Wilson, that portions of said road between San Jose and Toyon Station are in bad condition, although not considered by these gentlemen as absolutely unsafe; and having found as a further fact that, under all of the circumstances of the case, the defendant, San Jose Railways, should reconstruct said railroad from San Jose to Toyon Station, as set forth in the Opinion preceding this Order, and connect said reconstructed road with the Peninsular Railway with a line recently built and operated by the Peninsular Railway Company from San Jose to Alum Rock Park via Berryessa,

such connection to be at Toyon Station; and having found as a further fact that if said road is so reconstructed and connected with the line of the Peninsular Railway at Toyon Station that the line extending from Toyon Station, a distance of about one-half mile towards Alum Rock Canyon, will no longer be useful or necessary, either for public or private use:

IT IS HEREBY ORDERED: (First), That, within six months from date of this Opinion and Order, the defendant, San Jose Railways, shall reconstruct that portion of its San Jose and Alum Rock narrow gauge road in question as a standard gauge road, and properly equip the same from the present terminus of its standard gauge road at 26th Street, San Jose, to Linda Vista Station, a distance of three and one-fourth miles:

(Second): That, within six months thereafter, or within one year from date of this Opinion and Order, the defendant, San Jose Railways, shall reconstruct that portion of its narrow gauge road extending from Linda Vista to Toyon Station, a distance of one and one-fourth miles, as a standard gauge road, properly equipped, and shall make such further extension of said road as will connect said road with the line of the Peninsular Railway Company at or near Toyon Station;

(Third): That defendant, San Jose Railways, is hereby granted permission to dismantle and remove that portion of its narrow gauge road from Toyon Station, a distance of about one-half mile towards Alum Rock Canyon.

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 30th

day of August, 1913.

H. L. Ireland
E. L. Gordon
Mr. Helen

Commissioners.