

authority to suspend operations under certain highway common carrier certificates for the transportation of livestock.

Public hearing was held and the matter duly submitted, but on September 19, 1938, the order of submission was set aside and the case reopened for further hearing. On the same date the Commission issued its order of investigation in Case 4364 to determine whether or not the operative rights involved in the application had been abandoned by the applicant or by James A. Ross, a prior holder thereof, by failure to conduct the operations required under the certificates.

The certificates in question were originally granted to C. H. Warrington by Decision No. 13835, dated July 23, 1924, in Application No. 9979, and Decision No. 15288, dated August 13, 1925, in Application No. 11125. Through a succession of transfers these certificates were acquired by James A. Ross pursuant to authority granted by the Commission in Decision No. 26734, dated January 15, 1934, in Application No. 19229. By its decision No. 29669 dated April 12, 1937, the Commission authorized the transfer of the certificates from Ross to Rex W. Boston, and from Boston to Livestock Transport, Inc.

Both matters came on regularly to be heard on October 20, 1938, before Examiner Cameron in Los Angeles, at which time they were consolidated for hearing and disposition without objection. The facts of record may be summarized as follows:

Upon acquiring the certificates in 1934, Ross commenced operation using three trucks and four trailers. The business was not profitable but Ross for a time succeeded in securing enough business to justify maintenance of the service. In September 1935

Ross concluded that he could no longer continue operation, and on or about September 9, 1935, he discontinued service and stored his equipment on a vacant lot on East Vernon Avenue in Los Angeles. He testified in substance that the trucks were stored because he intended to quit the transportation business, and that he had no desire to continue, directly or indirectly, any operations under the certificates. Ross's equipment remained stored until March, 1937, at which time he disposed of it to J. Tanzola. No service of any kind was conducted by Ross or any one else under the certificates during the remainder of the time the certificates stood in his name, from September, 1935, until April, 1937, when the certificates were transferred to Boston, and from Boston to Livestock Transport, Inc.

It is evident that Ross discontinued service under the certificates without authority from the Commission and with the intention of abandoning the certificates.

Applicant makes some contention to the effect that if any abandonment occurred, it was waived by the Commission authorizing the transfers to Boston and to Livestock Transport, Inc. in Decision No. 29669. There is no merit in this contention, however, as the status of the operative rights was not before the Commission in that proceeding, and further, because Section 51(a) of the Public Utilities Act, by virtue of which the Commission's approval of the transfer was given, expressly provides, in part:

" . . . The permission and approval of the commission to the exercise of a franchise or permit under section 50 of this act, or the sale, lease, assignment, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any

franchise or permit, or to waive any forfeiture."

Moreover, even apart from any question of an abandonment by Ross, the record shows a similar abandonment by the Livestock Transport, Inc. after its purported acquisition of the certificates. A witness from that company testified that upon acquiring the certificates, the corporation entered upon an investigation of transportation conditions in its territory from which it concluded that no traffic could be obtained at its published rates, and that competitive conditions would render it futile to attempt to attract traffic by reducing its rates. This investigation, the witness claimed, occupied the entire time intervening between the acquisition of the certificates in April, 1937, until shortly before the instant application was filed on July 20, 1937. At no time did Livestock Transport, Inc. conduct any operations under the certificate, nor was it at any time in a position to do so, as the corporation was wholly without motor vehicle equipment or other means with which to handle any traffic had it been tendered.

From the record in this matter we are of the opinion and hereby find as a fact that James A. Ross and Livestock Transport, Inc. wilfully and deliberately abandoned the operation of the transportation service authorized by the certificates of public convenience and necessity granted by the Commission in Decisions Nos. 13835 and 15282, and by such abandonment the operative rights conferred by said decisions were voluntarily forfeited. The application for authority to suspend operations should therefore be dismissed and the certificates cancelled and annulled.

O R D E R

A public hearing having been held, the matter having been

duly submitted, the Commission now being fully advised, and, basing its order upon the foregoing findings of fact and opinion,

IT IS ORDERED that the application of Livestock Transport, Inc., No. 21355, be and it is hereby denied.

IT IS FURTHER ORDERED that the operative rights granted by the Railroad Commission in its Decision No. 13835, dated July 23, 1924, and Decision No. 15288, dated August 13, 1925, be and they are hereby cancelled, revoked, and annulled by reason of the unauthorized suspension of service by James A. Ross, without the permission of the Railroad Commission.

IT IS FURTHER ORDERED that all tariffs, time schedules, concurrences, and powers-of-attorney now on file with the Commission in the name of Livestock Transport, Inc., be and they are hereby cancelled.

The effective date of this order shall be twenty (20) days from date hereof.

Dated at San Francisco, California, this 27th day of December, 1938.

Rafaela J. [Signature]

[Signature]

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Commissioners.