

George F. Pell and T. F. Luedtke, for McCormick Steamship Company.
McCutcheon, Olney, Mannon & Greene by F. W. Mielke, for Hammond Shipping Co. Ltd. and North Coast Redwood Company (formerly Hobbs-Wall & Co.).
Pillsbury, Madison & Sutro by Hugh Fullerton and Thomas Stanton, for P. L. Transportation Company.
J. Richard Townsend and H. R. Bolander, Jr., for San Diego Steamship Company, San Diego-San Francisco Steamship Line and James K. Nelson.
A. Larsson, for Rockport Redwood Company.
W. R. Chamberlin, for Chamberlin Steamship Co., Ltd.

(For other appearances in Case No. 4394 and Applications Nos. 21556 and 22299, see Decision No. 31833 of March 20, 1939, an interim opinion and order issued upon the record made at the initial hearing in those matters.)

O P I N I O N

In Case No. 4394, the Commission has under investigation the operating rights, operations and practices of common carriers of persons and property by vessel upon the high seas between points in California. The principal purposes of the investigation are the determination of the nature, scope and extent of the intrastate operating rights of all coastwise common carriers by vessel; of the extent to which, if at all, such operating rights should be revoked for unauthorized discontinuance or suspension of service; and of the extent to which, if at all, temporary suspensions of service should be authorized. In Applications Nos. 21556, 22299, 22690 and 23454, J. R. Hanify Company, Los Angeles-San Francisco Navigation Company Limited, North Coast Redwood Company (formerly Hobbs-Wall Company) and P. L. Transportation Company, respectively, which carriers are also respondents in the investigation proceeding, seek authority temporarily to suspend common carrier vessel service. Los

Angeles-San Francisco Navigation Company Limited also requests permission to substitute truck service for vessel service during the period of suspension. Public hearings in these matters were had at San Francisco before Examiner Mulgrew.¹

Whatever operating rights as coastwise common carriers by vessel are possessed by the carriers involved in these proceedings must have been acquired by good faith operations on August 21, 1933, under tariffs on file with the Commission, or by certificates of public convenience and necessity subsequently issued by the commission. The controlling statutory provision is Section 50(d) of the Public Utilities Act, which reads, in part, as follows:

"No corporation or person * * * shall hereafter (August 21, 1933) begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points in this State, without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required as to termini between which any such corporation or person is lawfully operating vessels in good faith under this act as it existed prior to this amendment, under tariffs and schedules of such corpora-

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As directed by the order instituting investigation in Case No. 4394, a copy thereof was served on each of the respondents at least 10 days prior to the initial hearing on March 9, 1939. For the information of other interested parties, copies of the order were also sent to cities, port authorities, chambers of commerce, trade associations, shippers and land carriers. All of the parties so notified of the investigation were informed by an accompanying letter that at the initial hearing each respondent would be expected to present in exhibit form a statement showing the points between which, and the commodities for the transportation of which operating rights were claimed. The letter explained that evidence in support of claimed rights would not be received at the initial hearing but that respondents would be expected to present such evidence at a later date. Pursuant to this plan an adjourned hearing for the taking of the supporting evidence was set for April 29, 1940. On March 25, 1940, respondents and other interested parties were notified of this hearing and of its purposes.

In the application proceedings, notices of scheduled hearings were forwarded interested parties from time to time as the occasion arose.

tions or persons, lawfully on file with the Railroad Commission."

In Golden Gate Ferry Company vs. Railroad Commission

(204 Cal. 305), a case involving prescriptive rights of a common carrier by vessel on the inland waters of this State, the statutory provision "operating vessels in good faith" was before the Supreme Court of California.² The Court construed this provision as meaning operating vessels "in the essential and inherent features of the service sought to be continued after the effective date of the Act." The principle thus established was followed by the Commission in Decision No. 28283, of October 14, 1935, in Case No. 3824 (39 C.R.C. 429), in re: Vessel Operative Rights. The Commission there said:

"Where a carrier demonstrated that it has transported in good faith and under tariffs on file with the Commission on August 17, 1923, all or substantially all commodities then offered for transportation in the territory it served, it should not be deprived of the right to haul such other articles of commerce as might be offered later, but that where the articles transported clearly indicate that the carrier has restricted its operations to commodities of a certain class or of a limited number of classes the carrier must be regarded as holding itself out to transport only commodities in that class or classes and cannot later without express authority change the essential and inherent nature of its service by transporting other commodities."

In Decision No. 29778 of May 24, 1937, in the same case (40 C.R.C. 493), the foregoing holding was reiterated. In addition, it was there held that where a carrier's operations are confined to service between a limited group of points that fact is strongly indicative of an intention to so restrict its operations, and that

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Operating rights of common carriers by vessel on the State's inland waters are also controlled by Section 50(d) of the Public Utilities Act. The only substantial difference in the statutory provisions is that prescriptive rights on the inland waters are predicated upon good faith operations on August 17, 1923.

mere filing of a tariff is insufficient to confer operating rights.

Operating rights acquired by securing certificates of public convenience and necessity from the Commission are defined in the decisions which granted the certificates.

As indicated at the outset of this opinion, a further purpose of the investigation is to determine whether or not operating rights should be revoked in instances where the respondents discontinued or suspended service without authority from the Commission. In treating this phase of the investigation consideration must be given to the fact that in acquiring operating rights, whether by prescription or certification, each carrier acquiring rights undertook to serve the public in a particular field. It follows that after assuming an obligation to render service in order to secure operating rights carriers should not be permitted to withdraw entirely or partially from the field of service undertaken without forfeiting their rights to render the withdrawn service, unless public interest is best served by temporary suspension of service, and then only after securing appropriate authority from the Commission. Suspension of service with no intention of reestablishing it constitutes abandonment of operating rights and, clearly, rights so relinquished should be revoked. In decisions bearing on withdrawal from common carrier operations, the Commission has consistently held that unauthorized discontinuance of service was a sufficient ground for revocation of operating rights.³ The reasonableness and propriety of

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Service of De Luxe Transportation Company (17 C.R.C. 565); Nelson et al., vs. Halev et al. (21 C.R.C. 226); Application of M. Haydis for a certificate of public convenience and necessity between San Diego and El Centro (22 C.R.C. 944); Investigation into the practices and operations of Mrs. Thorndyke Duggan (30 C.R.C. 886); among others.

this policy becomes at once apparent when consideration is given to the conditions which would result from allowing the carriers to suspend and reinstate service at will. If the carriers were left free to choose when, and to what extent, they would discharge their obligations, the public would have no assurance that the carriers would fulfill them, and unlawful discriminations between localities and between shippers might well result. Moreover, the maintenance of sound and enduring intrastate vessel service would be hampered, if not made impossible, by the barriers, in the shape of operating rights held for discontinued services, placed in the way of the entry of new carriers into the field.

There remains for discussion the third of the principal purposes of the investigation, as hereinbefore outlined, namely, determination of the extent to which, if at all, suspension of service should be authorized. This question was before the Commission in other proceedings where it was held that, ordinarily, the authorization of repeated and lengthy suspensions of service was not in the public interest.⁴ If the Commission were now to discard that policy in favor of granting temporary suspensions whenever applied for, and without requiring a substantial showing that other than ordinary circumstances surround the transportation service involved, it would be remiss in its duty to see that the carriers discharge their obligations to the public.

Although there are forty respondents to the investigation

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See Decision No. 28832 of May 25, 1936, in Application No. 20001 (unreported); Decisions Nos. 29893 and 31953 of June 28, 1937, and May 25, 1939, respectively, in Application No. 20158 (unreported); Decision No. 30044 of August 16, 1937, in Application No. 20417 (unreported); and Decision No. 30605 of February 7, 1938, in Application No. 19969 (unreported).

proceeding, only nine claims to operating rights were entered. In the main, the claimed rights were predicated upon good faith operations on and prior to August 21, 1933. In some cases the respondents also pointed out that they held certificates of public convenience and necessity for specified operations. A detailed discussion of the record follows.

Carriers Claiming Operating Rights

Chamberlin Steamship Co. Ltd.

Chamberlin Steamship Co. Ltd. claims an operating right to transport lumber from Humboldt Bay points to all California ports located south of Humboldt Bay. Respondent's president testified that during the years 1933 to 1936, inclusive, the corporation was engaged in handling general cargo between San Francisco and Oakland on the one hand and Los Angeles Harbor on the other, and from those ports to Eureka; but that, during that time, the company did not transport property of any description from Humboldt Bay points. He said that in 1936 the company changed the character of its business, abandoning its general cargo operations in favor of handling full cargoes of lumber from Humboldt Bay.⁵ No statement of the ports to which the lumber was transported was offered in support of the claimed rights, the witness stating that the movements were not of a regular character. He also stated that the last time lumber had been handled was early in 1938 when Northwestern Pacific Railroad service was interrupted. No certificate of public convenience and necessity is held by this company.

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Any prescriptive rights it may have held for the transportation of commodities other than lumber and forest products by virtue of operations on and prior to August 21, 1933, were revoked by Decision No. 32711 of January 9, 1940, in Case No. 4394, which was issued in response to the company's request for authority to discontinue handling general merchandise. Tariffs and schedules covering operations under the rights so revoked were canceled.

Chamberlin Steamship Co. Ltd. had rates on lumber from designated ports on Humboldt Bay to twenty-four other California ports on file with the Commission on August 21, 1933, by participation in Pacific Coastwise Lumber Conference Local Freight Tariff No. 6, C.R.C. No. 3, of Robt. C. Parker, Agent, filed on behalf of sixteen vessel carriers. The record is clear, however, that no property was transported from Humboldt Bay ports until 1936, when the lumber service was inaugurated. As was held in Vessel Operative Rights, supra, it is incumbent upon those claiming prescriptive operating rights to show actual good faith operations under a filed tariff to establish their claim, the mere filing of a tariff being insufficient to confer such rights. The operations of this respondent as a coastwise common carrier of lumber by vessel thus being unlawfully established no rights were acquired thereby. Such rights as it may have held to render other service having been revoked pursuant to a request to discontinue all operations except the transportation of lumber and forest products, it must be found that Chamberlin Steamship Co. Ltd. holds no right to operate as a coastwise common carrier by vessel. Its tariffs and schedules will be canceled.

Hammond Shipping Co. Ltd.

At the initial hearing, Hammond Shipping Co. Ltd., urged that it held operating rights for the transportation of property between San Francisco Bay points and Los Angeles Harbor and Long Beach, and between Eureka and San Francisco, Oakland, Alameda, Los Angeles Harbor and Long Beach; forest products from Humboldt Bay points to ports located south of Humboldt Bay; and designated commodities in lots of 300 tons from San Francisco Bay points to Los

Angeles Harbor and Long Beach. Subsequently, however, an application (No. 23488) was filed seeking authority to discontinue intrastate common carrier service by vessel. By Decision No. 33340 of July 16, 1940, in that proceeding, the application was granted and whatever operating rights may have been held by Hammond Shipping Co. Ltd. were revoked.

J. R. Hanify Company
J. R. Hanify & Co.

In Case No. 4394, J. R. Hanify Company, also known as J. R. Hanify & Co., claims prescriptive rights for the transportation of forest products by vessel from Crescent City, Point Arena and Humboldt Bay points to various destinations.⁶ No certificate of public convenience and necessity is held by the respondent. In support of claimed rights a statement was submitted showing that lumber was transported from Eureka to southern California during the period from February, 1933, to December, 1935; and that one cargo of lumber was transported from Eureka to San Francisco in December, 1933. No service was rendered thereafter. In an application (No. 21556) filed October 30, 1937, the J. R. Hanify Company first sought authority to suspend operations. Upon that application suspension of service was authorized until March 20, 1940. In a supplemental application, filed April 6, 1940, after expiration of the authority, extension thereof for one-year period is sought.

From the showing made it appears that this respondent's operations as of August 21, 1933, were confined to the transportation

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The Humboldt Bay points from which rights are claimed are: Arcata Wharf, Fairhaven, Bucksport, Eureka, Field's Landing and Samoa. The points of destination are: Alameda, Antioch, Benicia, Crockett, Eueneme, Long Beach, Los Angeles Harbor, Mare Island, Martinez, Monterey, Moss Landing, Oakland, Pittsburg, Port San Luis, Richmond, Rio Vista, San Diego, San Francisco, San Simeon, Santa Barbara, Santa Cruz, Stockton, Vallejo, Ventura and Redwood City.

of lumber from Eureka to southern California ports, and that this service was maintained until December, 1935. Application for authority to suspend operations was not filed until almost two years after service had been discontinued. As hereinbefore stated, the Commission regards unauthorized discontinuance of service as a sufficient ground for revocation of operating rights and views repeated and lengthy suspensions of service as not in the public interest under ordinary circumstances. The record is clear that for more than four years the public has been deprived of the J. R. Hanify Company's service. It is apparent that there is no longer a need for the service or that the respondent cannot or will not fulfill its obligations to continue to operate. Under such circumstances, and particularly in view of the unauthorized discontinuance of service for a period of close to two years, the supplemental application for authority to further suspend service will be denied, operating rights will be revoked and tariffs and schedules will be canceled.

Chas. H. Higgins
C. H. Higgins

At the initial hearing Chas. H. Higgins, also known as C. H. Higgins, entered a claim to a prescriptive right to transport lumber and general merchandise between Eureka, Point Arena, Blunt's Reef, San Francisco, Oakland, Redwood City, Vallejo, Antioch and Pittsburg. He holds no certificate of public convenience and necessity. No evidence was submitted in support of the claimed rights at any of the hearings. A witness for the Commission testified, however, that the one vessel formerly operated by Higgins had been out of service since April 12, 1939, and that Higgins had died on April 18, 1940. No authority to suspend service has been sought or granted. As pointed

out in discussing the J. R. Hanify Company's claims, unauthorized discontinuance of service is a sufficient ground for revocation of operating rights. Whatever rights may have been held by this respondent will be revoked and his tariffs and schedules will be canceled.

Los Angeles-San Francisco
Navigation Company Limited

Respondent Los Angeles-San Francisco Navigation Company, Limited, claims that it holds prescriptive rights authorizing it to transport persons and property between San Francisco, Alameda, Richmond and Oakland on the one hand and Santa Barbara, Los Angeles Harbor and Long Beach on the other, and between Stockton and Los Angeles Harbor and Long Beach; and that it holds a certificate of public convenience and necessity authorizing the transportation of specified property in lots of 300 tons or more between designated points on San Francisco Bay and its tributaries on the one hand and Los Angeles Harbor, Long Beach and San Diego on the other.⁷

By Decision No. 31833 of March 20, 1939, as amended, in Application No. 22299, this carrier was authorized to suspend its common carrier vessel service until September 20, 1940. Matters as yet undecided in the application proceeding are the requests for further suspension of service to March 20, 1941, and for authority to substitute truck for vessel service for the transportation of property between San Francisco, Richmond, Berkeley, Oakland and Alameda on the one hand and Long Beach, Los Angeles Harbor and Los

⁷ The property and the points on San Francisco Bay and its tributaries involved are: Grain and grain products from and to Port Costa and South Vallejo; petroleum and its products from and to Avon and Martinez; cement, shells and shell products from and to Redwood City; and property of all descriptions from and to Mare Island.

Angeles on the other, during the suspension period.

Evidence submitted in support of the claimed prescriptive rights shows that this respondent's operations on and prior to August 21, 1933, were confined to the transportation of general property between San Francisco and Los Angeles Harbor (San Pedro) and from San Francisco to Port San Luis and Santa Barbara; and to the transportation of canned goods in quantities of 150 tons and over from Alameda to Los Angeles Harbor. It also shows that operations to Port San Luis and Santa Barbara were discontinued, the former in October, 1935, and the latter in June, 1936; that subsequent to March, 1935, canned goods were not transported from Alameda to Los Angeles Harbor; that in March and April, 1935, operations between San Francisco and Long Beach were substituted for the San Francisco-Los Angeles Harbor operations in so far as general cargo was concerned; that, thereafter, the San Francisco-Los Angeles Harbor traffic was confined to special cargoes; and that from February, 1937, to October, 1938, when the application for authority to suspend service was filed, the only operations from and to San Pedro were the transportation of freight for the United States Government, sugar and household goods from San Francisco and sardine meal to San Francisco. No evidence of probative value was submitted in support of the asserted right to transport passengers.

Respondent discontinued general cargo service between San Francisco and Los Angeles Harbor and inaugurated general cargo service between San Francisco and Long Beach without first securing authority from the Commission. Respondent also discontinued other operations under prescriptive rights and commenced operations not covered by its prescriptive rights or by certificates of public convenience and neces-

sity without securing authority. Prescriptive rights for the operations discontinued in February, 1937, or prior thereto, will be revoked because of the respondent's failure to discharge its obligation to render service to the public until it sought and received permission to suspend temporarily the services involved. Operating rights were not acquired by inauguration of service in violation of the plain terms of the statute.

The record shows that general cargo was transported between San Francisco and Los Angeles Harbor on and prior to August 21, 1933; that respondent subsequently narrowed its operations between those ports to freight for the United States Government, sugar and household goods from San Francisco and sardine meal to San Francisco; and that tariffs naming rates for the services which were not discontinued were maintained in the Commission's files. It appears, therefore, that prescriptive rights are held for the restricted operations above set forth.

The certificated rights claimed under Decision No. 27088 of May 21, 1934, in Application No. 19323 (39 C.R.C. 222) exceed those granted thereby in that the authorized operations were restricted to southbound traffic, except in so far as transportation between Mare Island and the Southern California ports involved is concerned. Further, in regard to those rights, the record shows that the only property handled thereunder was sugar from Crockett to Los Angeles Harbor, and that in all other respects the carrier did not exercise the authority granted. As in the case of the prescriptive rights which were not utilized, and for similar reasons, the failure to render service under the certificated rights from May, 1934, when

they were granted, until October, 1938, when the application to suspend service was filed requires revocation of the unexercised certificated rights. Such action will be taken.

Upon the revocation of operating rights, as above indicated, respondent will hold rights for the transportation of freight for the United States Government, sugar and household goods from San Francisco to Los Angeles Harbor; sardine meal from Los Angeles Harbor to San Francisco; and sugar, in lots of 300 tons or more, from Crockett to Los Angeles Harbor. It will be required to cancel all tariffs and schedules for services for which operating rights are not held.

In view of these conclusions, this carrier's application for authority to operate truck service in lieu of vessel service between San Francisco Bay points and Los Angeles and vicinity during the suspension of vessel service will be denied because of the failure to establish vessel rights for the transportation of general cargo between the ports involved. It is unnecessary, therefore, to dispose of other issues raised on the assumption that the applicant held the vessel rights on which its proposed truck service was predicated.

In regard to the proposed further suspension of operations to March 20, 1941, a hearing was had on April 29, 1940, for the purpose of receiving evidence with respect to the proposal. At that hearing Los Angeles-San Francisco Navigation Company Limited failed to appear. The request for authority to further suspend service will be denied.

McCormick Steamship Company
The McCormick Steamship Company

Prescriptive rights were claimed by McCormick Steamship Company for the transportation of property without restriction between San Francisco, Oakland, Alameda, Richmond and Stockton on the one hand, and Los Angeles Harbor, Long Beach and San Diego on the other; and between San Diego and Los Angeles Harbor and Long Beach. It also

claimed prescriptive rights, subject to a minimum weight of 300 tons, for the transportation of property between Mare Island and Los Angeles Harbor, Long Beach and San Diego, and the following operations to Los Angeles Harbor, Long Beach and San Diego: (a) petroleum and petroleum products, from Avon and Martinez, (b) sugar, from Crockett, (c) grain and grain products, from Port Costa and South Vallejo, and (d) cement, shells and shell products, from Redwood City.

Statements of the traffic transported during the years 1933 to 1939, inclusive, were submitted. They show that the respondent transported property, generally, between San Francisco and Oakland on the one hand, and Los Angeles Harbor and San Diego on the other, and between Los Angeles Harbor and San Diego, on and prior to August 21, 1933, and that those operations subsequently were not discontinued. The Commission's tariff files show that the respondent continuously maintained rates for such transportation.

The statements submitted by the respondent also show that it was engaged in other transportation services on and prior to August 21, 1933, such as the transportation of property, generally, from San Francisco and Oakland to Long Beach, the transportation of canned goods from Alameda to Los Angeles Harbor and Long Beach, and the transportation of automobiles from Richmond to Los Angeles Harbor and Long Beach. As to those operations the showing made indicates that they were discontinued without authorization from the Commission. In other instances the claimed rights embrace operations which were not shown to have been conducted on and prior to August 21, 1933, or under

⁸ In regard to the rights claimed, subject to a minimum weight of 300 tons, the Commission's records show that those rights are founded upon a certificate of public convenience and necessity granted McCormick Steamship Company in and by Decision No. 27088 of May 21, 1934, in Application No. 19318 (39 C.R.C. 222).

certificates of public convenience and necessity from the Commission. Typical of those operations are transportation from Long Beach which was commenced on July 3, 1936, and continued until September 16, 1936, without securing a certificate of public convenience and necessity from the Commission, and operations from Stockton conducted only during the period from April 14, 1934, to August 22, 1936, likewise without a certificate. Whatever operating rights McCormick Steamship Company may have held because of operations on August 21, 1933, which were subsequently discontinued will be revoked for failure to discharge the obligations assumed by acquiring those rights. Unlawful commencement of other operations fails to establish rights therefor.

With respect to the certificated rights subject to a minimum weight of 300 tons, it appears from the respondent's statements that the rights exercised were those authorizing the transportation of grain and grain products from Port Costa and South Vallejo; sugar from Crockett; and cement, shells and shell products from Redwood City. As to the balance of the certificated rights, it appears that no transportation service was rendered during a period of over five years. Either there is no public need for the services not rendered or the respondent has failed in its duty to the public. In either event the unexercised rights should be revoked. This action will be taken.

Subsequent to the submission of Case No. 4394, the transfer of respondent McCormick Steamship Company's operating rights to The McCormick Steamship Company was authorized by Decision No. 33391 of August 6, 1940, in Application No. 23592. The latter company agreed that it would be bound by any orders or opinions which the Commission might issue in any proceeding in which the former was a party. It appears that upon the revocation of operating rights as above indicated The McCormick Steamship Company will have acquired operating rights formerly possessed by McCormick Steamship Company

to transport property without restriction either as to the quantity or the kind of property transported between San Francisco and Oakland on the one hand and Los Angeles Harbor and San Diego on the other and between Los Angeles Harbor and San Diego, and to transport to Los Angeles Harbor, Long Beach and San Diego, in lots of 300 tons or more: grain and grain products from Port Costa and South Vallejo; sugar from Crockett; and cement, shells and shell products from Redwood City. It will be required to amend its tariffs and schedules to conform with its operating rights.

North Coast Redwood Company
Hobbs-Wall and Company
Hobbs-Wall & Co.

After Case No. 4394 was instituted the Hobbs-Wall interests changed the corporate name under which they were conducting vessel operations from Hobbs-Wall & Co. to North Coast Redwood Company. Prescriptive rights are claimed for the transportation of (1) all commodities between San Francisco and Crescent City, and (2) lumber from Crescent City to Oakland, Berkeley, Los Angeles Harbor and San Diego. By Decision No. 31999 of May 16, 1939, as amended, in Application No. 22690, suspension of service between San Francisco and Crescent City was authorized. North Coast Redwood Company now seeks extension of that authority to May 1, 1941.

A statement submitted by the respondent shows that until the authorized suspension of operations a wide variety of commodities was transported between San Francisco and Crescent City. The tariff files of the Commission indicate that rates were continuously maintained for such transportation. No evidence was submitted in support of the claimed rights to transport lumber from Crescent City to Oakland, Berkeley, Los Angeles Harbor and San Diego. No certificate of public convenience and necessity is held.

The record is clear that the operations of the Hobbs-Wall interests on and prior to August 21, 1933, created a prescriptive right to transport property of all descriptions between San Francisco and Crescent City and that service was rendered between those points until its temporary suspension was authorized. Contrary to the claim submitted, however, no right was shown to have existed for the transportation of lumber from Crescent City to California ports other than San Francisco. Respondent will be required to cancel tariffs covering operations for which it holds no operating rights.

In justification of the sought further suspension, it was urged that the lumber plant located at Crescent City had not been in operation since October 15, 1938; that there did not appear to be any prospect of the plant resuming its operations prior to May 1, 1941; that the absence of lumber traffic and the reduction of northbound cargo occasioned by the cessation of the operations of the lumber mill would make the revenues from the remaining traffic insufficient to defray the cost of service; and that in any event, the harbor at Crescent City had become silted, requiring that it be dredged prior to the resumption of vessel service.⁹ The showing made is persuasive that this is an instance where continuance of the temporary suspension of service is justified and in the public interest because of the extraordinary circumstances surrounding the transportation service involved. The supplemental application seeking extension of the authority to suspend San Francisco-Crescent City service until May 1, 1941, will be granted.

P.L. Transportation Company
Los Angeles-Long Beach Despatch Line

P.L. Transportation Company claims operating rights for

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A witness for the applicant stated that California and Oregon counties formerly served by the port of Crescent City had requested the Federal Government to improve the harbor, but that as yet no action on their request had been taken.

the transportation of (1) lumber and its products between Arcata Wharf, Bucksport, Crescent City, Eureka, Fairhaven, Fields Landing, Point Arena and Samoa on the one hand, and on the other, Alameda, Antioch, Benicia, Crockett, Hueneme, Long Beach, Los Angeles Harbor, Mare Island, Martinez, Monterey, Moss Landing, Oakland, Pittsburg, Port San Luis, Richmond, Rio Vista, San Diego, San Francisco, San Simeon, Santa Barbara, Santa Cruz, Stockton, Vallejo and Ventura; (2) general merchandise between San Francisco, Oakland, Alameda, Long Beach, Los Angeles Harbor, San Diego and Eureka on the one hand, and Eureka, Samoa, Port Arena and Fields Landing on the other; (3) general merchandise between San Francisco, Oakland, Alameda and Richmond on the one hand, and Los Angeles Harbor, Long Beach and San Diego on the other; and (4) passengers and baggage between San Francisco and Santa Barbara, Long Beach and San Diego. In Application No. 23454, P.L. Transportation Company seeks authority to suspend its vessel services for a period of one year.

The operating rights claimed by P.L. Transportation Company were said to have been acquired from Los Angeles-Long Beach Despatch Line under authority granted by Decision No. 28243, of September 23, 1935, in Application No. 20112 and Decision No. 29103, of September 14, 1936, in Application No. 20665. Decision No. 28243 authorized the transfer of operating rights, if any existed, between Eureka on the one hand, and San Francisco, Oakland, Alameda and Long Beach on the other. Similarly, Decision No. 29103 authorized the transfer of the San Francisco Bay-Southern California operating rights, if the Despatch Line held such rights. In each of those decisions the Commission expressly stated that it made no finding with respect to the nature and extent of the rights authorized to be transferred.

A statement submitted by respondent, P.L. Transportation

Company, shows that subsequent to its acquisition of whatever rights were held by the Despatch Line general cargo was transported from San Francisco to Eureka and lumber was transported from Eureka to Long Beach but that no service was rendered between San Francisco Bay ports and Southern California ports, between Eureka and Alameda, or from Eureka to Oakland. The statement also shows that Long Beach to Eureka operations were discontinued in October, 1935, and Oakland to Eureka operations in September, 1936. From Eureka to Long Beach only lumber was transported subsequent to March, 1937. No authority to discontinue service was sought until April 30, 1940. Any rights P.L. Transportation Company may have acquired for operations discontinued without appropriate authorization will be revoked for reasons previously stated herein in connection with the discussion of other respondents' claimed rights where unauthorized discontinuance of service was involved.

The remaining operating rights which P.L. Transportation Company ostensibly acquired from the Despatch Line cover the transportation of property, generally, from San Francisco to Eureka and lumber from Eureka to Long Beach. A witness for P.L. Transportation Company testified that these services, among others, were rendered by the Despatch Line on August 21, 1933, and were continued until the transfer to P.L. Transportation Company was consummated. The Commission's tariff files show that the carriers involved maintained rates for the transportation involved. Thus it appears that P.L. Transportation holds operating rights for the transportation of property, generally, from San Francisco to Eureka and the transportation of lumber from Eureka to Long Beach. It will be required to amend its tariffs so as to conform to the rights held.

In regard to the proposed suspension of service it was represented that lack of patronage will make revenues from the small

volume of traffic available insufficient to defray the expense of rendering service. Inasmuch as this is the first request of P.L. Transportation for authority to suspend operations, temporarily, its application will be granted for the reasons it advanced. It is placed on notice that the Commission views repeated and lengthy suspensions of service as not in the public interest except under extraordinary circumstances.

James K. Nelson
San Diego-San Francisco Steamship Company
San Diego-San Francisco Steamship Line

James K. Nelson operating the San Diego-San Francisco Steamship Company, also known as the San Diego-San Francisco Steamship Line, claims a prescriptive operating right to transport general merchandise between San Francisco, Oakland, Alameda, Berkeley, Richmond, Redwood City, Avon, Port Costa, Crockett, South Vallejo, Mare Island, Pittsburg, Antioch, Stockton, River Landings and Monterey on the one hand, and San Diego, Long Beach, Los Angeles Harbor, Los Angeles and Monterey on the other.

A statement of the operations of this respondent was submitted in support of the claimed rights. It was developed, however, that after an authorized suspension of approximately two years, service was resumed in January, 1938, under an arrangement with Consolidated Olympic Line, a vessel carrier operating between California ports in connection with interstate vessel service. Under this arrangement San Diego-San Francisco Steamship Company was assigned space in the Consolidated Olympic Line's vessels. Inasmuch as those vessels were not owned, controlled, operated or managed by respondent Nelson, any service he may have rendered the public by means of those vessels was not that of a common carrier by vessel.

Nelson's failure to resume vessel service for at least a year after the expiration of the suspension authority is an unauthorized discontinuance of service requiring the revocation of any

operating rights he may have possessed and cancellation of his tariffs and schedules. Such action will be taken.

Carriers Not Claiming Operating Rights

By Decision No. 32711 of January 9, 1940, in Case No. 4394, entered pursuant to the requests of Pacific Steamship Lines, Ltd. and Redwood Steamship for authority to discontinue coastwise common carrier vessel service, whatever operating rights they may have possessed were revoked.

As hereinbefore stated any operating rights which may have been held by Hammond Shipping Co. Ltd. were revoked by Decision No. 33340 of July 16, 1940, in Application No. 23488. That proceeding did not involve Hammond Lumber Company, Christenson Hammond Line (Hammond Shipping Co. Ltd. Managing Agents), Hammond & Little River Redwood Co. Ltd., Hammond Shipping Company, Ltd. (Christenson Hammond Line), and Christenson Hammond Line, affiliated with Hammond Shipping Co. Ltd., and respondents in Case No. 4394. However, the Hammond interests claim no operating rights on behalf of the affiliated companies. Whatever rights those companies may hold will be revoked and their tariffs and schedules canceled.

A witness for the Commission testified that respondents A.F. Mahony Company, A.F. Mahoney Company, B. & A. Steamship Corp., E.K. Wood Lumber Company, Hartwood Lumber Company, Hart-Wood Lumber Company, Kingsley Navigation Co. Ltd., Lawrence-Phillips SS Co., Lawrence-Phillips SS Company, Fred Linderman, Oliver J. Olson & Co., Pacific Spruce Corp., Paramino Lumber Company, J. Ramselius, Schafer Bros. Lumber & Shingle Company and Sudden & Christensen, had voluntarily applied for and secured authority to cancel their tariffs naming rates for the transportation of property by vessel. These withdrawals from common carrier service constitute abandonment of any operating rights that may have been possessed. Such rights as may exist will be canceled.

The Commission's witness also testified that respondents Beadle Steamship Company Ltd., Beadle Steamship Co. Ltd., and Beadle Steamship Company were no longer in business. Whatever operating rights as coastwise common carriers by vessel they may have possessed will be revoked and their tariffs will be canceled.

As stated at the outset of this opinion the principal issues before the Commission in Case No. 4394 are determination of the nature, scope and extent of the operating rights held by coastwise common carriers by vessel; whether operating rights should be revoked because of unauthorized discontinuance of service; and the extent to which, if at all, temporary suspensions of service should be authorized. Questions relating to the adequacy of existing vessel service and to whether public convenience and necessity require the continuance of operations for which respondents were found not to possess operating rights on this record are not here in issue. The conclusions hereinbefore reached are, therefore, not to be construed as determinations of the adequacy of vessel service or that public convenience and necessity does not require the inauguration or continuance of service between any of the ports involved. These are questions, which if they exist or arise, may be presented to the Commission by the filing of appropriate applications or complaints. The revocation of the rights of the carriers who were unable or unwilling to fulfill their obligations to render the services undertaken when they acquired operating rights will, to a large extent, leave the field open to responsible parties who may be willing, ready and able to fill such public needs as may exist or arise.

Upon consideration of all the evidence of record we are of the opinion and find:

1. That Los Angeles-San Francisco Navigation Company Limited, The McCormick Steamship Company, North Coast Redwood Company and P.L. Transportation Company, common carriers by vessel, possess the following operating rights to transport property on the high seas between points in California:

Los Angeles-San Francisco Navigation Company Limited

(a) property for the United States Government, sugar and household goods from San Francisco to Los Angeles Harbor, (b) sardine meal from Los Angeles Harbor to San Francisco and (c) sugar in lots of 300 tons or more from Crockett to Los Angeles Harbor;

The McCormick Steamship Company - (a) property between San Francisco and Oakland on the one hand and Los Angeles Harbor and San Diego on the other and between Los Angeles Harbor and San Diego, and (b) in lots of 300 tons or more, grain and grain products from Port Costa and South Vallejo, sugar from Crockett, and cement, shells and shell products from Redwood City, respectively, on the one hand and Los Angeles Harbor, Long Beach and San Diego on the other;

North Coast Redwood Company - property between San Francisco and Crescent City; and

P.L. Transportation Company - (a) property from San Francisco to Eureka, and (b) lumber from Eureka to Long Beach.

2. That operating rights as coastwise common carriers by vessel acquired by Los Angeles-San Francisco Navigation Company Limited, The McCormick Steamship Company, North Coast Redwood Company and P.L. Transportation Company by good faith operations on August 21, 1933, or by certificates of public convenience and necessity secured thereafter and which are not listed in Finding No. 1 should

be revoked because of unauthorized discontinuance of service; that these carriers should be required to amend their tariffs and schedules on file with the Commission so as to conform with the operating rights listed in Finding No. 1; and that they should be required to discontinue transporting persons and property on the high seas between points in California as common carriers by vessels except for those operations listed in Finding No. 1, unless and until certificates of public convenience and necessity are secured from the Commission.

3. That whatever operating rights as coastwise common carriers by vessel respondents in Case No. 4394 other than those respondents listed in Finding No. 1 acquired by good faith operations on August 21, 1933, or by certificates of public convenience and necessity secured thereafter should be revoked because of unauthorized discontinuance of service and that tariffs and schedules filed with the Commission by the respondents whose operating rights are so revoked should be canceled.

4. That except for the carriers and their operations specifically listed in Finding No. 1, all respondents in Case No. 4394 should be required to discontinue transporting persons or property on the high seas between points in California as common carriers by vessel unless and until certificates of public convenience and necessity are secured from the Commission.

5. That the temporary suspensions of service proposed by North Coast Redwood Company and P.L. Transportation Company in Applications Nos. 22690 and 23454, respectively, should be authorized.

6. That the further suspensions of service proposed by J.R. Hanify Company and Los Angeles-San Francisco Navigation Company Limited in Applications Nos. 21556 and 22299, respectively should be denied.

7. That the "in lieu" truck service proposed by Los

Angeles-San Francisco Navigation Company Limited in Application
No. 22299 should be denied.

ORDER

These proceedings having been duly heard and submitted
and basing this order upon the conclusions and findings contained
in the preceding opinion,

IT IS HEREBY ORDERED that, except for those operations
listed in Findings No. 1 of the opinion which precedes this
order, any and all operating rights as common carriers by vessel
held by A.F. Mahoney Company, A.F. Mahony Company, Beadle
Steamship Company, Ltd., Beadle Steamship Co. Ltd., Beadle Steamship
Company, B. & A. Steamship Corp., Chamberlin Steamship Co., Ltd.,
Chas. H. Higgins, C.H. Higgins, E.K. Wood Lumber Company, Fred
Linderman, Hartwood Lumber Company, Hart-Wood Lumber Company,
J.R. Hanify & Co., J.R. Hanify Company, Hobbs-Wall and Company,
Hobbs-Wall & Co., James K. Nelson, J. Ramselius, Kingsley Navigation
Co., Ltd., Lawrence-Phillips SS Company, Lawrence-Phillips SS Co.,
Los Angeles-Long Beach Despatch Line, Los Angeles-San Francisco
Navigation Company Limited, Christenson Hammond Line, Hammond Shipping
Company, Ltd. (Christenson Hammond Line), Hammond & Little River
Redwood Co., Ltd., Christensen Hammond Line (Hammond Shipping Co.
Ltd., Managing Agents), Hammond Lumber Company, McCormick Steamship
Company, The McCormick Steamship Company, North Coast Redwood Company,
Oliver J. Olson & Co., Pacific Spruce Corp., Paramino Lumber Company,
P.L. Transportation Company, San Diego-San Francisco Steamship Company,
San Diego-San Francisco Steamship Line, Schafer Bros. Lumber & Shingle
Company, and Sudden & Christensen be and they are hereby revoked.

IT IS HEREBY FURTHER ORDERED that all carriers named in the preceding ordering paragraph, except those carriers listed in Finding No. 1 of the opinion which precedes this order, be and they are and each of them is hereby directed on or before the effective date of this order to cease and desist and thereafter abstain from transporting persons or property for compensation upon the high seas between points in this state as common carriers by vessel.

IT IS HEREBY FURTHER ORDERED that all tariffs and schedules of the carriers listed in the first ordering paragraph hereof, except those carriers listed in Finding No. 1 of the opinion which precedes this order, be and they are and each of them is hereby canceled.

IT IS HEREBY FURTHER ORDERED that Los Angeles-San Francisco Navigation Company Limited, The McCormick Steamship Company, North Coast Redwood Company and P.L. Transportation Company, be and they are and each of them is hereby directed on or before the effective date of this order to cease and desist and thereafter abstain from transporting persons or property for compensation upon the high seas between points in this state as common carriers by vessel, except to the extent that each of them is lawfully entitled to engage in such transportation as set forth in Finding No. 1 of the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that Los Angeles-San Francisco Navigation Company Limited, The McCormick Steamship Company, North Coast Redwood Company and P.L. Transportation Company be and they are and each of them is hereby directed to amend its tariffs within ten (10) days from the effective date of this order on not less than two (2) days' notice to the Commission and the public so that their tariffs will conform with their respective operating rights as common carriers by vessel upon the high seas, as set forth in Finding No. 1 of the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that North Coast Redwood Company and P.L. Transportation Company be and they are and each of them is hereby authorized to suspend the common carrier by vessel services listed in Finding No. 1 of the opinion which precedes this order until May 1, 1941, provided that the authority granted to each of the said companies is conditioned upon the supplementing of its tariffs on file with the Commission, on or before twenty (20) days from the effective date of this order, to show that service has been suspended as authorized herein.

IT IS HEREBY FURTHER ORDERED that, except to the extent previously granted, Applications Nos. 21556 and 22299, as amended and supplemented, be and they are and each of them is hereby denied.

The effective date of this order shall be thirty (30) days from the date hereof.

Dated at San Francisco, California, this 1st day of October, 1940.

Ray L. Rice
Stanley D. Smith
Robert W. Shepard
J. J. Baker
Justice J. C. Cramer
Commissioners