

McS

ORIGINAL

Decision No. 11620

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

BAY CITY HAULING COMPANY,)

Complainant

-vs-

Case No. 1847

J. H. TRUITT,)

Defendant. :

F. W. Nightingill for complainant

J. H. Truitt in propria persona.

BY THE COMMISSION.

O P I N I O N

Chew Gong and Chew Chick, co-partners doing business under the firm name and style of Bay City Hauling Company, filed a formal complaint with the Railroad Commission in which they allege that J. H. Truitt, defendant herein, has been operating automobile trucks in the transportation of produce for compensation over a regular route and between fixed termini in violation of the provisions of Chapter 213, Statutes of 1917, and amendments thereto in that he has never obtained from the Railroad Commission a certificate of public convenience and necessity authorizing him to engage in such business, as required under

the provisions of Section 5 of the above numbered statutory enactment.

A public hearing was held upon the above entitled complaint before Examiner Eddy on January 10, 1923, at San Francisco, California, at which time the matter was submitted and it is now ready for decision.

The complaint in effect recites that defendant herein has been transporting garden produce from points in Santa Clara and San Mateo Counties to certain commission merchants located in San Francisco, specifically named in the complaint; that such transportation has been conducted at a fixed rate per sack, crate or bunch according to the kind of commodities handled.

Defendant in his answer contends that he is not operating as a common carrier, but that the produce transported by him for the grower is subject to the grower's directions and orders and is delivered to whatever commission house the grower may direct, the commission house deducting the transportation charge from the receipts of the sale of such produce and paying such transportation charges to defendant herein.

Complainant in support of its allegations called as witnesses some four commission men located in the City and County of San Francisco who testified to the fact that defendant had been hauling and delivering daily to them farm produce for which they paid a fixed rate deducting such rate from their remittance to the consignor. There was also introduced in evidence as an exhibit a bill submitted by defendant herein to the Santa Cruz Produce Company showing transportation conducted from October 8th to 12th, inclusive, listing the commodities transported and the charges for such transportation.

Defendant contends that he was not hauling for compensation, but was in effect, a partner of the producers for whom he transported commodities, basing his belief that he was a co-partner upon the fact that he had advanced certain sums to the growers and considered himself as a co-partner in their farming activities. These sums, he admitted later, had been in the main, repaid and that actually he had no co-partnership interest whatsoever with any of the consignors for whom he transported produce nor was he in any way interested in the revenues or expenses of their farming operations.

Chapter 213, Statutes of 1917, as amended by Chapter 280, Statutes of 1919, not only includes within the provisions thereof, what may be strictly construed as common carriers, but also the operators of trucks engaged in the transportation of property for compensation over a regular route or between fixed termini who might be termed limited or so-called contract haulers. Unquestionably, defendant herein, has been engaged in the transportation of property for compensation over a regular route and between fixed termini and inasmuch as he has never secured a certificate of public convenience and necessity authorizing him to engage in such business as required under the provisions of Section 5 of Chapter 213, Statutes of 1917, and amendments thereto, his operation is unlawful and in violation of the provisions of the above numbered statutory enactment.

O R D E R

A public hearing having been held upon the above entitled proceeding, evidence submitted and the Commission being fully advised,

IT IS HEREBY FOUND AS A FACT that J. H. Truitt, defendant herein, is operating an automobile trucking service transporting property for compensation over a regular route and between fixed termini in violation of the provisions of Chapter 213, Statutes of 1917, and amendments thereto, and

IT IS HEREBY ORDERED that said J. H. Truitt be, and he hereby is, directed to immediately and permanently discontinue said service until such time as he has complied with the provisions of Chapter 213, Statutes of 1917, and amendments thereto, and,

IT IS HEREBY FURTHER ORDERED, that the Secretary of the Railroad Commission be, and he hereby is directed to forward by registered mail, a copy of the within Decision to the District Attorney of the City and County of San Francisco and the District Attorneys of the Counties of Santa Clara and San Mateo, California.

✓ Dated at San Francisco, California, this 6th day of January, 1923.

Clarence

David Martin

J. H. Whitney
Commissioners.