

McS

Decision No. 12322

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

ORIGINAL

In the Matter of the Application of )  
 MARY M. REDGRAVE, Special Administratrix )  
 of the Estate of T. A. Stuart, Deceased, )  
 to sell and RUSSELL O. DOUGLASS to purchase ) Application No. 8626  
 and operate an automobile passenger stage )  
 line between Folsom and Sacramento, Calif. )  
 :  
 )

Peter J. Wilkie for Applicant  
 A. J. Plank for Southern Pacific  
 Company, Protestant.

BY THE COMMISSION,

O P I N I O N

In this proceeding Mary M. Redgrave as Special Administratrix of the Estate of T. A. Stuart, Deceased, has filed a joint application with Russell O. Douglass, in which they petition for an order authorizing the Administratrix on behalf of the Estate to sell and Douglass to purchase and operate an automobile passenger stage line at the present time engaged in operation as a common carrier of passengers for compensation between Sacramento and Folsom and intermediate points, California.

The operative right claimed by the Estate of T. A. Stuart is alleged to have been established under the provisions of Section 5 of Chapter 213, Statutes of 1917, due to operation in good faith prior to May 1st, 1917, and continuously since that time.

1.

A public hearing was held before Examiner Eddy on March 8, 1923, at Sacramento, at which time the matter was submitted and it is now ready for decision.

The testimony in said hearing showed that on the first day of July 1921 applicants herein entered into a certain written agreement for the transfer of the operative right hereinabove mentioned. This written agreement provided for the payment by applicant Douglass of the sum of \$5,000.00, payable \$1,000.00 upon date of execution of the agreement and \$300.00 a month on each and every month thereafter, with interest on all deferred payments at 6%. In return Douglass was to receive solely the operative right claimed by the Estate of T. A. Stuart.

It further appears from the testimony that immediately upon execution of said agreement, Russell O. Douglass took over the stage line in question, operated his own equipment and has continued to so operate independently of the Estate, although no lease agreement has ever been entered into between the parties in question. Upon the execution of said agreement, the Estate claiming the operative right, abandoned service and permitted said Douglass to maintain operation thereunder during the period of time in which he was to make payments as required under the agreement of sale. The Commission was not consulted in any manner whatsoever with respect to this tentative transfer of an operative right until the full \$5,000.00 with interest had been paid to the Estate by Russell O. Douglass.

Testimony shows that the last payment was made in December of 1922, although it was February, 1923, before an application was made to the Commission for an order authorizing the transfer of said operative right as required under the provisions of Section 5 of Chapter 213, Statutes of 1917 and

amendments thereto. The Attorney for the Estate was requested to furnish certain information in connection with the above transaction and under date of March 9th, 1923, wrote to the Commission, a letter being received on April 3, 1923, in which he stated that in October or November of 1917, he commenced an action against one J. L. James, the then owner and operator of the stage line and attached all of his property. In November, 1917, said James assigned all of his property and his right to operate to one P. F. Donnelly as trustee for his creditors, who in November 1917, sold all of his right as such trustee to D. E. Wiley and Phil H. Andross who operated the stage line until December 1918, at which time Donnelly, as trustee, transferred the interest and right so acquired by him to Thomas A. Stuart and Phil Andross. Sometime subsequent Stuart purchased the interest of Andross.

From the above statements, it clearly appears that the Estate of T. A. Stuart, Deceased, cannot claim an operative right between Sacramento and Folsom due to operation in good faith prior to May 1st, 1917, and continuously since that time, in that T. A. Stuart was not operating on the date last above mentioned, but in fact claimed to have acquired an operative right through transfer in 1918, or later, at which time Chapter 213, Statutes of 1917, then in effect, did not permit of the transfer of certificates of public convenience and necessity, nor did T. A. Stuart, who commenced operation in 1918 or later, ever secure from this Commission a certificate of public convenience and necessity authorizing him to engage in the business of transportation of passengers for compensation between the fixed termini of Sacramento and Folsom and intermediate points.

It further appears from the testimony in this proceeding that applicant Russell O. Douglass paid to the Estate of T. A. Stuart, Deceased, the sum of \$5,000.000 for a purported right to operate an automotive stage service, which right applicants herein have failed to establish.

In view of the foregoing, must recommend that the application be denied. An order will be entered accordingly.

ORDER

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

IT IS HEREBY ORDERED that the above entitled application be, and the same hereby is denied.

IT IS HEREBY FURTHER ORDERED that Mary M. Redgrave as Special Administratrix of the Estate of T. A. Stuart, Deceased, and or Russell O. Douglass, be, and they hereby are directed to cease operation of an automotive stage line as a common carrier of passengers between the termini of Sacramento and Folsom and intermediate points, California, unless and until such time as they have obtained from this Commission a certificate of public convenience and necessity authorizing such operation as required under the provisions of Chapter 213, Statutes of 1917, and amendments thereto, or have shown, to the satisfaction of the Commission, that the Estate of T. A. Stuart, Deceased, does own and control a valid right to operate over the above described territory as provided for under the provisions of Section 5 of Chapter 213, Statutes of 1917.

Dated at San Francisco, California, this 17 day  
of July, 1923.

C. M. ...  
James M. ...  
Edward ...  
Commissioners