

EHM

Decision No. 19734

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HIGHWAY TRANSPORT COMPANY,  
a Corporation,

Complainant,

vs.

SAM NEWTON and THOMAS BIGGART,  
co-partners, doing business  
under the fictitious name of  
Valley Truck Line, and JOSEPH  
WYTHE, RUDOLPH HOERLER, WILLIAM  
WAHL and J. C. BIANCHINI, co-  
partners,

Defendants.

**ORIGINAL**

Case No. 2278.

Gwyn H. Baker, for Complainant,

Sanborn and Roehl, by A. B. Roehl,  
for Defendants.

BY THE COMMISSION:

O P I N I O N

Highway Transport Company, a corporation, complainant in the above entitled proceeding, complains against the above named defendants and alleges that said complainant is an authorized truck operator over the public highways of this state between San Jose and Hollister, and intermediate points, under and by virtue of Decision No. 15328, in Application No. 10938; that defendants Sam Newton and Thomas Biggart, co-partners operating under the fictitious name of Valley Truck Line, are and during all

the times mentioned in said complaint were, authorized truck operators over the public highways of this state between San Jose and Hollister under and by virtue of Decision No. 15279, in Application No. 11508.

Complainant further alleges that on or about August 1, 1926, said defendants Sam Newton and Thomas Biggart, co-partners, abandoned the business theretofore conducted by them of transportation of freight by automobile trucks, as common carriers, on the public highways of the state between San Jose and Hollister, theretofore conducted under authority of said Decision No. 15279, and discontinued such transportation, and have not since on or about August 1, 1926, conducted said business or engaged therein; that said abandonment and discontinuance of said business of transportation was without authority of the Railroad Commission of the State of California, and was in violation of the terms of said certificate and decision theretofore issued by the Commission authorizing such transportation; that on or about August 1, 1926, defendants Joseph Wythe, Rudolph Hoerler, William Wahl and J. C. Bianchini engaged in the transportation of freight by automobile trucks as common carriers for hire over the public highways of the State between the fixed termini of San Jose and Hollister, and over the regular route of the public highway between said points, and since on or about August 1, 1926, have been continuously engaged, and are now engaged in such transportation, and in the solicitation of said business of transportation as common carriers.

That complainant is informed and believes, and on information and belief alleges, that an arrangement and agreement of some sort, the particulars of which complainant has no knowledge, was made between said defendants Sam Newton and

Thomas Biggart, co-partners, and Joseph Wythe, Rudolph Hoerler, William Wahl and J. C. Bianchini, co-partners, whereby defendants Sam Newton and Thomas Biggart should discontinue and abandon the business of transportation of freight as common carriers between the points of San Jose and Hollister, and defendants Joseph Wythe, Rudolph Hoerler, William Wahl and J. C. Bianchini should engage in such business as hereinbefore alleged, and that said arrangement and agreement was made without authorization by the Railroad Commission of the State of California.

Complainant prays for an order of this Commission commanding and requiring defendants Joseph Wythe, Rudolph Hoerler, William Wahl and J. C. Bianchini to cease and desist from transporting freight by automobile trucks, as common carriers, between San Jose and Hollister and intermediate points.

Said defendants Sam Newton and Thomas Biggart, co-partners under the fictitious name of Valley Truck Line, and defendants Joseph Wythe and Rudolph Hoerler, by their answer filed herein, denied generally and specifically all the allegations of said complaint. No answer was filed by said defendants William Wahl, or J. C. Bianchini.

A public hearing on said complaint was held before Examiner Satterwhite at San Jose, the matter was submitted and is now ready for decision.

Highway Transport Company called as its sole and only witness Joseph Wythe, one of the co-defendants above named.

The testimony of this witness shows that he and said R. E. Hoerler, co-defendant, were desirous of purchasing said operative rights of defendants Sam Newton and Thomas Biggart between San Jose and Hollister, which is the subject matter of this proceeding, and in June or July, 1926, opened negotiations with them for that purpose. It appears that at this

time there was pending before the Railroad Commission Application No. 12317, filed by Messrs. Newton & Biggart on December 17, 1925, for the purpose of removing a cloud upon and to have validated these operative rights sought to be purchased by defendants Wythe & Hoerler. Pending the decision thereon, arrangements were entered into by the interested parties whereby Joseph Wythe, under and by virtue of a power of attorney made and executed by Messrs. Newton & Biggart, operated said freight service between San Jose and Hollister, as their agent and representative. Under this authorized agency this truck-line is still being conducted by Joseph Wythe, and will be so operated until this Commission makes and enters its order and decision on Application No. 13804, which is a petition by Messrs. Newton & Biggart to sell and transfer said operative rights between San Jose and Hollister to defendants Wythe & Hoerler. This application for said transfer was heard concurrently with the instant proceeding.

It further appears by the record in this proceeding that Joseph Wythe prior to entering into arrangements to act as agent for the said truck line consulted with and was advised by the Auto Stage Department of this Commission as to the proper and legal method to pursue in this matter.

The record and evidence in this proceeding indicate clearly that there is no merit to said complaint and it should be dismissed.

#### O R D E R

A public hearing having been held in the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings

of fact which appear in the opinion preceding this order, and good cause appearing therefor,

IT IS HEREBY ORDERED that said complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 10<sup>th</sup> day of January, 1928.

Leon Whitall  
O. E. Sawyer  
Thos. S. Rutter  
M. J. P.  
Commissioners.