

Decision No. 20668

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

F. M. Hodge, John D. Kwis, and
H. A. Rose, a co-partnership,
doing business under the ficti-
tious name of the SAN JOAQUIN
VALLEY TRANSPORTATION COMPANY,

Complainants,

-vs-

C. S. TABER and C. R. TABER,

Defendants.

Case No. 2515.

Newlin & Ashburn, by Arthur T. George, for Complainants,
W. E. Simpson, for Defendants,
Edward Stern, for American Railway Express Company,
W. S. Johnson and A. C. Smith, for Southern Pacific Co.

BY THE COMMISSION:

O P I N I O N

F. M. Hodge, John D. Kwis, and H. A. Rose, a co-partnership,
operating under the fictitious name of the San Joaquin Valley Trans-
portation Company, complainants in the above entitled proceeding,
complain and allege in substance and effect that C. S. Taber and
C. R. Taber have for more than one year last past been operating
auto trucks as a common carrier in the business of transportation
of property for compensation between Los Angeles and Porterville
and between Los Angeles and Tulare without having obtained from
the Railroad Commission of the State of California a certificate

of public convenience and necessity authorizing such operation.

Complainants pray for an order that the defendants be enjoined and restrained from further operating said auto trucks as a common carrier between the above named communities until they have obtained from the Railroad Commission a certificate of public convenience and necessity.

C. S. Taber and C. R. Taber, said defendants, by their written answer herein, deny generally and specifically all of the material allegations contained in said complaint and pray for an order that plaintiffs take nothing by their said complaint and that said action be dismissed.

A public hearing on this proceeding was conducted by Examiner Satterwhite at Fresno, the matter was duly submitted and is now ready for decision.

Complainants called, as their own witness, C. S. Taber, one of the defendants in this proceeding, together with several other witnesses who had employed the defendants to transport certain commodities between Los Angeles and Porterville and Los Angeles and Tulare.

The undisputed evidence shows that the defendants C. S. Taber and C. R. Taber have for several months prior to the commencement of this proceeding been engaged in the business of transporting eggs for certain producers at Porterville and Tulare and delivering them to certain purchasers at Los Angeles. This transportation service was rendered under and by virtue of certain written contracts with the Porterville Poultry Association at Porterville and with Corder & Thompson of Tulare made and executed in the month of February, 1928. It appears that before the execution of these written contracts, the defendant C. S. Taber had for some time hauled eggs to Los Angeles for these shippers under verbal

contracts, but substantially under the same terms and conditions as provided in said written contracts.

The record shows that defendants have also hauled during the past six months from Los Angeles under and by virtue of written contracts goods, wares and merchandise for four merchants at Porterville which contracts were entered into after private negotiations and understanding. The above truck operations constitute practically the entire transportation service of defendants for more than a year last past. It further appears that defendants have at no time sought or offered to transport eggs or merchandise of any kind for the public generally, but have always confined their truck operations to a selected number of patrons who employed them under verbal or written agreements made and entered into as the result of previous negotiations.

After a careful consideration of all the evidence in this proceeding, we are of the opinion and hereby find as a fact that the defendants C. S. Taber and C. R. Taber, or either of them, are not operating as a common carrier between Los Angeles and Porterville and Los Angeles and Tulare and intermediate points, and that their transportation service and truck operations are those of a private carrier. The complaint should therefore be dismissed for lack of jurisdiction.

ORDER

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

IT IS HEREBY ORDERED that the complaint in the above

entitled proceeding be and the same is hereby dismissed for lack of jurisdiction.

Dated at San Francisco, California, this 12th day of January, 1929.

Thos D. Lott
@ Cherry
Leon Whitell
W. J. Carr
Commissioners.