

Decision No. 21475

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

L. A. THORNEWILL,
Complainant,
vs.
C. W. GREGORY and R. C. GREGORY,
Defendants.

ORIGINAL

Case No. 2484.

ON ORDER TO SHOW CAUSE WHY DEFENDANTS
SHOULD NOT BE PUNISHED FOR CONTEMPT.

Rittenhouse & Snyder, by Bert B. Snyder, for
C. W. Gregory and R. C. Gregory.

Douglas Brookman, for L. A. Thornewill.

CARR, COMMISSIONER:

OPINION, FINDINGS AND JUDGMENT

On August 4, 1928 a verified complaint was filed before the Railroad Commission by L. A. Thornewill against C. W. Gregory and R. C. Gregory, in which it was alleged that the said Gregorys had been, and were, operating as common carriers of property, for compensation, over the public highways of the State between fixed termini and not exclusively within the limits of an incorporated city or town, or city and county, and without a certificate of the Railroad Commission declaring that public convenience and necessity require such operation, and in this they were violating the provisions of the Auto Stage and Truck Transportation Act and a cease and desist order previously made by this Commission in Case No. 2484 (31 C.R.C. 843), being the case indicated in the title hereof.

The prayer of the complainant was that the Gregorys be ordered to cease and desist from said operations and that they be adjudged guilty of contempt of the Railroad Commission.

Thereafter, answer of the complaint having been duly made, the case was set for hearing and was, on November 20, 1928, heard before an Examiner of the Commission. Thereafter, in Decision No. 20949, the Railroad Commission ordered the two Gregorys to cease and desist from the operations complained of. This order was based upon an opinion and findings of fact to the effect that the Gregorys were continuing to operate as common carriers between Santa Cruz and San Francisco in unlawful and flagrant disregard of the Commission's order of June 6, 1928 in Case No. 2484.

The Commission did not, however, in the last mentioned decision, apparently out of excess of caution, attempt to punish the two Gregorys for contempt, but subsequently, upon affidavits being filed, orders to show cause were made and served upon the two Gregorys citing them to appear and show cause, if any they had, why they should not be punished for contempt. These orders and affidavits were duly served upon C. W. Gregory and R. C. Gregory, in response to which they appeared in person, or by attorney, before Commissioner Carr at the time and place directed in the orders to show cause, to-wit: at Santa Cruz on May 22, 1929, at which time a public hearing was had on said orders and the matter was submitted.

After a careful review of the evidence presented at said hearing upon said orders the Commission finds the following facts to be established:

I.

On the 6th day of June, 1928 the Railroad Commission rendered its Decision No. 19860. In said decision it was found as a fact that C. W. Gregory and R. C. Gregory operated motor trucks used in the business of transporting property as common

carriers, for compensation, over the public highways of this State between fixed termini and over a regular route, to-wit, between Santa Cruz and San Francisco, without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation, and they were ordered, jointly and severally, immediately to cease and desist from said operations, which said order and the opinion upon which based appears in Volume 31 of the Opinions and Orders of the Railroad Commission at pages 343, et seq. Said order has never been revoked and is still in force and effect.

II.

Copies of said Railroad Commission Decision No. 19860 were personally served upon C. W. Gregory and R. C. Gregory, and each of them, on June 8, 1928; said C. W. Gregory and R. C. Gregory each had personal knowledge of the making of said order and the contents thereof.

III.

On April 12, 1929 there was filed with the Railroad Commission the affidavits of Thomas M. Cannon, in which it was alleged that the said C. W. Gregory and R. C. Gregory, notwithstanding the order of the Railroad Commission in its said Decision 19860, were, and each of them was, during the period from the 6th day of June, 1928 to the 30th day of November, 1928, engaged in operating a common carrier truck business between Santa Cruz and San Francisco without having obtained a certificate of public convenience and necessity from the Railroad Commission and in violation of said order of the Railroad Commission; and that notwithstanding said order the said C. W. Gregory and R. C. Gregory, and each of them, failed and refused to comply with said order and did, between the dates specified (and subsequently), engage in the business of transporting property by motor truck as a common

carrier, for compensation, over the public highways of this State, between fixed termini and over a regular route, namely, between San Francisco and Santa Cruz.

IV.

Upon said affidavits being received and filed the Railroad Commission regularly, on April 12, 1929, made and issued its orders requiring C. W. Gregory and R. C. Gregory to appear before Commissioner Carr on Tuesday, the 30th day of April, 1929, at 10:00 o'clock a.m., in the City Hall, in the City of Santa Cruz, California, to then and there show cause, if any they had, why they should not be punished for contempt for failure and refusal to comply with the terms of the order of the Railroad Commission in Decision No. 19860. Said orders, together with said affidavits upon which based, were duly served upon the said C. W. Gregory and R. C. Gregory on April 13, 1929. Thereafter, at the request of counsel for C. W. Gregory and R. C. Gregory, the date of said hearing on said orders to show cause was on April 26, 1929 ordered postponed until May 22, 1929, said orders and affidavits being duly served upon the said C. W. Gregory and R. C. Gregory on April 29, 1929.

V.

Notwithstanding the order of the Commission contained in said Decision No. 19860, the said C. W. Gregory and R. C. Gregory have failed and refused, and each of them has failed and refused, to comply with the terms thereof, and each of them did during the period from April 8, 1928 to November 20, 1928 continue to engage in the business of transporting property by motor truck as common carriers for compensation over the highways of this State between Santa Cruz and San Francisco.

VI.

The failure of the said C. W. Gregory and R. C. Gregory, and each of them, to comply with said order of the Railroad Commission in its Decision No. 19860 of June 6, 1928, and their said continuance to operate as common carriers of property is in contempt of the Railroad Commission.

In view of the foregoing findings of fact, we are of the opinion that C. W. Gregory and R. C. Gregory, and each of them, should be punished for their said contempt of this Commission and its order.

The said order of the Commission, No. 19860, made on June 8, 1928 (31 C.R.C. 843), for disregard of which the two Gregorys are here cited, was based upon an opinion and findings discussing somewhat at length the nature of their operations. Various authorities were there cited, and it was concluded that the manner of their operations did not place them in the category of private carriers. No review of this order was sought by them. Their operations subsequently had been changed in no material respect, except that they have caused written agreements to be prepared with most of the shippers who then used or have since begun to use the Gregory Truck service between Santa Cruz and San Francisco. On November 20, 1928, there were at least thirteen customers using Gregory service between such points under such written agreements, of which the following form is typical:

"CONTRACT FOR HAULING -

IT IS AGREED, between-

R. C. GREGORY,
of the City of Santa Cruz, County of Santa Cruz,
State of California, First Party,

KEYSTONE GROCERY COMPANY, a corporation,
of the City of San Jose, County of Santa Clara, State
of California, Second Party, as follows:

WHEREAS, the first party is the owner of three
or more automobile trucks and is now engaged with said
trucks in certain private hauling, under the business
designation of GREGORY TRUCKING SERVICE, and is able
to undertake certain additional hauling, and,

WHEREAS, the second party in the conduct of
its business has need for certain hauling,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

Commencing as of the date hereof, and con-
tinuing until reasonable notice of termination shall
have been given by either party, the second party
will reserve for and give to the first party, and the
first party will receive and undertake hauling of
merchandise incidental in the operation of the
business of the second party, as the second party
shall designate.

IN WITNESS WHEREOF the parties hereto
have affixed their hands, in duplicate, this 25th
day of April, 1928.

R. C. GREGORY

First Party

KEYSTONE GROCERY COMPANY, a
corporation,

By Keystone Co.-Santa Cruz Branch
H. H. Ledyard, Second Party
Mgr."

All except three of these customers testified that they had used
the Gregory Truck Service prior to entering into written contracts,
and that no change of any kind in rates or service had followed
their execution. Two customers entered into similar agreements
and began to use their service in July, 1928, subsequent to said
order of June 8, 1928, while service to several smaller shippers
was thereafter discontinued.

R. C. Gregory is the legal owner of the trucks which are
used in the transportation of goods for such customers, but C. W.
Gregory admits that he is the manager of the business in which they
together are engaged. Since our order to cease and desist opera-
tions was issued the bills formerly rendered by R. C. Gregory have

been changed to eliminate the words "truck service."

The attempt thus evidenced to get across the line which separates a private contract carrier from a common carrier was considered in the opinion upon which said Decision No. 20949 was based and correctly characterized as not changing the Gregorys' character as common carriers. In the instant hearing, by way of seeking to purge themselves from the contempt charged, the Gregorys testified that they had revised their contracts so that at present, while terminable at any time by the shippers, they were not so terminable by the Gregorys themselves.

One of two things is clearly true: either the operations of the two Gregorys as disclosed here was in violation of the "cease and desist" order of the Commission, or the Auto Stage and Truck Transportation Act as it applies to property carriers can be so easily evaded as to be of little force and effect. I do not believe the act is of such a character and I can see no escape from the conclusion that the Gregorys, by reason of their operations, must be held to be in contempt of the Commission's order. (Haynes v. McFarlane, 78 Cal. Dec. 92.)

Protests have been received from several users of Gregorys' trucking service between Santa Cruz and San Francisco against any interference by the Commission with their operations as now conducted. They point out that such service has adequately met their transportation needs and that inconvenience would result to them were the service not obtainable. This may well be true. We are not in this proceeding passing upon the inadequacy of the service rendered between such points by other transportation companies or upon the necessity for the establishment of an additional service. The Commission is aware of its obligation to consider the shipping necessities of the public and is ready always to hear demands for improved or additional service and to entertain applica-

tions from capable and responsible persons for the establishment of such a service. But in addition, it is our function to compel obedience to the law by enjoining those who use the public highways as transportation companies without certificates. In the long run the public will best be served by the elimination from the highways of those carriers who show no disposition to submit to regulation.

J U D G M E N T

Orders to show cause having been duly issued by the Railroad Commission in this action on the 12th day of April, 1928, wherein C. W. Gregory and R. C. Gregory were directed to appear and show cause before the Railroad Commission why they should not be punished for contempt for their disobedience of the order of said Commission made in Decision No. 19360, and the said C. W. Gregory having appeared in person and by counsel, and the said R. C. Gregory having appeared by counsel, and each having been given full opportunity to answer said orders and to purge themselves of their alleged contempt,

IT IS HEREBY ORDERED AND ADJUDGED that the said C. W. Gregory and R. C. Gregory each has been guilty of a contempt of the Railroad Commission of the State of California in disobeying its order made on the 6th day of June, 1928, in its Decision No. 19360 (31 C.R.C. 843), by failing and refusing to desist from operating as common carriers of property for compensation by auto truck between San Francisco and Santa Cruz, and

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that for their said contempts of the Railroad Commission as aforesaid the said C. W. Gregory and R. C. Gregory each be punished by the

fine of Two Hundred Fifty (\$250.00) Dollars, to be paid by each respectively to the Secretary of the Railroad Commission of the State of California, within ten (10) days from the date hereof, and in default of payment thereof that each be committed to the county jail of the County of Santa Cruz, State of California, until such fine is paid, at the rate of one day's imprisonment for each \$2.00 of said fine.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, if said fines are not paid within the time specified above, prepare appropriate orders of arrest and commitment in the name of the Railroad Commission of the State of California, directed to the sheriff of Santa Cruz County, to which shall be attached and made a part thereof a certified copy of this opinion, findings and judgment.

The foregoing opinion, findings and judgment are hereby approved and ordered filed as the opinion, findings and judgment of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of August, 1929.

Thomas D. Stewart
Edward C. Kelly
Leon A. Whipple
M. J. Quinn
Commissioners.