

ORIGINAL

Decision No. 21612

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

PIONEER EXPRESS COMPANY, a
corporation,

Complainants,

vs.

Case No. 2508.

THOMAS KELLER, K. B. PURCHASING
AGENCY, THOMAS KELLER, doing
business under the fictitious name
of KELLER BROS. and doing business
under the fictitious name of K. B.
PURCHASING AGENCY,

Defendants.

ON ORDER TO SHOW CAUSE WHY DEFENDANT
THOMAS KELLER SHOULD NOT BE PUNISHED
FOR CONTEMPT.

Harry A. Encell, for Thomas Keller, respondent.

Walter H. Robinson, for Pioneer Express Company.

W. S. Johnson, for Southern Pacific Company,
interested party.

CARR, COMMISSIONER:

OPINION, FINDINGS AND JUDGMENT

On February 23, 1928 a verified complaint was filed before the Railroad Commission by Pioneer Express Company, a corporation, against Thomas Keller and others, alleging that they were operating as a common carrier of freight by auto truck between San Jose and San Francisco without a certificate of public convenience and necessity, in violation of the provisions of the

Auto Stage and Truck Transportation Act. Thereafter hearings were had in the case thus initiated, which was entitled and numbered as above, and on October 18, 1928 the Commission duly made its decision and order No. 20349, in which it was found as a fact that "Thomas Keller and K. B. Purchasing and Delivery Service, owned by Mrs. G. M. Adams and operated under the above fictitious name and style, are operating motor trucks used in the business of transportation of property, as a common carrier, for compensation, over the public highways of this State between fixed termini and over a regular route, without first having obtained from this Commission a certificate declaring that public convenience and necessity requires such operation, in violation of the Auto Stage and Truck Transportation Act." Based upon the findings made, it was ordered that the said Thomas Keller and K. B. Purchasing and Delivery Service "cease and desist from operations between San Francisco and San Jose, and intermediate points, or vice versa, as above described, unless and until a certificate of public convenience and necessity shall have been obtained from this Commission." Said decision and order is published in the Railroad Commission Advance Sheets (32 C.R.C. 314).

Petition for rehearing of this decision and order No. 20349 was, on October 26, 1928, filed by Thomas Keller. Thereafter and on the 13th day of November, 1928, said petition for rehearing was denied. The defendant Thomas Keller had actual notice of said order and said denial of his application for rehearing at the time they were made. No application was made to the Supreme Court for a review of this order, and the order became final upon the denial of the application for rehearing.

It has not been revoked and is still in full force and effect.

On May 31, 1929 there was filed with the Railroad Commission in the above entitled matter an affidavit of H. M. Hays, in which it was alleged that Thomas Keller was continuing to operate as a common carrier over the public highways between San Francisco and San Jose, and intermediate points, and vice versa, for compensation, in violation of said "cease and desist" order of the Commission and in contempt of the Commission, and in which there was asked an order requiring said Thomas Keller to appear and show cause why he should not be punished for contempt of the Railroad Commission.

Thereafter, and on August 2, 1929, the Commission duly made and issued its order to show cause directing the said Thomas Keller to appear before Commissioner Carr on September 3, 1929, in the Court Room of the Commission at San Francisco, to show cause why he should not be punished for contempt, which said order and a copy of the said affidavit were duly served on said Keller prior to the return date. On the return day the said Keller appeared, by attorney, and requested a continuance to September 18, 1929, which continuance was granted.

On September 17, 1929 the defendant Thomas Keller duly filed his answer to the order to show cause, and on September 18, 1929, at the time and place to which said hearing was adjourned, a full and complete hearing was had upon said affidavit, order to show cause and answer, at which various witnesses testified and at which Thomas Keller testified on his own behalf.

The defendant Keller at said hearing frankly admitted there had been no change in the nature of his operations following the "cease and desist" order, with the single exception that as to one of his various customers the basis of compensation was changed from a charge per pound for goods transported to a flat monthly sum calculated to yield approximately the same return. He has not applied for or secured a certificate of public convenience and necessity. The only defense to the citation was a renewal of the claim made in the case which resulted in the "cease and desist" order that his operations were not those of a common carrier. The "cease and desist" order became final upon the denial of the application for a rehearing, no review having been sought or had, and there is nothing in the evidence or in the contentions advanced to lead to a reversal of that order, assuming such a course to be proper here.

There is no escape from the conclusion that Keller has entirely disregarded and flaunted the "cease and desist" order of the Commission in that he has continued to operate as a common carrier by auto truck, for compensation, over a regular route and between fixed termini, without a certificate of public convenience and necessity therefor. This is a contempt which cannot be ignored if orders of the Commission are to command respect.

JUDGMENT

An order to show cause having been duly made and issued by the Railroad Commission in this action on the 2nd day of August, 1929, wherein Thomas Keller was directed to

appear and show cause before the Railroad Commission why he should not be punished for contempt for his disobedience to the order of the said Commission made in its decision No. 20349, and the said Thomas Keller having appeared by person and by counsel and having been given full opportunity to answer said order and to purge himself of his alleged contempt, based upon the foregoing findings,

IT IS HEREBY ORDERED AND ADJUDGED that the said Thomas Keller has been guilty of contempt of the Railroad Commission of the State of California in disobeying its order made on the 18th day of October, 1928, in its decision No. 20349, by failing and refusing to desist from operating as a common carrier of property for compensation by auto truck between San Francisco and San Jose and intermediate points, and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED for said contempt of the Railroad Commission as aforesaid the said Thomas Keller be punished by a fine of Five Hundred (\$500.00) Dollars, to be paid to the Secretary of the Railroad Commission of the State of California within ten (10) days from the date hereof, and in default of the payment thereof that he be committed to the County Jail of the County of Santa Clara, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each Five Dollars (\$5.00) of said fine that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, if such fine is not paid within the time above specified, prepare appropriate order of arrest and commitment in the name of the Railroad Commission of the State of California directed to the Sheriff of the County of Santa Clara, 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 27th day of September, 1929.

Paul D. Larkin
George W. ...
Leon ...
Commissioners.

Fee Pd \$500.00⁰⁰
RAILROAD COMMISSION
STATE OF CALIFORNIA
SEP 27 1929
H. M. ...
Fee # 27553