

Decision No. 23163.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

G. A. BRINKMAN, doing business
under the fictitious name and style
of DAIRY DELIVERY COMPANY OF
SOUTHERN CALIFORNIA,

Complainant.

vs.

ADOHR CREAMERY COMPANY, a corpora-
tion,

Defendant.

ORIGINAL

Case No. 2924

Hugh Gordon, Attorney for Complainant,

Farrand & Slosson, by Leonard B. Slosson,
Attorney for Adohr Creamery Company,
Defendant.

O P I N I O N

DECOTO, COMMISSIONER:

After a day and a half hearing in this case the parties thereto entered into the following stipulation of the facts upon which, so far as the complainants were concerned, the Commission might base its decision upon the defendant's motion to dismiss.

"That the complainants have either proved or offered to prove that the Adohr Creamery Company has engaged in the transportation of milk for compensation from the dairies in the Chino district to its creamery in Los Angeles; that its transportation service is rendered on its own trucks; that it transports milk only, no other commodities — fluid milk in cans which belong to the Creamery Company; that the title to this milk does not pass to the Creamery Company until it reaches the Creamery; that the Adohr Creamery Company undertakes to haul all milk produced in the Chino district which it actually purchases and acquires upon the delivery of such

milk at the Creamery; that the Adohr Creamery Company does not undertake to haul and does not haul any other milk or any other commodities," * * * * "the said operation being conducted between fixed termini or over regular routes and over public highways."

This stipulation is the most favorable that the complainant could expect and is not completely supported by the evidence so far taken. Considering the case upon the stipulation, the facts therein stated do not remove it from the doctrine laid down in Frost vs. Railroad Commission, 271 U.S.583, and Forsyth vs. San Joaquin Light and Power Corporation, 208 Cal. 397. Particularly is this true in the light of the language used by the Supreme Court in Forsyth vs. San Joaquin Light, etc. Corporation, in commenting upon the case of Public Service Commission vs. Western Maryland Dairy. The facts set forth in the Western Maryland Dairy case are practically identical with the facts set forth in the foregoing stipulation. In discussing it the Supreme Court said:

"This case may lend some slight support to the respondent's contention that the appellant is a common carrier and therefore subject to the provisions of the Auto Transportation Act of this state. But if it does, it is the exception to the rule and is contrary to the general rule enunciated by both the courts of this state and those of other jurisdictions. The parties to that action, if the opinion correctly states their position, appear to have been principally concerned with the issue as to the ownership of the milk which the dairy company was transporting, and the court having decided that the producers of the milk and not the dairy company, owned the milk, both court and counsel appear to have considered that the decision of that issue was determinative of the action itself. There was no showing whatever that the dairy company had ever carried or solicited transportation of any milk except that which it had purchased from the purchasers, nor was there any proof that it had held itself out to the general public as a carrier of milk or any other commodity. It is difficult therefore, to understand in view of the great unanimity of authority upon this subject, how the court could have held that the dairy company under such circumstances was a common carrier."

In view of the law so distinctly set forth by the Supreme Court of this state, there is no alternative left to this Commission than to dismiss this action.

ORDER

IT IS HEREBY ORDERED that the complaint in this case be and the same is hereby dismissed.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of December, 1930.

Al. J. ...
Ernest ...
Thos. ...
W. J. ...
Commissioners.