

Decision No. 23843

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

F. A. WERMUTH, doing business under the name of Wermuth Transfer, and Bay Rapid Transit Company,

Complainants,

vs.

C. E. STAMPER, ZANETTA DRAYAGE, CHARLES WHITE, JOHN DOE, RICHARD ROE, JOHN DOE CORPORATION, and the RICHARD ROE partnership.

Defendants.

ORIGINAL

Case No. 2975

George D. Pollock, for Complainants.

W. S. Johnson, for Southern Pacific Company and Pacific Motor Transport Company, intervenors on behalf of complainants.

Edward Stern, for Railway Express Agency, Inc., intervenors on behalf of complainants.

HARRIS, Commissioner -

OPINION, FINDINGS AND JUDGMENT

After public hearings in Case No. 2975 the Commission, on March 9, 1931, duly made its decision and order No. 23492, in which it was found as a fact that C. E. Stamper, doing business under the fictitious name and style of Zanetta Drayage and/or Monterey Peninsula Drayage Company, was engaged in the business of transporting property on the highways as a common carrier for compensation between San Francisco and Oakland and San Jose on the one hand, and Monterey and Carmel and other points on the other, also points intermediate thereto, in violation of

Chapter 213, Statutes of 1917. Based upon the findings made, it was ordered that the said C. E. Stamper, doing business under the fictitious name and style of Zanetta Drayage and/or Monterey Peninsula Drayage Company, cease and desist from such illegal operation until he had obtained from the Railroad Commission a certificate of public convenience and necessity for such service. (Decision No.23492, dated March 9, 1931, and issued in Case No.2975).

Though defendant C. E. Stamper had actual notice of said Decision No.23492, no application for rehearing was filed, and the order became final. It has not been revoked and is still in full force and effect.

On May 25, 1931, there was filed with the Commission the application for order to show cause and affidavit of service of F. A. Wermuth. It was alleged therein that said C.E.Stamper has failed to comply with the terms of Decision No.23492 in that he is transporting property as a common carrier for compensation between the points hereinabove named. Paragraph VI of the application and affidavit sets forth in detail three alleged instances of violation of this Commission's order. It was further alleged that Decision No.23492 had been violated on many occasions subsequent to March 9, 1931. It was asked that an order be issued requiring said C. E. Stamper to appear and show cause why he should not be punished for contempt.

Thereafter, and on June 1, 1931, the Commission duly made and issued its order to show cause directing the said C.E.Stamper to appear before Commissioner Harris on June 23, 1931, at the city hall in the city of Monterey, to show cause why he should not be punished for contempt, which said order and a certified copy of said affidavit were duly served on said C.E.Stamper on June 11, 1931. On the return date the said Stamper appeared in person at the city hall in Monterey. The matter was partially heard and an adjournment taken to American Legion Hall,

where further evidence was taken and an order of submission made.

E. M. Durham, a hardware dealer in Carmel, testified that Monterey Peninsula Drayage Co. had been delivering freight at his store for several months; that he paid the driver freight charges and that the service he now receives from Monterey Peninsula Drayage Co. is the same as the service he was receiving prior to March 9, 1930. He identified three receipts (Exhibit No.1) for freight charges paid by him to "Monterey Peninsula Drayage Co.," the bills covering freight charges on consignments of goods shipped by San Francisco dealers to witness Durham at Carmel.

F. A. Wermuth testified that he saw equipment operated by Stamper's driver on the Carmel-Monterey road practically every day during the last two months and had observed all kinds of freight being delivered from the vehicles at many places of business in Carmel. He testified that the service "was just the same" as that given by Monterey Peninsula Drayage Co. prior to March 9, 1931.

Defendant Stamper, as a witness called by complainant, and in his own behalf and defense, readily admitted that he had received a copy of the Commission's decision ordering him to cease and desist from the operation of a trucking service as described in said decision. He said he had not complied with the order to cease and desist and was at this time operating "a transfer line between San Francisco and East Bay points and Carmel and Monterey."

From the record it is clear that Stamper has disregarded the terms of Decision No.23492 and it is found as a fact that subsequent to its issuance property had been transported by him in violation of said decision and of said Chapter 213.

## J U D G M E N T

An order to show cause having been duly made and issued herein on June 1, 1931, wherein C. E. Stamper was directed to appear and show cause before the Railroad Commission why he should not be punished for contempt for his disobedience of the order of the said Commission, made in its Decision No.23492, and the said C. E. Stamper having appeared in person 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 said C.E.Stamper has been guilty of contempt of the Railroad Commission of the State of California in disobeying its order made on March 9, 1931, in its Decision No.23492, by failing and refusing to desist from the transporting of property as a common carrier for compensation between San Francisco and Oakland and San Jose on the one hand and Monterey and Carmel and other points on the other, including points intermediate thereto.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that for said contempt of the Railroad Commission, as aforesaid, said C. E. Stamper shall be punished by a fine of \$ 500.00 to be paid to the Secretary of the Railroad Commission of the State of California within ten (10) days from the date of service of this judgment, and in default of the payment thereof that he be committed to the county jail of the County of Monterey, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each \$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 Monterey, 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 29<sup>th</sup> day of June, 1931.

W. H. Severy  
Leon Whitwell  
W. J. Cunniff  
M. B. Harris  
Fred G. Stewart  
COMMISSIONERS.