



HARRIS, Commissioner

OPINION, FINDINGS AND JUDGMENT

Decision 23409 (35 C.R.C. 842), dated February 16, 1931 (effective date being fixed as twenty days from said date), found as a fact that J. O. Bray was operating automobile trucks as a common carrier of property between Los Angeles and Fresno and intermediate points without having obtained a certificate of public convenience and necessity as required by Statutes 1917, chapter 213, as amended. Defendant Bray was ordered to cease and desist such common carrier operations unless and until he should have secured from this Commission a certificate of public convenience and necessity. Thereafter, and on March 5, 1931, a petition for rehearing was filed. Rehearing was denied on March 12, 1931 (Decision 23498).

Petition of defendant for a writ of certiorari to review Decision 23409 was denied by the Supreme Court of the State of California on May 18, 1931 (Bray vs. Railroad Commission, S. F. No. 14289).

The Application for Order to Show Cause and Affidavit of Service of H. E. Northway was filed on October 17, 1931. This Application, in addition to reciting the filing of the original complaint, hearings thereon, and the issuance of Decision 23409, alleged that defendant Bray, notwithstanding the "cease and desist" order, was continuing to operate as a

common carrier between the points named. Several specific instances of alleged violations are set forth in the Application, the prayer being that defendant Bray be required to appear and show cause why he should not be punished for contempt for violation of Decision 23409 and for violation of the laws of the State of California.

On October 19, 1931, the Commission issued its order directing defendant Bray to appear on November 6, 1931, and show cause, if any he had, why he should not be punished for contempt. Hearings were held at Fresno on November 6, December 8 and 9, 1931, and at Los Angeles on December 10, 1931 and January 7, 1932, the matter being submitted after oral argument at Los Angeles on January 15, 1932.

At the opening of the hearing defendant filed a "motion to quash order to show cause", "demurrer and exceptions", and "application for order striking out portions of affidavit for order to show cause." The motions to quash and to strike were denied and the demurrer overruled. By these pleadings it was contended that the application for order to show cause did not state facts sufficient to warrant the issuance of an order to show cause; did not state facts, or any acts or omissions on the part of defendant, sufficient to constitute contempt; and did not state facts sufficient to confer upon the Commission jurisdiction "to hear or determine said order to show cause." After again reviewing the above pleadings and the arguments of counsel I am of the opinion that the application for order to show cause is sufficient in form and substance to confer upon the Commission jurisdiction to issue its order to show cause and to entertain and determine this proceeding in contempt.

The answer of J. O. Bray, filed at the hearing, denies that he is operating a common carrier trucking service and alleges that any transportation business conducted by him during the time referred to in the application for order to show cause, "or now being conducted by him, is and was the business of a private and not a common carrier"; denies that the cease and desist order was served upon him other than on or about September 15, 1931; denies that he "had personal knowledge, or any knowledge, of the making of said order, or the contents thereof", prior to September 15, 1931; and denies that he transported for hire as a common carrier the specific shipments set forth in the application for order to show cause.

As a further and separate defense defendant alleges that "no notice of said decision, or said decision and order, was served upon affiant until the 15th day of September, 1931," and that "Prior to service of said decision upon affiant, as aforesaid, affiant had no knowledge of the existence of said Decision No. 23409, and no knowledge of the decision or order contained therein, and no knowledge of the contents thereof."

Regarding the above separate defense N. H. Robotham, service inspector of the Railroad Commission, testified that in connection with certain investigations made by him on April 6 and 7, 1931, and on April 7, 1931, at Mr. Bray's warehouse near Tulare, in the presence of Lieutenant Reynolds of the Los Angeles Police Department and Harold Northway, he asked Mr. Bray if he had been served with the cease and desist order, and that Mr. Bray replied "yes, I have seen the order, but my attorney advises me that I have a right to do as I am doing. I am going to do just as I have been doing." (Tr., p. 276)

Lieutenant Reynolds, assigned to the Board of Public Utilities of the City of Los Angeles, testified that he was present and overheard the conversation of April 7, 1931, between Mr. Bray and Mr. Robotham, and that during such conversation "Mr. Robotham asked him if he had received a copy of the cease and desist order from the Railroad Commission. He said that he had and that he was going to file, through his attorney, for a writ of review." (Tr., p. 470)

Witness Robotham testified further that on April 21, 1931, following a conversation with Mr. Bray at Mr. Bray's office near Tulare, and after leaving the office, Mr. Bray "overtook" the witness and offered him a ride to Fresno, which was accepted. Upon arrival at that point, and at Mr. Bray's request, the witness went to the office of counsel for defendant, where he was introduced to counsel. In testifying to the conversation that followed, which was in the presence of defendant, Witness Robotham stated that

"He" (defendant's counsel) "said he will take this case to the Supreme Court. I asked Mr. Gearhart if he had received a copy of the cease and desist order; he said 'Of course we have; we are going to take this up to the Supreme Court'." (Tr., p. 294)

The record herein also shows that personal service of Decision No. 23409 was made upon defendant J. O. Bray on September 15, 1931. The record clearly shows that defendant had notice of the making of the cease and desist order and had actual knowledge of the contents thereof long prior to September 15, 1931, and I am of the opinion that this special defense is without merit.

In reviewing the record to determine whether common

carrier operations have been conducted in violation of the cease and desist order, it may be well to consider the various allegations of the Application for Order to Show Cause separately.

1. PARAGRAPH 10 OF THE APPLICATION

In this paragraph it is alleged in substance that on or about April 6, 1931, J. O. Bray, by means of an auto truck bearing license number PS 33520, transported as a common carrier a miscellaneous shipment originating at Globe Grain & Milling Company, Los Angeles, and delivered to certain consignees and destinations. The consignee, commodity (Bestola, Richmol, Salad Oil, etc.), and destination (Dinuba, Corcoran, Fresno, Bakersfield, Wasco, etc.) is fully and specifically set forth.

Witness Robotham, service inspector for the Commission, and Lieutenant Reynolds of the Los Angeles Board of Public Utilities and Transportation, made an investigation on April 6, 1931. Witness Robotham testified that on that date a truck bearing license number PS 33520 was stopped by Lieutenant Reynolds on San Fernando Boulevard in the City of Los Angeles. This truck had a state license tag showing it had engine C.F. 17441, was a Reo, and was licensed to J. O. Bray, Riverdale. The driver was Rolly Misenhimer and a check of the contents of the truck was made by Witness Robotham. Nine of the thirteen specific shipments set forth in Paragraph 10 of the Application were found thereon. Names and addresses of consignees were stencilled upon some of the barrels or tierces. In addition certain pails of Bestola and of salad oil having no consignee's mark thereon were upon the truck. The truck was followed to Mr. Bray's warehouse at Tulare, where on April 7, 1931, during the conversation already referred to, the witness asked defendant

if he might see the bills on the shipments that had just arrived. The bills were handed to witness by defendant, and witness found printed duplicate bills from Globe Grain and Milling Company for each of the shipments identified upon the truck on the previous evening, and in addition found some for the shipments that were unmarked on the truck.

Lieutenant Reynolds testified that he was present with witness Robotham on April 6 and 7, 1931, assisted in the making of checks, read off the registration certificates to witness Robotham, saw the bills of lading handed to witness Robotham by defendant, and recorded the license plate numbers.

Frank Wells, manager of Home Bakery Company, Fresno, consignee of one of the shipments on the above truck, produced several invoices on billheads of Globe Grain and Milling Company, of which Exhibit No. 5 is typical. This invoice, dated May 14, 1931, reads in part "Sold to Burwell & Wells, Home Bakery, Fresno, Calif., via Bray Truck." Shipments, usually consisting of one tierce of Bestola, were received by the witness regularly once a week, from Los Angeles, until about two months prior to December 8, 1931 (the date upon which witness testified), and were prepaid.

H. L. Cierley, of the Sanitary Bakery at Bakersfield, consignee of one of the shipments on the truck referred to by witness Robotham, receives compounds from Globe Grain and Milling Company in Los Angeles (and has received such shipments since April or May, 1931, until October 16, 1931, and subsequently), and "We have bills twice a week 'J. O. Bray' and some are signed 'J. O. Bray' by somebody else," the freight being prepaid.

Sheet 1 of Exhibit No. 6 is a receipt dated September 17, 1931, reading received "From Sanitary Bakery Co., Bakersfield, Calif., 11 Empty tierces (4 with heads), 2 Empty Salad Oil Drums, J. O. Bray", and under the latter name, the word "Van". This exhibit is the receipt given by the truck driver when empty tierces were returned to Los Angeles, the truck delivering the Bestola picking up the empty tierces.

D. L. Roderick, proprietor of a bakery at Corcoran, and consignee of one of the shipments on the truck already referred to, between the period March 16 and October 16, 1931, and since, has received Bestola from the Globe Grain and Milling Company at Los Angeles about once a month, and for the month preceding December 8, 1931 (the date upon which he testified) received such shipments about once a week. Exhibit No. 8, an invoice similar to Exhibit No. 5, is dated April 6, 1931, and reads in part "Sold to D. L. Roderick, Corcoran Bakery, Corcoran, Calif., via Bray Truck", and is for 2 tierces Bestola and one 60 lb. Tub Richenol. The shipments arrive prepaid.

Exhibit No. 9 is an invoice similar to the two described above, dated September 14, 1931, to Mascagno Brothers, Armona Bakery, at Armona, also a consignee of one of the shipments on the truck concerning which witness Robotham testified.

George A. Whitney is traffic manager for the vegetable oil branch, Globe Grain and Milling Company. During the period March 16 to October 16, 1931, the Globe Company shipped shortening and salad oils from Los Angeles to Fresno about twice a week, in truckloads, and to various consignees. Some time in 1929 a "verbal contract" was entered into with Mr. Bray and is



still in force. Pursuant to this verbal understanding Globe Company was to give Bray Motor Drayage its entire hauling to the San Joaquin Valley, Modesto and south. Bray was to have trucks available, subject to call for all shipments. Globe Company did not agree to ship any minimum number of truck lots, nor to pay defendant Bray any minimum in the event no shipments were made, but merely agreed to ship when and if it had something to ship, rather than to use its own trucks. Occasionally shipments have been made through other truck carriers or by rail. Shipments via Bray Motor Drayage have been made to practically all points between Los Angeles and Fresno. Aside from the rates there has been no change in the agreement since 1929 and no practical change in the manner of shipping. When a truck is needed a telephone call is made to Mr. Bray's representative in Los Angeles, whom the witness "thinks" is a Mr. Moore. (The activities of Mr. Moore in connection with the business of defendant will be discussed at greater length in a subsequent portion of this opinion) The Globe Company ships under one rate for delivery any place in the San Joaquin Valley south of Modesto.

2. PARAGRAPH 11 OF THE APPLICATION

In this paragraph it is alleged that on or about April 6, 1931, J. O. Bray, by means of an auto truck and trailer bearing license numbers PS 37627 and PS 4195, respectively, transported as a common carrier a miscellaneous shipment, consisting in part of refrigerator cases from Ward Refrigerator and Manufacturing Company at Los Angeles to certain specified consignees at Stockton and Mt. View, and in part of empty milk cans and

butter from Challenge Creamery Company at Los Angeles to Tulare. (Shipments of Ward Refrigerator and Manufacturing Company will be discussed in considering Paragraphs 12 and 13 of the Application)

Witness Robotham testified that at 6:30 p.m. on April 8, 1931, on San Fernando Boulevard in the City of Los Angeles, a truck bearing license number PS 37627, and having registration certificate marked "J. O. Bray, P. O. Box 81, Riverdale, California", contained certain refrigerators, and that a trailer bearing license number PS 4195 contained a load of empty cans and four cartons of butter marked "Danish Creamery Butter" from the Challenge Creamery, Los Angeles.

3. PARAGRAPHS 12 and 13 OF THE APPLICATION

(Ward Refrigerator and Manufacturing Company)

Paragraph 12 alleges that on or about April 15, 1931, J. O. Bray, by means of an auto truck bearing license number PS 33534, transported as a common carrier a shipment of sixteen refrigerator cases originating at Ward Refrigerator and Manufacturing Company at Los Angeles and delivered to Central California Ice Company at Fresno.

Paragraph 13 alleges that on or about April 17, 1931, J. O. Bray, by means of an auto truck and trailer bearing license numbers PS 33528 and PS 3041, respectively, transported as a common carrier a miscellaneous shipment originating at Ward Refrigerator and Manufacturing Company at Los Angeles and delivered to certain specified consignees and destinations, among which were Central California Ice Company at Fresno and Visalia Manufacturing Company at Visalia.

Witness Robotham testified that on April 15, 1931, at 7:15 p.m., at Greenfield Corners, eight miles south of Bakersfield, a truck bearing license number PS 33534, with certificate showing engine number CF 17439, issued to J. O. Bray, Riverdale, California, driver Hollis Freeman Cone, contained sixteen refrigerator cases from Ward Refrigerator and Manufacturing Company, the four cases in the rear being marked "Central California Ice Company, Fresno, California."

Witness Robotham testified further that on April 17, 1931, at 9 a.m., just north of Oil Junction on Highway 99, a truck carrying license number PS 33528, with certificate showing engine number CF 30361, issued to J. O. Bray, driver Anton Peterson, contained twenty one cases of refrigerators marked from Ward Refrigerator and Manufacturing Company for the Central California Ice Company at Fresno, also three cases of refrigerators marked "Visalia Manufacturing Company, Visalia"; and that a trailer bearing license number PS 3041 contained in part two cases of refrigerators for Visalia Manufacturing Company.

G. E. Nance, auditor of Central California Ice Company, testified that shipments were received by truck from Los Angeles on the average of once in two weeks, and that he found nothing in his records pertaining to Bray or Bray Motor Drayage by name in connection with shipments from Los Angeles. Receipts signed for goods received by truck have somebody's name on them;

"Q. Do you recall any of the names? A. Yes, the ones that you are talking about here are by the Moore Transportation Company." (Tr. p. 341)

Bills are received from time to time in the mail from the Los Angeles office of Moore Transportation Company. (Reference has been made above to this company, which will be discussed at greater length in a subsequent portion of this opinion).

Exhibit No. 7 consists of a series of documents.

It appears therefrom that on April 10, 1931, Central California Ice Company ordered twenty one refrigerators from Ward Refrigerator and Manufacturing Company to be shipped to Fresno via "Moore's Transp." . Sheet 3 of Exhibit 7 is a uniform straight bill of lading upon which the printed name "Southern Pacific Company Pacific Lines" is scratched out and the name "Moore Transportation Co." typed in. It is dated April 15, 1931, shows a shipment of twenty one refrigerators from Ward Refrigerator and Manufacturing Company to Central California Ice Company, and bears the signature "Robert Cox". Sheet 8 of Exhibit 7 is a duplicate invoice upon a bill - head of "Moore Transportation Co., Ltd.," dated April 30, 1931, for the shipment of twenty one "Ward Refrigerators". Freight was paid by Central California Ice Company.

P. R. Asmussen is assistant to the general manager of Ward Refrigerator and Manufacturing Company. Shipments by truck to points between Fresno and Los Angeles have not been made over Bray Motor Drayage but have been made via Moore Transportation Company. Between the period April 1 to October 7, 1931, approximately one hundred such shipments were made, on an average of two or three times per week. Shipments are made as ordered by customers, the Ward Company having no arrangement with Moore Transportation Company, but merely phones that company upon receipt of an order, - "It is customer's risk and customer's order." Exhibits 20 to 39, inclusive, are bills of lading showing shipments from Ward Refrigerator and Manufacturing Company to Fresno and points between Fresno and Los Angeles via "Moore Transportation Company".

4. PARAGRAPHS 14 to 18, INCLUSIVE, OF THE APPLICATION

Paragraph 14 alleges that on or about April 15, 1931, in an auto truck and trailer bearing license numbers PS 33522 and

3042, respectively, J. O. Bray transported as a common carrier a shipment of empty milk cans originating at Los Angeles and delivered to the following consignees: Dairymen's Co-operative Association at Tulare, Adohr Creamery at Tulare, Western Dairies at Tipton, and King's County Creamery at Lemoore.

Paragraph 15 alleges that J. O. Bray, since the effective date of the cease and desist order, has operated and now operates a daily trucking service as a common carrier between Tulare and Los Angeles for the Dairymen's Co-operative Association.

Paragraph 16 is a like allegation as to common carrier operations between Tipton and Los Angeles for Western Dairies; paragraph 17 relates to operations between Tulare and Los Angeles for Adohr Creamery Company; and paragraph 18 pertains to operations between Lemoore and Los Angeles for Kings County Creamery.

Witness Robotham testified that, at 10:30 p.m., April 15, 1931, on the Ridge Route (Highway 99), a truck bearing license number PS 33522, and trailer bearing license number PS 3042, certificate issued to J. O. Bray, contained empty cans only.

W. M. Hubbard, manager of Kings County Creamery at Lemoore, testified that since March 9, 1931, shipments have been made over the truck line of J. O. Bray practically six times per week up to the date witness testified (November 6, 1931). These shipments are to the "Challenge Cream and Butter in Los Angeles; all our consignments are to them." (Tr. p. 333) Occasionally shipments are brought to Lemoore from Los Angeles over the Bray line. On June 25, 1931, an agreement was entered into between J. O. Bray and Kings County Creamery Association. This agreement, read into the record, provides substantially as follows:

that Bray, for a period of two years, commencing July 1, 1931, shall

"with Motor Trucks properly equipped therefor, call at such times as shall be designated by the second party at the plant of the second party at Lemoore, California, properly load and pack and promptly and carefully transport from said plant to such plant of the Challenge Cream and Butter Association at Los Angeles as may be from time to time designated by the second party, all of the butter and/or cream produced and packed for shipment by the second party at its plant in Lemoore, California"; (Tr., p. 387) that

the creamery will deliver said butter and cream; that a specified rate per hundred shall be paid; that Bray shall properly ice said products when weather conditions make the same necessary; that Bray shall carry workmen's compensation, property damage, public liability, and cargo insurance; that

"The rates which the second party has, during the past two years, been paying the first party for the transportation of freight other than butter and/or cream shall be paid during the existence of this agreement to the first party by the second party for transportation of freight other than butter and/or cream." (Tr., p. 388)

Mr. Hubbard testified further that, while not covered by the contract, there is a verbal understanding and agreement between Mr. Bray and the creamery that nothing else will be hauled on the same load. Mr. Bray has hauled for Kings County Creamery Association for approximately three years, and trucks call every day unless instructed otherwise.

C. O. Wiseman is manager of the Adohr Creamery Branch at Tulare. Shipments are usually made daily from the Tulare plant to the Los Angeles plant over the Bray truck line, and shipments are received from Los Angeles "possibly once every 5 or 6 days we get something, small items." (Tr., p. 424)

Freight is paid out of the Los Angeles office. On cross-examination the witness stated that all milk products shipped

by the branch to Los Angeles are sent over the Bray Truck Line, the charge for milk and cream being on a per can basis, and

"Q. You know nothing about the contract that has been made between Mr. Bray and your company, do you? A. I have never seen the contract."  
(Tr., p. 426)

5. PARAGRAPHS 7 to 9, INCLUSIVE, OF THE APPLICATION

Paragraph 7 alleges in substance that notwithstanding the order of the Commission, and with full knowledge of, and subsequent to the effective date thereof, defendant has refused and failed, and does now refuse and fail to comply with its terms, in that defendant is continuing to and does now operate, conduct and manage an automobile truck line for the transportation of property between Los Angeles and Fresno and intermediate points, over the highways of this state, as a common carrier for compensation.

Paragraph 8 alleges in substance that notwithstanding said order, with full knowledge thereof, and subsequent to its effective date, defendant has held and now holds himself out to, and did and does offer himself to the public as a common carrier of property for compensation over the highways of this state over regular routes between Los Angeles and Fresno and intermediate points, and did offer and now offers to the public to transport property for compensation as a common carrier over said highways and between said termini.

Paragraph 9 alleges in substance that notwithstanding said order, with full knowledge thereof, subsequent to its effective date, and pursuant to said holding out referred to in the preceding paragraph, defendant did operate and now operates, daily, one or more trucks over the highways and over regular routes between Los Angeles and Fresno and intermediate points, and rendered and now renders a daily transportation service

of property between said points for various firms, persons, corporations and for the general public, for compensation as a common carrier.

Los Angeles Soap Company

Walter H. Palmer is the Fresno branch manager of Los Angeles Soap Company, the main plant and factory being in Los Angeles. The Fresno branch receives shipments from Los Angeles approximately twice a week, and 75 per cent of the time these shipments would be a truck load and oftentimes both truck and trailer.

George Rahe, assistant general traffic manager of Los Angeles Soap Company, testified that between March 18 and October 16, 1931, shipments to the Fresno plant were made two or three times per week over the Bray Truck Company, under a "verbal contract which is renewed yearly." The last "contract" was entered into in January, 1930, and

"We agreed with Mr. Bray that we would give him all our tonnage going to Fresno; he would furnish us transportation to Fresno, furnish cargo insurance, necessary cargo insurance, and also protect our cargo against any third parties. We, in turn, was to pay a given rate and give him all our tonnage to Fresno."  
(Tr. p. 523)

This arrangement has been in force at all times from January, 1930, up to the day witness testified (December 10, 1931). Los Angeles Soap Company did not agree to give Mr. Bray any minimum or stipulated amount of goods for hauling, but "we agree to give him our entire tonnage" (Tr., p. 524), and pays no minimum charge, irrespective of the amount of shipping done. Mr. Bray has been hauling under this arrangement since January, 1930, and other than the rate paid, there has been no change in procedure or operations, which are just the same now as in January,



1930, and "we renew that contract about every 6 or 8 months." (Tr., p. 529). Prior to the arrangement with Mr. Bray, goods moved to Fresno by rail.

Decision No. 23409, the order which defendant is alleged to have violated, and which found that defendant was operating as a common carrier, shows that the Commission had before it for consideration the testimony of W. H. Palmer, Fresno manager of Los Angeles Soap Company. It appears that no change has been made in the service afforded this company since the effective date of Decision No. 23409.

#### Danish Creamery

Hans L. Beck, assistant manager of the Danish Creamery at Fresno, produced a book of shipping instruments supplied by Bray Motor Drayage in which shipments made by the creamery over that line are recorded, and as to the period March 18 to October 16, 1931,

MR. CLARY: In regard to the frequency of shipments it appears from an inspection of the book, and I think the witness is ready to testify, that they averaged two a week; that there are some cases where a week would go by without any shipments, but those are rather rare; in general it is two shipments a week from Fresno to Los Angeles, and they are either skim milk or dried skim milk or dried buttermilk, consigned to Challenge Creamery and Butter Association. Now, is that a correct statement?

A. That is right.

COMMISSIONER HARRIS: As far as that statement is concerned, Mr. Gearhart, I understand that you are satisfied with that; of course as to the admissibility that has nothing to do with that.

MR. GEARHART: Yes, I am waiving objection to the method used to establish that." (Tr., p. 454)

Mr. Beck does not know of any agreement with Mr. Bray regarding hauling.

Mrs. Catherine Barrington is in charge of the office of the Danish Creamery. The files of the creamery do not disclose any written contract or agreement with Mr. Bray. Exhibit No. 14 consists of one invoice and seventeen sheets of statements upon stationery of "Bray Motor Drayage, Trips Any Time, Anywhere." The invoice is dated September 22, 1931, and covers a shipment of cheese from Challenge Creamery and Butter Association, Los Angeles, to Danish Creamery, Fresno. The statements are for the year 1931 (January to October, inclusive), and subsequent to March 16, 1931, show numerous shipments over the Bray line to Los Angeles, and a smaller number from Los Angeles and to and from San Francisco and Oakland.

Mr. Murphy, manager of the Danish Creamery, being ill at the time of hearing, it was stipulated that he would testify that an oral agreement was made in 1928 between Mr. Bray and Mr. Murphy, to the effect that Mr. Bray would handle for Mr. Murphy's concern, truckload lots when called by Mr. Murphy, provided that Mr. Bray had trucks available for the service, Mr. Bray retaining to himself the right to refuse all shipments, unless convenient, because of Mr. Murphy's lack of desire to give to Mr. Bray the exclusive right to haul; and pursuant to that agreement during all of these years Mr. Bray has hauled for the specified and agreed rates, and has, on numerous occasions, refused to take the business and has accepted business as suited his convenience and he hauled not only to Los Angeles, but any place that Mr. Murphy might indicate, the northern end of the state as well as the southern end of the state. It was stipulated further that in the agreement

Mr. Bray would carry cargo insurance, and that other than changes in rates, the agreement is still in force and that Mr. Bray was operating under the same agreement at the time of hearing (December 9, 1931).

Decision 23409 (the cease and desist order) shows that the Commission, in passing upon the status of Mr. Bray's operations at that time, had before it for consideration the testimony of Mr. Murphy, manager of the Danish Creamery, regarding the services then rendered to the Creamery by Mr. Bray.

Dairymen's Creamery Company

It was stipulated that if Mr. Higdon, who was subpoenaed, was present and testified, he would testify substantially as follows: That he is manager of Dairymen's Creamery Company at Tulare; that in 1928 he entered into a verbal agreement with Mr. Bray for the transportation of all of the finished products of his creamery; that Mr. Bray would have the hauling of everything produced by that plant, it being understood that Mr. Bray would carry such products to any place that Mr. Higdon would indicate in the State of California, it being contemplated that there would be haulings to San Francisco, Oakland, Los Angeles, Paso Robles, Salinas and many other places; that Mr. Bray, in consideration of the exclusive right to handle all products of this concern, would furnish trucks upon their being required; that a schedule of charges was agreed upon; that Mr. Bray would provide cargo insurance and would carry employer's liability insurance; that Mr. Higdon did not agree to ship any specific amount; that Mr. Bray has furnished some four or five trucks a

week to this concern; that such trucks have gone in every direction throughout the state; and that during the period March to October, 1931, a number of these trucks have gone south over the main traveled route between Tulare and Los Angeles at frequent though irregular intervals.

Haas Brothers

Witness T. Sargent of Haas Brothers, wholesale grocers, which has a branch at Fresno, testified that between March 15 and October 16, 1931, shipments were received over the Bray Motor Drayage from Los Angeles "when we have a carload of merchandise available there we have it hauled up. Of course, that might be two or three in a week, then again there might not be any for a month." (Tr., p. 490) This hauling is performed under a verbal agreement, to the effect that Mr. Bray will haul when called upon, in carload lots only, and if he has the equipment available to handle it. Haas Brothers has not agreed to ship any definite amount of goods at any specific times, and is not obligated to make any shipments at all. Several carloads of hominy have been hauled by Mr. Bray from the McKeon Canning Company at Burbank, which is a point intermediate between Los Angeles and Fresno. Bills for transportation are rendered and paid in the ordinary course of business. There have been a few instances where Mr. Bray has refused to haul less than carload shipments. Defendant's Exhibit No. 12 is a letter dated November 12, 1931<sup>(1)</sup> to Haas Brothers at Fresno from West Coast

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(1) The Order to Show Cause herein was issued October 19, 1931, and the first day of hearing was November 6, 1931.

Couley Burcham Co., Ltd., at Los Angeles, referring to a shipment of ten cases, and stating that

"The Bray Drayage Co. refused to handle this shipment, and advised that they would be unable to handle any further deliveries for you. We, therefore, have made shipment by Pacific Freight Line."

Defendant's Exhibit No. 13 is a telegram dated November 14, 1931 from the same company, reading "Bray refuses handle your LCL shipments advise how to ship."

#### California-Oregon Paper Mills

Lowell M. Handric is purchasing agent and assistant treasurer for the California-Oregon Paper Mills. Exhibit No. 17 consists of sixteen sheets entitled "Notification of Delivery, By California-Oregon Paper Mills", and cover the period July 24 to August 19, 1931. Mr. Handric testified that these shipments were all made to Fresno, mostly to Haas Brothers and to the United Grocers. One is to Pacific Coast Paper Co. at Fresno. Freight was paid by the consignees. Witness has no agreement with Mr. Bray, but was instructed by consignees to ship via Bray Motor Drayage and the shipping clerk telephoned to the Bray office in Los Angeles "to come and get the load." (Tr., p. 559) The sixteen sheets constituting Exhibit No. 17 have printed thereon "Received in good order by", then a line for signature, beneath which is printed "Truckman". These sheets are signed as follows: "J. O. Bray, N. Shoemaker", "Bray Truck - E. Rush", "Bray Truck - H. E. Rush", or "J. O. Bray Truck, D. D. Haskell". California-Oregon Paper Mills has never paid Mr. Bray for any of these shipments and witness has no knowledge of any one else paying Mr. Bray for carrying the merchandise.

M. D. Moore (Moore Transportation Company)

Mr. Moore testified that he is "head of a transportation corporation", Moore Transportation Company, Ltd., at 5498 Alameda Street, Vernon, and that the corporation acts as a broker and turns business over to other lines. He has been at the above location about a year and a half and is acquainted with Mr. J. O. Bray.

"Q. Does he have an office in the same building that your office is in? A. I would not call it an office.

Q. What would you call it? A. He has a telephone there, is all.

Q. When calls come in for Mr. Moore who takes them? I mean for Mr. Bray - who takes them? A. Who takes his calls?

Q. Yes. A. One of his men.

Q. Does one of his employes stay in the office most of the time? A. No, it is one of my employes.

Q. One of your employes takes the calls? A. Yes, sir." (Tr. p. 594 )

Mr. Moore further testified that N. Shoemaker "was employed by us as a swamper" (Tr., p. 605), as a helper, and drove trucks, Mr. Bray pays rent for the use of a portion of Mr. Moore's office, does not have a separate room, and has "just a telephone is all". (Tr., p. 605) There is a yard at the office which Mr. Bray uses as a place for his trucks to come in and go from. Mr. Bray "moved down there with me in - about three months ago".

"COMMISSIONER HARRIS: Q. Mr. Moore, have you any written contract with Mr. Bray covering the time mentioned from March to October? A. No, not in writing.

Q. Did you have any contract not in writing? A. Yes.

Q. What was it? A. Well, that he could haul loads for me at so much a ton, different places.

Q. That he could haul loads for you. A. Yes, that he could haul loads for me.

Q. In that agreement did you agree to provide him with any certain tonnage during any given period?  
A. Well, I had no way of contemplating what the tonnage would be.

Q. What did you agree in regard to what you would do in the way of furnishing freight? A. I don't know what I would agree.

Q. What did you agree, I say? A. Well, I don't know of anything." (Tr., p. 608)

\* \* \* \* \*

"Q. What did Mr. Bray agree to do in regard to what you offered him? A. Well, just load the trucks or haul it back.

Q. Well, did he agree to take all that you would furnish? A. No.

Q. Or any specific part of it? A. No.

Q. What did he agree to do? A. Well, the agreement amounts to practically nothing. \* \* \*. (Tr., p. 609)

Mr. Moore produced a book referred to by him as a "sales register", in which a separate column relates to shipments made over the Bray line. This book shows the billing dates of shipments which actually moved some time shortly before such dates. The first such movement subsequent to March 16, 1931, is March 20. The column shows the amount paid to Bray by Moore Transportation Company. Among the shipments are the following:

Kettleman Hills Gasoline Company, which has plants at Taft, Kettleman Hills, and Hanford.

Hanford Ice Company.

Central California Ice Company, which has a place at Bakersfield.

Modesto Ice Delivery, Modesto, \$2.62 paid to Mr. Bray. (not a truckload)

Yoland Ice and Fuel Company, Yoland (\$3.95, not a truckload).

Exeter Ice and Fuel Company, Exeter (\$3.08, not a truckload).

Exeter Ice and Fuel Company, Exeter (\$2.53, not a truckload)

Hanford Ice Company (\$.41, not a truckload).

Taft Ice Delivery, Taft (\$2.26 and \$2.00, not a truckload).

Visalia Manufacturing Company (\$3.49, not a truckload).

Modesto Ice Delivery (\$4.75, not a truckload).

The above are typical of shipments entered in the register for the months of March and April, 1931, although many others were read into the record. Beginning with August, 1931, appear entries for shipments for W. R. MacLeod Company, the first of which shows \$327.28 paid to Mr. Bray. The witness testified that that represented a shipment of fertilizer hauled from Corcoran to Los Angeles Basin. Several other hauls of this nature appear subsequently. Numerous shipments made from March to October 19, 1931, were read into the record.

When Mr. Bray's office was on 15th Street, Los Angeles, a driver or swamper paid by Moore Transportation Company would be sent to obtain one of Mr. Bray's trucks and to pick up shipments. Loads were brought to Moore's office, whose dispatcher would "see that they had the stuff all right, and make out the papers on it." (Tr., p. 666½) Whoever picked up the shipments receipted for them. After checking, the load was then taken back to 15th Street, Los Angeles, and from that point on Mr. Bray took charge of it. The whole pickup, however, was made by Mr. Bray's truck. Mr. Bray moved to the office in Vernon some time in October, 1931. Since then Moore's dispatcher sends a



Moore employee to make pickups, which are turned over to Mr. Bray at the yard.

Mr. Moore operated as an individual under the fictitious name of Moore Transportation Company in 1928, 1929 and 1930. In March 1931, Moore Transportation Company, Ltd., was incorporated, Mr. Moore being president of the company. Before moving to Vernon his office was at 1824 East 15th Street. Mr. Bray had an office at the same location, his phone being in a different room, partitioned off from that of Mr. Moore's.

Two items were read into the record from the "Buyers Guide" of the Los Angeles telephone directory, dated December, 1931, at page 616, under the caption "Trucking business", as follows:

"Bray Motor Drayage, 5498 South Alameda,  
Vernon, Kimball 3310."

"Moore Transportation Company, 5498 South  
Alameda, Vernon, Lafayette 0151".

#### Use of Public Service Plates

Exhibit No. 40 consists of certified photostatic copies of thirty seven applications for motor vehicle licenses from the records of the Division of Registration of the Department of Motor Vehicles of the State of California. Attached to some of the applications are certificates of registration for the year 1930. On the back of each of these applications is an affidavit, signed by J. O. Bray, and sworn to before a notary public. The affidavits are in two forms, as follows:

(Form 1)

"J. O. Bray, being first duly sworn deposes and says:

That he is the owner of a transportation company.

That such company is operating an auto passenger service or freight service for the transportation of persons or property, under certificate and jurisdiction of

the Railroad Commission of the State of California.

That said company presents herewith applications for public service license in accordance with the ruling of the Attorney General under date of December 30, 1926".

(Form 2)

"J. O. Bray being first duly sworn deposes and says:

That he is the owner of a transportation company.

That the vehicle described in this application is used exclusively by said company in the operative work of its business of transportation of persons or property as a common carrier for compensation over public highways of this state between fixed termini, or over a regular route, and subject to taxation under the provisions of Section 15 of Article XIII of the Constitution of the State of California."

Twenty one "form 1" affidavits were sworn to on June 23, 1930; one on September 20, 1930; one on October 27, 1930; one on February 25, 1931; two on March 3, 1931; one on May 19, 1931; one on June 5, 1931; two on June 22, 1931; one on June 26, 1931; one on July 31, 1931; and one on August 17, 1931. One "form 2" affidavit was sworn to on June 25, 1930; one on September 20, 1930; one on October 27, 1930; and one on November 18, 1930.

R. E. Emmett, inspector for the California Highway Patrol of the Department of Motor Vehicles, testified that the letters "P.S." on a license plate indicate "Public Service", such plates being issued for vehicles exempted from paying the regular license fees under the so-called public utilities or common carrier exemption. Exhibit No. 40 consists in part of copies of applications made to the department for the issuance of public service plates. The certificate of registration (some of which certificates are a part of Exhibit 40) issued after receipt of the application, describes the vehicle, and

is the instrument used to renew the application at the time the license expires, for example, a renewal for the year 1931 is effected by submitting the 1930 registration certificate, upon which a 1931 license is issued. Licenses are issued on the original affidavit year after year. In the event a person wishes to change from a P.S. plate to a private plate, fees are due to the State for the balance of the year, public service plates are required to be turned in, a new application submitted showing that the vehicle is changed in service, and a new affidavit made indicating the change. If the vehicle is a pneumatic tire vehicle, the letters on the plates issued would be "P.C.", meaning "pneumatic commercial", and indicating that the vehicle is not exempt from paying the license fee.

As to Exhibit No. 40, Mr. Emmett testified that where copies of the 1930 registration certificate are attached to copies of the original application, the 1930 certificate bears a number in the upper right hand corner indicating the number of the license issued for the year 1931.

Exhibit No. 41 is a photostatic certified copy of page 59 of the Quasi-Public Assessment Roll for the year 1931 on file in the office of The Controller of the State of California. At the top of the sheet appears the following "Record of Assessments for State Taxes for the Year 1931, Assessments of highway transportation companies, mentioned and provided for in Section 15 of Article XIII of the Constitution of California, for property used exclusively in the operation of their business in the State of California". On lines 25 and 26 of that sheet it appears that "J. O. Bray, 500 South X St. Tulare, Calif.", paid such taxes for the year 1931.

Defendant's Witnesses

M. L. Seymour, salesman for Utility Trailer Sales Company at Fresno for three weeks prior to the date upon which he testified (December 8, 1931), and prior thereto a salesman for Larson & Krog of Fresno, distributors for trailers and other commodities, testified that on several occasions he asked Mr. Bray to transport certain articles weighing between 800 and 1200 pounds, and that Mr. Bray refused and stated that he was not doing that business. "He said if I had a truckload for him he would be glad to bring it up, but nothing less than truckload lots". (Tr., p. 474)

M. Ducey, of Thompson-Ducey, tires, testified that Mr. Bray refused to carry shipments for him, because "he did not haul small shipments any more; it was all contract hauling \* \* \*". (Tr., p. 476)

W. W. Coates, deputy sheriff of Fresno County, testified that certified copies of Decision 23409 were received by him on September 15, 1931, and that he personally served a certified copy thereof upon J. O. Bray on September 15, 1931.

Ted Ashjian, of Reliable Automotive Company, Fresno, testified that in purchasing six wheel attachments from Weber Trailer Manufacturing Company, Los Angeles, that company was directed to ship by Bray Transportation Company. Exhibit No. 15 is a letter dated April 4, 1931, from the Weber Company to Reliable Automotive Company to the effect that "we were informed by the Bray Truck Company that they were handling no shipments of less than 3 tons."

C. G. Lee, of The Autocar Sales and Service Company of California, testified that Mr. Bray has "ignored" requests to transport small shipments from Los Angeles. Truckload or car-

load shipments have not been offered to Mr. Bray.

E. S. Logan of Logan Auto Company, testified that Mr. Bray has refused to transport property for him. " \* \* \* he just laughed. 'No', he says 'I am not in the parcel delivery.'" (Tr., p. 517) The largest shipment offered was "probably 1,000 pounds", and a truckload has never been offered.

After a carefully review of the evidence presented in this proceeding the Commission finds the following facts to be established:

I.

On the sixteenth day of February, 1931, the Railroad Commission rendered its Decision No. 23409. In said decision it was found as a fact that J. O. Bray, doing business under the fictitious name and style of Bray Motor Drayage, was operating automobile trucks as a common carrier of property between Los Angeles and Fresno and intermediate points over regular routes between the above mentioned fixed termini without having secured a certificate of public convenience and necessity from the Railroad Commission as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto, and he was ordered immediately to cease and desist from said operation, which said order and the opinion upon which it is based appears in Volume 35 of the Opinions and Orders of the Railroad Commission at pages 842 et seq. Said order has never been revoked and is still in force and effect.

II.

J. O. Bray had personal knowledge of the making of said order and the contents thereof prior to April 7, 1931, and,

in addition, a certified copy of said Decision No. 23409 was personally served upon J. O. Bray on September 15, 1931.

### III.

On October 17, 1931, there was filed with the Railroad Commission the affidavit of E. E. Northway, in which it was alleged in substance that the said J. O. Bray, notwithstanding the order of the Railroad Commission in its said Decision No. 23409, subsequent to the effective date of said order and with full knowledge thereof, failed and refused to comply with said order, in that he is continuing to operate, conduct and manage an automobile truck line for the transportation of property between Los Angeles, California, and Fresno, California, and intermediate points, over the highways of this state as a common carrier for compensation; without having obtained a certificate of public convenience and necessity from the Railroad Commission; and in violation of the said order of the Railroad Commission.

### IV.

Upon said affidavit being received and filed the Railroad Commission regularly, on October 19, 1931, made and issued its order requiring J. O. Bray to appear before Commissioner Harris on Friday, the sixth day of November, 1931, in the rooms of the Commercial Club, Holland Building, Fresno, California, to then and there show cause, if any he had, why he should not be punished for contempt for his refusal, failure and/or omission to comply with the terms of the order of the Railroad Commission. Said order to show cause, together with said affidavit upon which based, was duly served upon the said J. O. Bray on October 25,

1931. Thereafter, hearings were held on November 6, December 8 and 9, 1931, at Fresno; December 10, 1931, and January 7 and 15, 1932, at Los Angeles.

V.

Notwithstanding the order of the Railroad Commission contained in said Decision No. 23409, the said J. O. Bray has failed and refused to comply with the terms thereof, and has continued and is now engaged in the business of operating automobile trucks for the transportation of property as a common carrier, for compensation, over the public highways of this state, between fixed termini and over a regular route, to-wit: between Los Angeles, California, and Fresno, California, and intermediate points.

VI.

The failure of the said J. O. Bray to comply with the said order of the Railroad Commission and his said continuance to operate as a common carrier of property is in contempt of the Railroad Commission of the State of California and its order.

J U D G M E N T

Order to show cause having been issued by the Railroad Commission in this proceeding on October 19, 1931, wherein J. O. Bray was directed to appear and show cause why he should not be punished for contempt, and the said J. O. Bray having appeared in person and by counsel, and having been given full opportunity to answer said order and to purge himself of his alleged contempt;

IT IS HEREBY ORDERED AND ADJUDGED that the said J. O. Bray has been guilty of a contempt of the Railroad Commission of the State of California in disobeying its order made on the sixteenth day of February, 1931, in its Decision No. 23409 (35 C.R.C. 842), by failing and refusing to desist from operating as a common carrier of property for compensation by automobile trucks between Los Angeles, California, and Fresno, California, and intermediate points; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that for his said contempt of the Railroad Commission and its order as aforesaid, the said J. O. Bray be punished by a fine of five hundred dollars (\$500.00) and five days imprisonment, said fine to be paid to the Secretary of the Railroad Commission of the State of California within five (5) days after the effective date of this opinion, findings and judgment and said imprisonment to be in the county jail of the County of Fresno, State of California.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED, that in default of the payment of the aforesaid fine, said J. O. Bray be committed to the county jail of the County of Fresno, 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 said fine is not paid within the time specified above, prepare appropriate order of arrest and commitment in the name of the Railroad Commission of the State of California, directed to the sheriff of Fresno County, to which shall be attached and made a part thereof a certified copy of this opinion, findings and judgment.



IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, upon this opinion, findings and judgment becoming effective, prepare appropriate order of arrest and commitment in the name of the Railroad Commission of the State of California, for the imprisonment of said J. O. Bray in the county jail of the County of Fresno, State of California, for a period of five days, said order of arrest and commitment to be directed to the sheriff of Fresno County, and to which order shall be attached and made a part thereof a certified copy of this opinion, findings and judgment.

IT IS HEREBY FURTHER ORDERED that this opinion, findings and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon said J. O. Bray.

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 23<sup>rd</sup> day of February, 1932.

C. C. Deavey  
Leon Whittell  
W. A. Cunniff  
M. B. Harris  
Fred G. Stewart  
Commissioners