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Decision No. 25177

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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RICE TRANSPORTATION COMPANY, a Corporation, DONOVAN TRANSPORTATION COMPANY, a Corporation, and ~~CORPORATION~~ TRUCK LINE, a Corporation,

Complainants,

vs.

INDEPENDENT TRUCK OWNERS SERVICE COMPANY and JOHN BETTS TRANSPORTATION COMPANY,

Defendants.

ORIGINAL

) Case No. 2994

H. J. Bischoff for complainants

Louis N. Whealton for John H. Betts

John M. Atkinson and Wallace K. Downey,  
by W. K. Downey, for intervener Motor  
Freight Terminal Company.

STEVENOT, Commissioner:

OPINION, FINDINGS AND JUDGMENT

Decision 24255 (36 C.R.C. 840), dated November 23, 1931 (effective date being fixed as twenty days after personal service upon John H. Betts),<sup>(1)</sup> found as a fact that John H. Betts, doing business under the fictitious name of John H. Betts Transportation Company,<sup>(2)</sup> was operating as a common carrier within the

(1) Personal service was made on November 30, 1931. (Exhibit 2)

(2) \*\* \* \*between Los Angeles and Los Angeles Harbor, on the one hand, and San Diego and intermediate points, including Santa Ana, Fullerton, Anaheim and Orange on the other hand, and between Los Angeles and Los Angeles Harbor, and between Long Beach and San Diego and between Long Beach and Los Angeles, \* \* \* (Decision 24255, Exhibit 1, p. 11)

meaning of Statutes 1917, chapter 213, as amended, without having obtained a certificate of public convenience and necessity. Defendant Betts was ordered to cease and desist such common carrier operations until he should have obtained a certificate.

The application for order to show cause and affidavit of service of C. F. McAnally was filed on March 30, 1932. The application recites the filing of the original complaint, the holding of hearings thereon, the issuance of Decision 24255, and service thereof. It alleges that notwithstanding the "cease and desist" order, defendant Betts has continued to operate a common carrier service between the points named. Specific violations, setting forth license numbers of trucks, consignors and consignees, etc., are alleged to have occurred on or about December 22, 23, and 24, 1931, and January 5, 6, and 7, 1932. It is also alleged that property has been and is being transported "almost daily" as a common carrier.

On April 7, 1932, the Commission issued its order to show cause directing defendant Betts to appear on May 17, 1932, and show cause, if any he had, why he should not be punished for contempt. <sup>(3)</sup> The "Affidavit of John H. Betts in reply to Application for Order to Show Cause" was filed on April 29, 1932, and denies that the business specified in the application was carried as a common carrier. It is alleged that said business was transacted under and by virtue of certain contracts in writing as a "lawful contract carrier", with the exception of a few hundred pounds of freight transported to San Diego Chain Stores, which it is alleged was taken by error and mistake from a warehouse together with freight which defendant transported for other

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(3) The "Application for Order to Show Cause and Affidavit of Service", together with the Order to Show Cause, was personally served upon John H. Betts on April 9, 1932. (Exhibit 3)

patrons with whom he had a contract.

At the hearing it was stipulated by counsel for defendant that certain allegations of the application for order to show cause were true, <sup>(4)</sup> with the exception of the allegation that the acts referred to were those of a common carrier. Thus, under the affidavits on file and the stipulation entered into at the hearing, the primary question is whether defendant's trucking operations, subsequent to the effective date of the decision of the Commission, were and are those of a private carrier or of a common carrier.

E. S. Wright, buyer for Safeway Stores at Los Angeles, testified that shipments were made to Western States Grocery Company at San Diego via Betts Transportation Company on December 28, 29, and 30, 1931. Klauber-Wangenheim and Company, wholesale grocers at Los Angeles, employs the transportation services of defendant between Los Angeles and its branch at San Diego (Witness E. W. Fiedler), and Libby, McNeil and Libby ship food products by defendant's line to Western States Grocery and Ideal Grocery at San Diego at customers' instructions, the latter paying the freight. (Witness A. Crews) N. Jamgoschian, secretary of California Soap Company, testified as to two shipments made subsequent to January 7, 1932, one being in May, 1932. Los Angeles Brewing Company ships to San Diego Soda Works approximately once or twice a week, the latter company paying for the hauling. Los

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(4) All allegations contained in paragraph 10 of the application are admitted as having occurred on the date set forth therein except the allegation that it was done as a common carrier. The same admission is made as to paragraph 11, except that it is denied that hauling was done for Young's Market or the U. S. Navy Pier, it being alleged that goods were hauled to the above for Proctor & Gamble Company. Paragraphs 12 and 14 are admitted except as to the allegation that the business was transacted as a common carrier. The same admission is made as to paragraph 13, it being alleged, however, that deliveries to S. H. Kress & Company and Young's Market were made for and on behalf of Proctor & Gamble Company. Paragraph 15 is admitted, except as to Southwestern Wholesale Company.

Angeles Brewing Company entered into a contract with Betts Transportation Company on December 5, 1931, "in order to get the return rate" on empties returning from San Diego. (Witness Bayha, Tr. p. 255)

Wacholder and Lenfestey Glass Company (Witness Joel Wacholder) ships glass bottles and supplies to customers in San Diego via Betts Transportation Company, sometimes paying the freight and at other times shipping C. O. D. Betts Transportation Company does not handle all shipments to San Diego. A contract was entered into approximately six months prior to the hearing.

"Q. What was said about signing the contract?

A. Nothing, simply a contract was tendered to be signed which I signed." (Tr. p. 265)

The witness feels free to ship by any means desired and does not feel obligated to give any specific tonnage to Betts Transportation Company.

E. L. Baker, office manager for General Food Sales Company, Inc., testified to specific shipments made on January 2, 5, and 6, 1932, to Western States Grocery Company, Klauber-Wangenheim, Piggly-Wiggly, and Wellman-Peck and Company, all at San Diego, via Betts Transportation Company. A contract was entered into on December 22, 1931, and "We had a contract which was covered by letter prior to that time, back on October 1, 1931." (Tr. p. 278) Coffee Products of America ships to San Diego Coffee Company, Inc. approximately twice a week, shipments ranging from one ton to six tons. (Witness Gunter)

George B. Winfrey, food broker, sells to wholesale grocers and chain stores in San Diego. Certain of his customers in that city have had goods transported by Betts Transportation

Company, although the witness has never shipped by nor paid transportation charges to defendant. On February 1, 1932, he entered into a contract with defendant.

"Q. Under what circumstances would you have occasion to employ John H. Betts? A. Only in case of some merchant down there not having a contract with Betts and, having a contract, I could ship.

Q. In other words, that is the reason you entered into this contract? A. That is right.

Q. If the emergency should arise you would be covered? A. Yes." (Tr. p. 291)

Johnson, Carvell and Murphy, merchandise brokers, (Witness A. G. Hornblower) ship prepaid and collect via Betts Transportation Company to some six accounts in San Diego.

"Q. Did you discuss with Mr. Jackson" (Traffic manager for John H. Betts) "the reason why a contract should be signed? A. Well, he advised us that he could not do any hauling for us unless we had a contract with him.

Q. Did he tell you why? A. Because he had to operate as a contract hauler, not having a franchise." (Tr. p. 300)

B. W. Doyle, manufacturer of dog food, ships by defendant to two customers in San Diego, having entered into a contract on April 11, 1932.

"Q. For how long a period of time, Mr. Doyle, was this agreement to remain in effect? A. 30 days.

Q. Who suggested that the agreement - who suggested that length of time? A. I don't know.

Q. This contract, I understand, was prepared by the Betts Transportation Company? A. Yes, sir.

Q. You made no changes in it? A. No, sir.

Q. You were not particularly interested in what the contract said? A. No, sir.

Q. That was the only reason you signed it? A. Yes, sir.

Q. You were perfectly willing to ship without making a contract? A. Yes, as long as I got the rate.

Q. All you were interested in was the rate and the service? A. That is all." (Tr. p. 305)

Mr. R. W. Jackson, traffic manager for John E. Betts, called as a witness on behalf of defendant, testified that after the issuance of the "cease and desist" order, he was instructed by Mr. Betts "To draw such a contract it would be legal to operate under and, if the business was offered us, to continue operations as a private contract carrier." (Tr. p. 320) On December 11, 1931, a circular letter was sent out to certain shippers. (5) This

(5) This letter, Exhibit 5, reads as follows:  
"December 11, 1931.

TO OUR PATRONS:-

You have heretofore patronized John E. Betts Transportation Co. in the matter of hauling freight or merchandise to various points in Southern California, which patronage we sincerely appreciate.

We have been endeavoring to conduct the freight business as independent contract carriers, and have not intended to invade the territory of franchise holders who are operating as common carriers under the regulations of the State Railroad Commission of this State. However, certain Motor Truck Companies, about a year ago, brought on a hearing before the State Railroad Commission, objecting to our conducting the aforesaid business unless we should obtain a franchise from the Railroad Commission so to do.

We thereupon went before the Railroad Commission and disclosed all the facts pertaining to our business. On or about the 23rd day of November, 1931, the State Railroad Commission handed down an Order in that case in which it holds that we have heretofore been conducting the business of a common carrier, and not having a franchise so to do, we hereby notify you that we will not solicit any further business nor can we receive any shipments from you on or after the 20th day of December, 1931, for transportation, in the method in which we have heretofore served you in that capacity, and that we will on and after said last mentioned date, cease to conduct the business of common carrier of freight.

We anticipate continuing in the freight transportation business, however, as contract carriers, under contracts with our patrons. If you desire to enter into such contract with us, we will be very glad to confer with you, upon being so advised.

We wish to assure you that this letter is not intended in any way as a solicitation of business to be conducted as a common carrier.

Again thanking you, and appreciating your patronage, we are,

Very truly yours,

JOHN E. BETTS TRANSPORTATION CO.,  
By (Signed) John E. Betts, Owner  
John E. Betts, Owner  
(Signed) R. W. Jackson  
R. W. Jackson, -Traffic Mgr."

letter was not sent to all because "There was some that was very small shippers that we did not care to contract with and \* \* \* some old customers we had not been doing business with for a long time, of course, they were left out." (Tr. p. 327) Certain business has been refused. (6) After sending out the letter of December 11, various people called the witness stating they would like to continue the business. Asked to state a typical case where a discussion was had as to entering into a contract, Mr. Jackson testified:

"A. Well, we will take some of the San Diego cases as an example. I went into Klauber-Wangenheim and they wanted to know what they could do to continue with our service, service had been perfectly satisfactory, rates were all right, they had no desire to change and I told them the only way we could operate with them would be under a binding contract." (Tr. p. 326)

A form of agreement first mimeographed and later printed was prepared by Betts Transportation Company. Mr. Betts signed a number of these forms in blank.

"Q. So that you could then go out and make whatever arrangements you wanted to? A. Whatever arrangement I made, all I had to do to make the contract valid was to sign it myself after the signature of the other people." (Tr. p. 332)

The following is a copy of the agreement with Klauber-Wangenheim Company, the words and figures underlined having been written in on the printed form:-

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(6) As to reasons for refusal, "\* \* \*the principal reason was because some of them wanted to specify the time that we had to pick it up, the time that we was to deliver it, wanted me entirely subject to their call on a moment's notice, and some of them was goods that I did not - small business that I did not want to handle; some of these people, without calling any names, I did not consider responsible and did not want their business." (Tr. p. 323)

"\* \* \*What we are trying to carry now, as near as we can, is package goods that one man can handle." (Tr. p. 324)



"AGREEMENT"

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THIS AGREEMENT entered into this 16 day of December, 1931, by and between Klauber Wangerheim Co. (a corporation) with a principal place of business at \_\_\_\_\_ in the State of California, party of the first part, and JOHN H. BETTS TRANSPORTATION COMPANY, an unincorporated body, having an office and principal place of business at 1346 West 14th Street, Long Beach, California, party of the second part,

WITNESSETH

WHEREAS, the party of the first part is engaged in the general business of dealing in Merchandise at Wholesale at 611 Island Avenue, in the City of San Diego, California, and is desirous of entering into a contract with the party of the second part for the transportation of said commodities from and to its said place of business; and,

WHEREAS, the party of the second part is willing to enter into a private agreement for the transportation of said commodities by means of auto trucks:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

I.

The party of the second part will transport said commodities for the party of the first part from Los Angeles and/or Harbor District and Environs said transportation service to be performed by means of auto trucks.

II.

The party of the first part agrees to turn over to the party of the second part for delivery in accordance with this agreement all shipments of said commodities originating in or at either or any of the places designated or covered by paragraph numbered "I". hereof.

III.

The party of the first part agrees to compensate party of the second part for said service at and in accordance with the charges attached to this agreement as Exhibit "A".

IV.

The party of the second part will present to party of the first part an itemized statement, weekly, covering the services rendered during the preceding week, and party of the first part agrees to pay party of the second part for the services rendered under this agreement weekly.

V.

The party of the second part shall be responsible for any loss, damage or breakage to said shipments transported in accordance with this agreement, while in the custody of party of the second part, his agents or employees, except when such damage or breakage is caused by acts of God, or other acts not under his control, and the party of the second part agrees to carry suitable accident, fire and theft insurance on all shipments transported for party of the first part, by second party.

VI.

The party of the second part agrees to operate and maintain in the transportation service covered by this agreement, motor equipment suitable to the requirements of said transportation service.

VII.

This agreement shall remain in full force and effect for a period of 90 days from the date hereof and shall continue thereafter until cancelled upon thirty (30) days written notice by either party.

VIII.

This agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused their signatures to be affixed hereto, and their corporate seals, if any, to be likewise affixed hereto, under competent authority so to do, and have executed this instrument in duplicate, this 16th day of December, 1931.

(Signed) Klauber Wangerheim Co.  
By Hugo Klauber Treasurer  
Party of the First Part

ATTEST:  
(Signed) A. W. Shepherd, Secretary  
(Corporate Seal)

JOHN H. BETTS TRANSPORTATION COMPANY  
By (Signed) John H. Betts  
John H. Betts, Owner  
and proprietor.

(Signed) R. W. Jackson  
R. W. Jackson, Traffic  
Manager.

WITNESS:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

EXHIBIT 'A'

As a part of the foregoing Contract and Agreement, the Compensation to and Service to be rendered by the Party of the Second Part thereunder, is as follows:

RATES:

The charge for transporting commodities under the aforesaid contract is hereby agreed upon to be 20¢ per hundred pounds. Said rate to apply in lots any quantity

A minimum pick-up charge of fifty cents (50¢) will be charged by the party of the second part and paid by the party of the first part for each separate and distinct call made by the party of the second part upon the party of the first part, or at the place designated for the acceptance of merchandise, whether the same shall be ready for delivery or not.

SERVICE.

The party of the second part shall, within thirty-six (36) hours after receiving notice in writing, by telephone, or by telegraph, stating point of delivery of commodities, pick up said commodities at said point so designated, and said party of the second part will within forty-eight (48) hours receipt of such commodities, transport and deliver same to the point of delivery so designated by the party of the first part, barring accidents, acts of God, and causes beyond the control of the party of the second part, as set forth in paragraph 'V' of said agreement.

The foregoing schedule of rates and service is to be deemed a part of the foregoing agreement as though set forth therein in full."

Exhibits 6 and 8 are copies of other agreements entered into by Betts Transportation Company. (7)

(7) Following is a list of the agreements comprising these two exhibits, which shows the name, date agreement was entered into, and period agreement was to remain in effect.

Klauber-Wangenheim Company, S. D.	Dec. 16, 1931	90 days
H. K. Glenn and/or San Diego Soda Works, S. D.	Dec. 16, 1931	12 months
Western Metal Supply Co., S. D.	Dec. 20, 1931	3 months
Southwestern Grocery Company, S. D.	Dec. 29, 1931	6 months
Whiting-Mead Co., S. D.	Dec. 16, 1931	6 months
San Diego Coffee Company, Inc., Ltd., S.D.	Dec. 21, 1931	"ninety"
Piggly-Wiggly of San Diego, Inc., S.D.	Dec. 17, 1931	1 year
Ideal Grocers, Inc., S. D.	Dec. 17, 1931	1 year
Western States Gro. Co., S.D.	Dec. 16, 1931	90 days
Proctor & Gamble Mfg. Co., L.B.	Dec. 19, 1931	1 year
Mailliard & Schmiedell, L. A.	Dec. 21, 1931	90 days
California Maple Syrup Co., L. A.	Dec. 22, 1931	6 months
Johnson, Carvell & Murphy, L.A.	Dec. 21, 1931	6 months
The Gelfand Manufacturing Company of California, Inc. L. A.	Dec. 18, 1931	1 year
The Eusey Co., Ltd., L. A.	Jan. 2, 1932	1 year
Mandarin Food Products Co., L. A.	April 4, 1932	6 months
Los Angeles Brewing Co., L.A.	Dec. 5, 1931	30 days
Hamilton & Rausher, L. A.	Feb. 11, 1932	"until Jan. 1, 1933"
Hall Wood Working Co., S. D.	Jan. 22, 1932	6 months

Trips are made to San Diego daily except on Saturday nights and holidays. Seven trucks and three trailers are used, the same number used prior to the "cease and desist" order. There was no lull or complete stoppage of the transportation business after the issuance of the above order, as on December 20, 1931, "We had contracts at that time and we hauled on the contracts solely."

(Tr. p. 344)

As to service rendered to customers prior to and since the "cease and desist" order

" Well, there is very little difference but there is some difference. The principal difference is before we tried to pick up goods when they were ordered without any limit as to the time, under the impression, of course, at that time, as I stated in court, that we could quit hauling for them at any time we wanted to, or refuse to haul for them any time we wanted to and we had no contracts. Now we have a contract with a specific agreement to pick up the goods within 36 hours, delivering within 48 hours after pick-up. That is the principal difference, as I can see.

Crown Fence & Supply Co. Ltd. Pasadena	Dec. 27, 1931	1 year
Pittsburgh Steel Co., L.S.	April 11, 1932	3 months
So. Cal. Disinfecting Co., L.A.	Dec. 27, 1931	12 months
The Van Landingham Co. and Van Landingham Western Sales Inc. L.A.	Dec. 30, 1931	1 year
Walker Mfg. Co., L.A.	Dec. 27, 1931	1 year
Geo. B. Winfrey, L.A.*	Feb. 1, 1932	6 months
Long Beach Glass Co., L.B.*	Dec. 28, 1931	6 months
Wacholder-Lenfestey Glass and Sales Co., L.A.*	Mar. 14, 1932	12 months
Doyle Packing Co., Vernon*	April 11, 1932	30 days
Long Beach Paper Co., L.B.*	Mar. 17, 1932	6 months
U.S. Paper Company, L.A.*	Feb. 10, 1932	6 months
Suniforma Co., S.D.*	Mar. 24, 1932	6 months
California Soap Company, L.A.*	April 14, 1932	6 months
Sparkletts Bottled Water Corpor- ation, L.A.*	Mar. 10, 1932	? blank ?
J. Rosenberg, L.A.*	Mar. 31, 1932	6 months
Star Roof Corporation, L.A.*	Mar. 8, 1932	6 months
Swift and Company, L.A.*	Mar. 25, 1932	90 days-May be canceled on 1 days' notice
Russell Distributing Co., Ltd. L.A.*	April 11, 1932	30 days
Warner Sales, Ltd., L.A.*	April 15, 1932	1 year
General Foods Sales Company, Inc., L.A.	Dec. 19, 1931	1 year

NOTE - \*indicates new shippers who were not using the service of Betts Transportation Company prior to the "cease and desist" order.

Q. Are there any other differences? A. None that I know of.

Q. Have you changed the rates at all? A. Some rates have been changed. I do not recall which ones, and some have not." (Tr. p. 337)

Hauling has been performed for new customers when their business was found satisfactory. (8) As manager, the witness would seek attractive business, and it is his purpose to conduct the business up to the capacity of the present equipment. (9)

John H. Betts, called as a witness in his own behalf, testified that Mr. Jackson is actively managing the business for him and has been authorized to enter into contracts on behalf of Betts Transportation Company. The activities of Mr. Jackson have been authorized or sanctioned by defendant.

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(8) "Q. When you say that you found their business satisfactory, what do you mean by that? A. It was small package goods, easy to handle, nice stuff, not liable -- all cases, not liable to much damage, things like that. Many things entered into agreements of this sort, naturally. Q. That is one of the elements, though? A. Yes, sir. Q. That is the type of goods you wish to handle? A. Yes, sir. Q. Of course, the rate must be what you consider a reasonable rate? A. Certainly. Q. You have no desire to haul heavy machinery, as you stated? A. If we can make the right kind of a contract. \* \* \*" (Tr. p. 339)

(9) "Q. Didn't you state that you never called on anybody with whom you wanted to enter into a contract, you wait until they call on you? A. Absolutely.

Q. Just why do you do it? A. Because we have all the business we really care for. If some attractive business was offered to us or if I were to hear of some attractive business I would go to see them.

Q. You would go to them if you heard of it? A. I would if I knew of it, yes, sir.

MR. WHEALTON: That is all.

MR. DOWNEY: Q. Mr. Jackson, is your purpose to conduct this business, this transportation business between Los Angeles and San Diego to carry package goods that can be handled by one man up to the capacity of your present equipment? A. Yes, sir.

Q. Where you can make contracts with the shippers for the goods? A. Certainly." (Tr. p. 347)

It is contended in the brief for defendant that the Commission has not heretofore adjudged one in contempt for failure to obey a desist order when such defendant has entered into bona fide and binding contracts specifying duration, tonnage, price, and reciprocal obligations placing the shipper under burden to patronize and the hauler under the burden to serve, with a selected class of patrons, and it is claimed that the operations are those of a private carrier within the meaning of Frost v. Railroad Commission, 271 U. S. 583.

Haynes v. MacFarlane, 207 Cal. 529, was an appeal from a superior court judgment enjoining certain trucking operations. The judgment was based upon a stipulation of facts, from which it appeared that the Commission had issued a desist order against defendant, and that

"\* \* \* \*On April 27, 1927, or the day after the effective date of the order of the commission, the defendant entered into seven written contracts with his former customers for the continued carriage of such freight for hire between said points, and, unless restrained by order of the court, intends to and will accept and enter into at least twenty additional contracts for the carriage of freight for hire between said points \* \* \* ." (p. 530)

The question, as stated by the Court, was whether a truck operator, hauling freight for compensation between fixed termini and over a regular route, may avoid regulation by entering into and operating under numerous so-called private contracts with his customers. In affirming the judgment the Court stated that

"If such a studied attempt to evade the provision of the statute should prove availing the law would become a nullity and the primary purpose of the act to regulate auto truck transportation companies would come to naught." (p. 534)

Upon a careful review of the record in this proceeding the Commission makes the following findings of fact:

1. On November 23, 1931, the Railroad Commission rendered its Decision No. 24255, in which it was found as a fact that John H. Betts, doing business under the fictitious name of John H. Betts Transportation Company, was operating as a common carrier within the meaning of Statutes 1917, chapter 213, as amended, without having a certificate of public convenience and necessity; and in which John H. Betts was ordered to cease and desist from common carrier operations between Los Angeles and Los Angeles Harbor, on the one hand, and San Diego and intermediate points, including Santa Ana, Fullerton, Anaheim, and Orange on the other hand, and between Los Angeles and Los Angeles Harbor, and between Long Beach and San Diego and between Long Beach and Los Angeles. Said order has never been revoked and is still in force and effect.

2. A certified copy of said Decision No. 24255 was personally served upon John H. Betts on November 30, 1931, and said John H. Betts had personal knowledge of the making of said order and its contents.

3. On March 30, 1932, there was filed with the Railroad Commission the affidavit of C. F. McNally, in which it was alleged in substance that the said John H. Betts, notwithstanding the order of the Railroad Commission in its Decision No. 24255, and with full knowledge of the contents and provisions thereof, has failed and refused to comply with said order in that he is continuing to conduct and operate an automobile truck line as a common carrier of property for compensation over public highways in this state, and specifically between Los Angeles and Los Angeles Harbor and San Diego.

4. Upon said affidavit being received and filed the Railroad Commission regularly, on April 7, 1932, made and issued its order directing John H. Betts to appear before Commissioner Stevenot on Tuesday, May 17, 1932, in the court room of the Commis-

sion, 708 State Building, Los Angeles, 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 personally served upon John H. Betts on April 9, 1932. Thereafter, hearing was had on May 17 and 19 and the matter submitted on briefs.

5. Notwithstanding the order of the Railroad Commission contained in said Decision No. 24255, the said John H. Betts has failed and refused to comply with the terms thereof, and continued to operate and conduct the business of operating automobile trucks for the transportation of property as a common carrier, for compensation, over the public highways in this state, within the meaning of Statutes 1917, chapter 213, as amended, and specifically between Los Angeles and San Diego, on December 22, 23 and 24, 1931, January 5, 6 and 7, 1932, and subsequent thereto.

6. The failure of the said John H. Betts to comply with the said order of the Railroad Commission, and his continuance to operate a common carrier of property by auto truck is in contempt of the Railroad Commission of the State of California and its order, and in violation of Statutes 1917, chapter 213, as amended.

#### J U D G M E N T

John H. Betts having appeared in person and by counsel, and having been given full opportunity to answer the order to show cause of April 7, 1932, and to purge himself of his alleged contempt;

IT IS HEREBY ORDERED AND ADJUDGED that the said John H. Betts has been guilty of a contempt of the Railroad Commission in disobeying its order made on November 23, 1931, in its Decision No. 24255, by failing and refusing to desist from the operation



of a common carrier of property, for compensation, over the public highways of this state, by auto truck, between Los Angeles and San Diego; 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 John H. Betts shall 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 days after the effective date of this opinion, findings and judgment and said imprisonment to be in the county jail of the County of Los Angeles, State of California.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that in default of the payment of the aforesaid fine said John H. Betts be committed to the county jail of the County of Los Angeles until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars of said fine that shall so remain unpaid.

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 John H. Betts in the county jail of the County of Los Angeles, State of California, for a period of five days, said order of arrest and commitment to be directed to the Sheriff of the County of Los Angeles, 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, 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 the County of Los Angeles, 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 this opinion, findings and judgment shall become effective twenty days after personal service of a certified copy thereof upon said John H. Betts.

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 12th day of September, 1932.

C. Sweeney  
Leon Sweeney  
W. A. Carr  
W. B. Hamer  
Fred G. Stewart  
Commissioners