

Decision No. 25261

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CALIFORNIA INTERURBAN MOTOR TRANSPORTATION ASSOCIATION,

Complainant,

vs.

YELLOW VANS, ASSOCIATED, a corporation,
YELLOW VAN TRANSFER & STORAGE COMPANY,
a corporation, PIERCE-RODOLPH COMPANY,
LTD., a corporation, U. C. EXPRESS &
STORAGE COMPANY, a corporation, BEVERLY
HILLS TRANSFER & STORAGE COMPANY, INC.,
a corporation, GRIGGS VAN & STORAGE
COMPANY, LTD., a corporation, TRIANGLE
EXPRESS, INC., a corporation, VENTURA
TRANSFER COMPANY, a corporation, CROWN
TRANSFER & STORAGE COMPANY, a corporation,
STOCKTON TRANSFER COMPANY, a corporation,
ELECTRIC TRANSFER & STORAGE COMPANY,
YELLOW VAN SHIPPING COMPANY, YELLOW LIFT
VAN COMPANY, YELLOW VAN & STORAGE COMPANY,
C. A. BUCK COMPANY, NICKELL TRANSFER COMPANY,
HOLMES EXPRESS & STORAGE COMPANY, BAKER
TRANSFER & STORAGE COMPANY, LOS ANGELES
WAREHOUSE COMPANY, GRIGGS VAN LINES,
TRIANGLE TRANSFER & STORAGE COMPANY OF
SAN DIEGO, FIRST DOE CORPORATION, SECOND DOE
CORPORATION, THIRD DOE CORPORATION, FOURTH
DOE CORPORATION, FIFTH DOE CORPORATION, SIXTH
DOE CORPORATION, SEVENTH CORPORATION, EIGHTH
DOE CORPORATION, NINTH DOE CORPORATION, TENTH
DOE CORPORATION, ELEVENTH DOE CORPORATION,
TWELFTH DOE CORPORATION, THIRTEENTH DOE CORPOR-
ATION, FOURTEENTH DOE CORPORATION, FIFTEENTH
DOE CORPORATION, FIRST DOE, SECOND DOE, THIRD
DOE, FOURTH DOE, FIFTH DOE, SIXTH DOE, SEVENTH
DOE, EIGHTH DOE, NINTH DOE, TENTH DOE, ELEVENTH
DOE, TWELFTH DOE, THIRTEENTH DOE, FOURTEENTH
DOE AND FIFTEENTH DOE,

Defendants.

ORIGINAL

Case No. 3226.

CALIFORNIA INTERURBAN MOTOR TRANSPORTATION
ASSOCIATION,

Complainant,

vs.

SAFEWAY TRANSFER VAN & STORAGE COMPANY,
a corporation, ARGONNE FIREPROOF STORAGE
COMPANY, BUSK VAN & STORAGE COMPANY,
HIGHWAY TRANSPORTATION COMPANY, OWL
MOVING COMPANY, INC., DICK'S VAN & STORAGE
COMPANY, TURNER VAN & STORAGE COMPANY, SUN
VAN & STORAGE COMPANY, FIRST DOE CORPORATION,
SECOND DOE CORPORATION, THIRD DOE CORPORATION,
FOURTH DOE CORPORATION, FIFTH DOE CORPORATION,
SIXTH DOE CORPORATION, SEVENTH DOE CORPORATION,
EIGHTH DOE CORPORATION, NINTH DOE CORPORATION,
TENTH DOE CORPORATION, ELEVENTH DOE CORPORATION,
TWELFTH DOE CORPORATION, THIRTEENTH DOE CORPOR-
ATION, FOURTEENTH DOE CORPORATION, FIFTEENTH
DOE CORPORATION, FIRST DOE, SECOND DOE, THIRD
DOE, FOURTH DOE, FIFTH DOE, SIXTH DOE, SEVENTH
DOE, EIGHTH DOE, NINTH DOE, TENTH DOE, ELEVENTH
DOE, TWELFTH DOE AND THIRTEENTH DOE,

Defendants.

Case No. 3227.

Reginald L. Vaughan, for complainants.

Sanborn & Roehl and Frank B. Austin, for defendants

Yellow Vans Associated, Yellow Van Transfer &
Storage Co., Pierce-Rodolph Co., Ltd., U. C. Ex-
press & Storage Co., a corporation, Griggs Van &
Storage Co. Ltd., Ventura Transfer Company, Crown
Transfer & Storage Co., Stockton Transfer Co.,
C. C. and C. E. Lockett, doing business as Electric
Transfer & Storage Co., C. A. Buck, doing business
as C. A. Buck Co., A. W. Nickell, doing business as
Nickell Transfer Co., W. R. Holmes, doing business
as Holmes Express & Storage Co., C. Fred Baker,
doing business as Baker Transfer & Storage Co.,
Los Angeles Warehouse Company, and Triangle Transfer
& Storage Company.

C. P. Von Herzen, for Beverly Hills Transfer & Storage
Co., Argonne Fireproof Storage Company, Busk Van &
Storage Company and Safeway Transfer Van & Storage
Company.

Dixon & Howell and J. J. Laton, for Sun Moving & Storage
Company and Highway Transportation Company.

Scott Elder, for Regulated Carriers.

H. W. Hobbs, for Southern Pacific Company and Pacific
Motor Transport Company.

CARR, Commissioner:

O P I N I O N

These two cases, which were consolidated and heard together,

involve the operations of twenty-one defendants.¹ In reality, they involved that number of separate controversies, because the business of each defendant differs somewhat from that of each of the others. In some instances the routes over which the operations complained of are conducted vary. In general, the lawfulness of an extensive furniture moving business between Los Angeles and San Francisco Bay points and between San Diego, Santa Barbara, Burlingame, Bakersfield, Fresno, Stockton and Sacramento and these two metropolitan centers are drawn into question.

The complaints were each filed on March 23, 1932. Shortly after issue was joined, Case No. 3226 was set for hearing on June 21, but at the request of the complainant and with the acquiescence of counsel for the defendants it was continued to August 23. Case No. 3227 was placed on the calendar for hearing on that date. Hearings were had at San Francisco on August 23, 24 and September 7, and at Los Angeles on August 25, 26, 31 and September 1. The two cases were argued orally on September 21 and submitted.

A brief preliminary history of truck regulation in California, together with an outline of prior applications to the Commission by certain of the defendants is pertinent.

On December 14, 1916, the State Supreme Court handed down its decision in Western Association, etc. vs. Railroad Commission, 173 Cal. 802, in which it held that under Sec. 22 of Article 11 of the Constitution the Railroad Commission had certain regulatory powers over companies transporting freight for hire over the public highways by means of motor trucks along routes not exclusively within the limits of a municipality.

1. Yellow Van & Storage Co., Triangle Express, Inc., Yellow Van Shipping Co. and Yellow Lift Van Co. appeared in the list of named defendants. These were mere names. There were no such operating entities. Griggs Van Lines also was named in this list but this is a certificated carrier and no evidence was adduced tending to show unlawful operations by it. No evidence was adduced as to Sun Moving & Storage Co. and a dismissal was asked, the same being true as to Triangle Express, Inc.

At the next session of the legislature there was enacted a comprehensive measure providing for the regulation of operators of trucks "used in the business of transportation of ***** property ***** as a common carrier ***** for compensation over any public highway in this state between fixed termini or over a regular route." (Chapter 213, Statutes of 1917). Included in the powers of regulation vested in the Railroad Commission by this act was that of certification. Certification, however, was not required as to operations conducted in good faith at the time the act became effective.

The State was thus launched upon an entirely new field of regulation. Hundreds of truck operators, large and small and in business in various parts of California, were affected. The act covered the operation of passenger stages equally with freight carrying trucks. Operators of these were no less numerous than those of trucks. The practical task of subjecting all of these to the processes of regulation was stupendous. The Commission moved slowly, devoting its attention first largely to the passenger carrying stages. Operators were not clear as to the meaning and effect of the legislation. The confusion naturally incident to the carrying out of this new State policy was increased by legislative changes in the act and a series of court decisions.

In 1923 the act was amended so as to except from regulation the movement of produce or instruments of husbandry, but on April 27, 1925, the Supreme Court, in Franchise Motor Freight Association vs. Seavey, 196 Cal. 77, held this exception to be unconstitutional and void.

About six months later, and on October 1, 1925, the State Supreme Court rendered its decision in Frost vs. Railroad Commission, 197 Cal. 230, in which the statute of 1917 was construed to require certification of private carriers operating for compensation on the public highways. This case, however, was carried to the United

States Supreme Court, which in Frost v. Railroad Commission, 271 U.S. 583, on June 7, 1926, reversed the State Court, holding the act unconstitutional to the extent it applied to the operations of a private or contract carrier.

On December 31, 1925, while the Frost case was in process of being appealed, the Railroad Commission, after very careful consideration, rendered its opinion and order in the so-called Ben Moore case, 27 C.R.C. 388, in which it was held that the Commission had no jurisdiction to certificate a radial "on call" operator. This decision was, on March 1, 1926, affirmed by the State Supreme Court in Harm v. Railroad Commission, S.F. No. 11972.

During the period from the enactment of the basic act until the date of the Ben Moore decision, an increasing number of applications for certification were filed by truck operators, the number being particularly large following the decision of the State Supreme Court in the Frost case.²

Of the defendants herein, ten, either by themselves or their predecessors in interest, filed applications for certificates.³

2. Thus, in 1918, 56 applications were filed, in 1919, 101 applications, in 1920, 103 applications, in 1921, 140 applications, in 1922, 160 applications, in 1923, 110 applications, in 1924, 90 applications, and in 1925, 706 applications. Many of the applications thus filed were crude in form. Generally they sought an approval of the character of business the applicant had been carrying on. Operators unfamiliar with the processes of regulation apparently overlooked the simple procedure of filing tariffs covering the operations existing in 1917.

3. Thus, on August 26, 1925, Pierce-Rodolph Storage Company, predecessor in interest of defendant, Pierce-Rodolph, Ltd., filed its application for a certificate for the transportation of household goods, etc. "between San Francisco ** and points within 60 miles within any direction therefrom or from such points to San Francisco." Authority to serve points within a radius of 25 miles on the main traveled highways along these routes was also requested. A. M. Griggs, predecessor in interest to defendant Griggs Van & Storage Company, Ltd., on November 18, 1925, applied for certification for the transportation on call of household goods, etc. between Los Angeles and San Francisco Bay points and various intermediate points. Ventura Transfer & Storage Company, predecessor of Ventura Transfer and Storage Company, Ltd., on July 20, 1925, applied for a certificate authorizing a general trucking business radiating out from Ventura. Crown Transfer and Storage Company, on October 31, 1925, filed an application describing its business and specifying the trips it had taken in the preceding few months and in

After the Ben Moore decision the Commission circularized the various applicants for certification whose applications indicated a radial operation, apprising them of the construction placed upon the act by the commission and advising them that their applications would be dismissed without prejudice by the Commission unless they filed amendments "proposing operations between fixed termini or over a regular route or routes." Following this circularization, many of the defendants or their predecessors either asked to have their respective applications dismissed, or the applications were dismissed at the instance of the Commission for lack of jurisdiction.⁴

3 Cont'd. effect requested the Commission to determine whether or not it needed a certificate for such operations and if it did to grant one. On October 5, 1922, the predecessor in interest of the Stockton Transfer Company, Inc. applied for a certificate between Stockton and various points, including Sacramento and San Francisco Bay points. This application was withdrawn and on October 28, 1925 a second application was filed specifying definite routes. Electric Transfer and Storage Company sought a certificate on October 17, 1925. Rights were sought as far north as Redding and as far south as the State boundary. No regular routes were specified. Nickell's Transfer & Storage Company applied for a certificate on July 24, 1925 for service within a radius of 100 miles of San Jose. W. R. Holmes, owner of Holmes Express and Storage Company, on December 31, 1925 applied for a certificate for the transportation of household furniture within a radius of 300 miles from Fresno. C. Fred Baker, on December 28, 1925, applied for a certificate from Bakersfield to various points in California, 79 definite routes being specified. Triangle Transfer and Storage Company, on March 24, 1924, sought a certificate between Los Angeles and San Diego and points within 30 miles of the termini. The application was granted in substance. William L. Carpenter, owner of Argonne Fireproof Storage Company, on November 23, 1925, applied for a certificate covering all points within a radius of 150 miles of Los Angeles.

4. On March 19, 1926 the application of Pierce-Rodolph Storage Company was, at its request, dismissed without prejudice. On October 25, 1926 the Griggs application was dismissed without prejudice, the order reciting both public hearings and a request by the applicant. On October 16, 1926 the application of Ventura Transfer & Storage was, at its request, dismissed without prejudice. On February 15, 1926 the Crown Transfer & Storage Company's application was dismissed without prejudice at its request. The application of the Stockton Transfer Company was denied on March 2, 1927, but only after a public hearing and findings that its operations were purely radial in nature. On March 16, 1926 the application of Electric Transfer and Storage Company was dismissed upon the ground that its character of service did not require a certificate. The application of Nickell's Transfer and Storage Company was dismissed on March 16, 1926 for lack of jurisdiction. Holmes' application was dismissed on June 19, 1926 for lack of

Two of the defendants, namely, C. A. Buck, doing business under the name of C. A. Buck Company, and U. C. Express & Storage Company, employed counsel to file for them applications for certificates, but upon the decision referred to being made and following the circularization to which reference has been made were advised that the filing of an application would be an idle act and none was filed.

One of the defendants, Stockton Transfer Company, by its predecessors, filed a second application (No. 11522) for a certificate on July 31, 1925, specifying various definite routes, among which was one from Stockton to San Francisco and from Stockton to Oakland. A public hearing was had on the application and on March 2, 1927 the Commission, by its Decision No. 18035, dismissed the application on the ground that the operations as shown by the evidence were wholly comparable to those passed upon in the Ben Moore case. It is significant that here the applicant not only urged the existence of prescriptive right for the conduct of the service sought but also sought a certificate de novo. In disposing of this contention it was said:

"In view of the fact that the testimony was that the character of the business is the same now as on May 1, 1917, when the Auto Transportation Act became effective, and that no certificate is now required for the conduct of such business, it appears that no prescriptive right is vested in applicant."

On April 10, 1930, Bekins Van Lines, Inc. and Lyons Van Line, Inc. filed a complaint against A. M. Griggs, doing business under the firm name and style of Griggs Van & Storage Company, alleging common carrier operations between Los Angeles and Santa Barbara and between Santa Barbara and San Francisco. On September 10, 1930 the

4 Cont'd. jurisdiction. Baker's application was, on March 16, 1926, dismissed for lack of jurisdiction. Carpenter's application was dismissed on March 30, 1926 for lack of jurisdiction.

complaint was dismissed, dismissal being grounded upon the theory that defendant was performing the same service as to which the Commission had earlier held that certification was not required. (Bekins Van Lines, et al. vs. A. M. Griggs, 35 C.R.C. 187). It was pointed out in the opinion that defendant averaged about six trips a month to Los Angeles and one every two or three months to San Francisco. Application for rehearing was filed and the Commission, on December 30, 1930, issued its "Opinion and Order on Rehearing" directing the defendant Griggs "within sixty days" to "cease and desist operations between Los Angeles and Santa Barbara unless within thirty days *** he make application to the Commission for a certificate of public convenience and necessity." It was further ordered that in the event such application was filed proceedings be stayed until the application was disposed of. Such application was filed and on April 20, 1931 Griggs was granted a certificate for service between Santa Barbara and Los Angeles and intermediate points. (Re Griggs, 36 C.R.C. 183).

Two other recent decisions of the Commission, as yet unpublished, bear upon the disposition proper to be made of these cases. In Pacific Freight Lines vs. Lawrence Warehouse Company, by Decision 24489 of date February 15, 1932, the Commission held that although the Lawrence Warehouse Company had never filed tariffs it was, on May 1, 1917, according to the record, actually operating in good faith as a common carrier by truck between Oakland and various East Bay points and that its continued operations in that respect should not be ordered discontinued.

In Re Suspension of Pacific Motor Tariff Bureau Tariff No. 6, it appeared that various East Bay operators who had never filed tariffs before or, with one exception, had been certificated to operate between points named in the tariff, filed a general tariff covering operations between various points about San Francisco Bay. The tariff

was suspended. At the hearing evidence was presented that the various parties to the tariff or their immediate predecessors in interest had each been operating in good faith as a transportation company on and prior to May 1, 1917. By Decision No. 24935 of date June 27, 1932, it was held that under these circumstances the tariff filing was justified and the order of suspension was revoked and cancelled. Thus, in effect, a prescriptive right was recognized and given a definite status.

The extent of the operations of the various individual defendants may be summarized as follows:

Pierce-Rodolph, Ltd., a corporation. Storage warehouse in San Francisco. No long distance hauling with its own equipment. Some radial operations about the San Francisco Bay region. Orders for long distance movements turned over to others on a commission basis, the volume of this business being small. An old concern which by itself or its predecessors has carried on the same type of operations since prior to 1917.

U. C. Express & Storage Company, a corporation. Storage warehouses in Oakland and Berkeley. Has developed an extensive long distance business between San Francisco Bay points and Los Angeles. An average of not less than 3 round trips a month in 1932. In addition, some long distance business thrown to others on a commission basis. An old concern which has carried on the same type of operations since 1917.

Beverly Hills Transfer & Storage Company, a corporation. No evidence as to any long distance hauling and only fragmentary evidence as to its general business.

Griggs Van & Storage Company, Ltd., a corporation. Storage warehouse in Santa Barbara. Apparently averaged about one trip a month between Santa Barbara and San Francisco Bay points and intermediate points in 1932.

Ventura Transfer Company, Inc., a corporation. Storage warehouse in Ventura. No long distance hauling to San Francisco Bay points. Some hauling to Los Angeles and some to Santa Barbara. In 1932 averaged about two trips a month over routes in issue. An old concern with no change in character of business.

Crown Transfer Company, a corporation. Storage warehouse in Pasadena. Does very little long distance hauling to or from Pasadena. No trips shown over routes in issue. An old concern which by itself or its predecessors has done the same character of business for many years.

Stockton Transfer Company, a corporation. A storage warehouse in Stockton. In 1932 averaged about 2 trips a month to San Francisco Bay points. An old concern which by itself or its predecessors has carried on the same type of business since prior to 1917.

Electric Transfer & Storage Company, a partnership composed of C. C. and C. E. Lockett. A storage warehouse in Sacramento. No hauling this year to Los Angeles. Averages about 1½ trips a month between Sacramento and San Francisco Bay points. An old concern. Business unchanged since about 1913.

C. A. Buck Company, a fictitious name under which C. A. Buck operates. A storage warehouse at Burlingame. Three trips to Los Angeles this year. Does not seek long distance business. When it comes usually turns it over to others on a commission basis. An old concern. Operations the same as prior to 1917.

Nickell Transfer Company, the name under which A. W. Nickell operates. Storage warehouse in San Jose. In 1932 about 12 trips over routes specified, none of which as far south as Los Angeles. Turns some long distance business over to others. An old concern. Operations the same as in 1917.

Holmes Express & Storage Company, the name under which W. R. Holmes operates. Storage warehouse in Fresno. Has averaged about a trip and a half a month to Los Angeles and about three a month to San Francisco Bay points. Some long distance business turned over to others. An old concern with operations the same for many years.

Baker Transfer & Storage Company, the name under which C. Fred Baker operates. Storage warehouse in Bakersfield. During the first half of 1932 made 6 trips to San Francisco or intermediate points, and 23 trips to Los Angeles or intermediate points. An old concern. Business the same for many years.

Los Angeles Warehouse Company, a corporation. Several storage warehouses in Los Angeles. No trips to San Francisco Bay points. Very little long distance hauling. Some business turned over to others. An old business. No change for many years.

Triangle Transfer & Storage Company of San Diego, a partnership, Ellis Brown, a partner. Storage warehouse in San Diego. Has certificated line from San Diego to Los Angeles. In addition to certificated business hauls irregularly between San Diego and various points in the State. Trips varying from one to seven a month. Evidence uncertain as operations over routes in issue. Operations the same as in 1913.

Van

Safeway Transfer & Storage Company, a corporation. Averages slightly more than a trip a month from Los Angeles to San Francisco Bay points.

Argonne Fireproof Storage Company, the name under which Wm. L. Carpenter operates. Has various warehouses in Los Angeles, one in San Francisco and several without the State. Not less than 23 trips between Los Angeles and San Francisco this year.

Busk Van & Storage Company. A partnership, partners changing rapidly. Evidence indicated active solicitation of long distance hauling over route in issue but uncertain as to volume of business.

Highway Transportation Company, the name under which C. W. Landis operates. Makes about three trips a month between Los Angeles and San Francisco Bay points.

Owl Moving Company. No evidence as to character or extent of business of this defendant. Apparently it had some connection with the Highway Transportation Company.

Dick's Van & Storage Company. A fictitious name under which Dick R. Spracklen at the time the complaint was filed was operating. While no answer was filed as to this defendant, Spracklen has been a rather prolific letter writer and the files contain several letters from him indicating transfers of the equipment and business, together with a plan of operation by which a van is leased by the trip to a licensed driver. This correspondence indicates that the business is now conducted under the name of The Economy Movers. The moving van was transferred on May 9th by Spracklen to Mary Graham, on May 31st by Mary Graham to Weaver Wells, on June 6th by Weaver Wells to Mary Graham, on August 16th by Mary Graham to G. E. Baugh. There is some evidence of long distance shipments being tendered to this defendant and accepted without question and in the ordinary course of business over the route in issue.

Turner Moving and Storage Company, name under which Merle N. Turner operates. Storage warehouse in Los Angeles. Averaged better than three trips a month to San Francisco Bay points in 1932.

Some of the several defendants, in addition to claiming that they were not operating over regular routes or between fixed termini, insisted with varying degrees of earnestness that they were not common carriers, having reserved the right to reject shipments offered. On this latter contention considerable difficulty was experienced in giving instances of rejection. One was specified where a proposed shipment was thought to have too many bedbugs, and another where the shipper had gotten the best of the defendant in a business deal and the defendant wished to have nothing more to do

with him. The showing upon this defense is not impressive or sufficient to overcome the very considerable evidence that these defendants held themselves out to the public to carry household furniture and personal effects and would and did transport the same whenever they could get the business.

In addition to the outline as to the operations of the various defendants indicating the extent and volume of the business transacted by them, it is significant that the defendants in Case No. 3226 were members of Yellow Vans, Associated, a non-profit corporation organized to improve the business methods of the various members, to give members the benefits of a cooperative scheme of advertising, to maintain a spirit of good will among the members, and to solicit business for the members. Members of the Association were urged to operate under the name of "Yellow Van & Storage Company." A slogan "Call a Yellow Van Anywhere" was urged and to some extent was used. Some of the defendant members actually used on their letterheads their own names, to which was added "Operating Yellow Van & Storage Company." Frequently in local telephone directories defendant members had listings of Yellow Van & Storage Company in addition to their own listings but under the same number. To a considerable degree the members cooperated among themselves in throwing business from one to another. About September, 1931, Griggs sold a van to one Frank Schnorenburg on a conditional sale contract. This was painted yellow and had on it both the name and slogan urged by the Association. Members threw business to Schnorenburg. Shortly after the complaint was filed Schnorenburg went out of business, the truck being repossessed by Griggs. When business was thrown from one member of the Association to another commissions were usually paid. When all of the movements of trucks of the defendant members of this Association over highways 99 and 101 are considered, together with the movements of the Schnorenburg van, it is apparent that there was a considerable regularity of

service occurring and that the various defendant members of the Association when securing orders for long distance hauling between the two metropolitan centers and intermediate points seldom, if ever, experienced any difficulty in arranging for the prompt movement of goods over member vans or over the Schnorenburg van. In addition to this, other defendants, not members of the Association, shopped about for return loads, thus further increasing the facilities for movement of goods.

Such, in brief, is the picture and its background with which the Commission must deal.

With the exception of a few of these defendants, no element of bad faith exists. Many of them are old and established operators, their business being of the same general nature as in 1917. Many of them during the formative years of truck regulation came before the Commission with their applications for certificates, which were in many cases dismissed because the character of operations disclosed were then believed to be such as not to call for certification. It cannot be said they were trying to defeat or evade regulation.

That these individual defendants, with but a few exceptions, are in fact common carriers is clear. Their course of business, their advertisements, their handling of mixed loads, and their general holding out to serve a portion of the public, leads irresistibly to this conclusion. It is not so clear that they are common carriers operating over regular routes or between fixed termini so as to draw them within the provisions of the Auto Stage & Truck Transportation Act of 1917. The line separating the purely casual or occasional "on call" radial operator from the one who operates over regular routes and between fixed termini is not easy of delineation. It is reasonably clear that some of these defendants fall upon one side of the line and some on another. In placing these several defendants, the judgment of this body must be formed in the light of all the surrounding

circumstances.

It does not follow from the conclusion thus expressed that those defendants whose operations bring them under the act must be summarily ordered to cease and desist their use of the public highways. Some, it appears, may have prescriptive rights by reason of similar operations in 1917 so as to fall within the rule announced in Pacific Freight Lines vs. Lawrence Warehouse Company (supra) and Re Suspension Pacific Motor Tariff Bureau Tariff No. 6 (supra). Others fall within the precedent announced in Bekins Van Lines, et al. v. Griggs, 35 C.R.C. 187, and Re Griggs, 36 C.R.C. 183. Some are within both. Those who fall within the first class should be given opportunity to file their tariffs and, if suspended, justify the same.⁵ It may hardly be gainsaid that the concept both of common carrier and regular route operations is changing in the light of experience and the body of court and commission decisions and determinations made to meet the rapidly developing business of truck transportation. And this must be kept in mind in forming an order herein, just and fair both to the public and the various parties involved.

While the somewhat loose and informal practices of throwing business one to the other as between the members of Yellow Vans Associated has in effect brought about a greater regularity of operations and service than appears from a consideration of the business of the various defendant members separately, the entire lack of control by Yellow Vans Associated of the operations and equipment of its members and the intangible nature of the acts of the members resulting in the routing of business over each other's lines negative the idea of an

5. The question of prescriptive rights can hardly be said to have been tried here. The filing of tariffs, with a suspension by the Commission, would present this precise and definite issue.

order directed either against Yellow Vans Associated or against the members collectively.

The following form of findings and order is recommended:

FINDINGS AND ORDER

Public hearings having been had in these cases and the cases having been submitted for decision, the Railroad Commission of the State of California, after giving full consideration to the record before it and the argument of counsel, concludes and finds as follows, to-wit:

The defendants hereinafter named as to the routes and termini set opposite their respective names are each operating as a "transportation company" as defined in Sec. 1, sub. (c) of the Auto Stage and Truck Transportation Act (Chap. 213, Stats. of 1917) and are each engaged as a common carrier in transporting for hire over the public highways new and second-hand household goods, office furniture and personal effects without having a certificate of public convenience and necessity for such service: -

- (a) U. C. Express & Storage Company, a corporation, between San Francisco and Los Angeles and intermediate points;
- (b) Griggs Van & Storage Company, Ltd., a corporation, between Santa Barbara and San Francisco and intermediate points;
- (c) Ventura Transfer Company, Inc., a corporation, between Ventura and Los Angeles and intermediate points, between Ventura and Santa Barbara, and between Ventura, Menlo Park and intermediate points;
- (d) Stockton Transfer Company, a corporation, between Stockton and San Francisco and intermediate points;
- (e) Electric Transfer and Storage Company, a partnership composed of C. C. and C. H. Lockett, between Sacramento and San Francisco and intermediate points;
- (f) C. A. Buck, doing business under the name of C. A. Buck Company between San Mateo and Los Angeles.

- (g) A. W. Nickell, doing business under the name of Nickell Transfer Co. between San Francisco, Oakland, Berkeley, San Jose, Los Gatos, Del Mar, Santa Barbara and intermediate points;
- (h) W. R. Holmes, doing business under the name of Holmes Express & Storage Co., between Fresno and Los Angeles and intermediate points and between Fresno and San Francisco and intermediate points;
- (i) C. Fred Baker, doing business under the name of Baker Transfer & Storage Co., between Bakersfield and Los Angeles and intermediate points and between Bakersfield and San Francisco and intermediate points;
- (j) Safeway Transfer^{Van} & Storage Company, a corporation, between Los Angeles and San Francisco Bay points of San Francisco, Oakland, Berkeley, Alameda, Emeryville, Piedmont, Albany and Richmond, and intermediate points;
- (k) William L. Carpenter, doing business under the name of Argonne Fireproof Storage Co., between Los Angeles and San Francisco Bay points named in (j) supra, and intermediate points;
- (l) C. W. Landis, doing business under the name of Highway Transportation Company, between Los Angeles and San Francisco Bay points mentioned in (j) supra, and intermediate points;
- (m) Dick R. Spracklen, doing business under the name of Dick's Van & Storage Company, or Dick's Express, between Los Angeles and San Francisco Bay points mentioned in (j) supra, and intermediate points;
- (n) Merle N. Turner, doing business under the name of Turner Moving & Storage Company, between Los Angeles and San Francisco Bay points named in (j) supra, and intermediate points.

Based on the findings herein and in the opinion,

IT IS HEREBY ORDERED that

U. C. Express & Storage Company, a corporation,

Griggs Van & Storage Company, Ltd., a corporation,

Ventura Transfer Company, Inc., a corporation,

Stockton Transfer Company, a corporation,

Electric Transfer and Storage Company, a partnership composed of C. C. and C. H. Lockett,

C. A. Buck, doing business under the name of C. A. Buck Company,

W. R. Holmes, doing business under the name of Holmes Ex-
press & Storage Co.,

A. W. Nickell, doing business under the name of Nickell
Transfer Co.,

C. Fred Baker, doing business under the name of Baker
Transfer & Storage Company,

Safeway Transfer^{Van} & Storage Company, a corporation,

William L. Carpenter, doing business under the name of
Argonne Fireproof Storage Company,

C. W. Landis, doing business under the name of Highway
Transportation Company,

Dick R. Spracklen, doing business under the name of Dick's
Van & Storage Company and Dick's Express, and

Merle N. Turner, doing business under the name of Turner
Moving & Storage Company,

each cease and desist, directly or indirectly, or by any subterfuge or device, from operating as a transportation company between the termini specified in the foregoing findings, as to each unless and until they shall have obtained a certificate of public convenience and necessity authorizing such service, or otherwise shall have established their right to continue such service.

(a) This order, however, as to the defendants

U. C. Express & Storage Company,

Ventura Transfer Company, Inc.,

Stockton Transfer Company,

Electric Transfer and Storage Company, a partnership composed of C. C. and C. H. Lockett,

C. A. Buck, doing business under the name of C. A. Buck Company,

W. R. Holmes, doing business under the name of Holmes Ex-
press & Storage Company,

A. W. Nickell, doing business under the name of Nickell
Transfer Co., and

C. Fred Baker, doing business under the name of Baker
Transfer & Storage Company,

shall not become effective until January 1, 1933, and as to such of said defendants as shall prior to said date have filed with this

Commission tariffs for such service shall not become effective at all as to service covered by such tariffs, respectively, as are allowed to go into effect, or approved and justified if suspended.

(b) This order as to the defendants

Venture Transfer Company, Inc.,

Stockton Transfer Company,

Electric Transfer & Storage Company, a partnership composed of C. C. and C. E. Lockett,

W. R. Holmes, doing business under the name of Holmes Express & Storage Company,

C. Fred Baker, doing business under the name of Baker Transfer & Storage Company, and

William L. Carpenter, doing business under the name of Argonne Fireproof Storage Company,

shall not become effective until January 1, 1933, and as to such of said defendants as shall prior to said date have applied to this Commission for a certificate of public convenience and necessity for such service it shall not go into effect until the final determination of such application.

IT IS FURTHER ORDERED that the complaints as against the other named defendants be dismissed without prejudice.

The effective date of this order, except as otherwise herein provided, shall be twenty (20) days from the date hereof.

The foregoing opinion, findings and order are hereby approved and ordered filed as the opinion, findings and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of October, 1932.

C. C. Seaver
Leon C. Whidell
M. J. Curran
M. B. Karpis
Fred G. Stewart
Commissioners.