

Decision No. 25276.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on)
the Commission's own motion into the)
operations, rates, regulations, time)
schedules, practices, contracts, and/)
or certificate of Helene G. Thorne-)
will, Wm. F. Vernor, Martin L. Smith,)
Peter Fornaca, Roy M. Leitz, Malvin)
Blacklock, Albert Buck, John Doe No. 1,)
John Doe No. 2, John Doe No. 3, John)
Doe No. 4, John Doe No. 5, Jane Doe)
No. 1 and Jane Doe No. 2, for the)
transportation of property as a common)
carrier between Santa Cruz and San)
Francisco and intermediate points.)

Case No. 3318.

ORIGINAL

H.J. Bias, for Helene G. Thornewill, Respondent.

Simon M. Collins, for M.L. Smith and the
copartnership.

Edward Stern, for Railway Express Agency, Inc.,
amicus curiae.

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

William F. Vernor, in propria persona.

BY THE COMMISSION:

O P I N I O N

By its order dated August 16, 1932, this Commission cited Helene G. Thornewill, William F. Vernor, Martin L. Smith, Peter Farnaco, Roy M. Leitz, Malvin Blacklock, Albert Buck, and others under John Doe aliases, to appear before Examiner Kennedy at Santa Cruz on August 26 and then and there show cause why they, or either or any of them, should not be ordered to cease and desist from conducting an operation for the transportation of freight as a common carrier between Santa Cruz and San Francisco and certain intermediate points, including Davenport and Capitola, unless and

until they shall have secured from the Commission a certificate of public convenience and necessity therefor. All the parties appeared personally except Buck, who appeared by his counsel.

The Thornewill operation has been before the Commission in various forms for the past five years and the Commission, by its Decision No. 21473 in Case No. 2651, Southern Pacific Co. v. Thornewill 35 C.R.C. 450, dated August 20, 1929, revoked all certificates previously issued to Thornewill for limited operations between termini and certain intermediates. Thereafter a complaint was filed in the Superior Court for the recovery of penalties for operation in violation of the Auto Stage and Truck Transportation Act. (People of the State of California v. Thornewill, No. 213659, San Francisco). This action was compromised upon the payment of seven hundred and fifty dollars. Early in 1930 Leslie A. Thornewill, owner of the trucking business, died and Helene G. Thornewill, succeeded to all his interests and property. On August 8, 1931, Case No. 3104 was filed by Southern Pacific Railway and others against Helene G. Thornewill, seeking an order requiring her to cease and desist from the transportation of property as a common carrier between Santa Cruz and San Francisco. During the progress of the hearings on this case, Mrs. Thornewill transferred all her rights and interests to William F. Vernor for a consideration of \$16,000. together with certain contracts with consignors and consignees for the transportation of property; and thereupon Vernor assumed full charge of the business and proceeded to continue the operation of the Thornewill Trucking Company. On March 15, 1931, on motion of complainants, Vernor as a John Doe was made a party in Case No. 3104 and the matter set for further hearing at Santa Cruz on August 9, 1932. At this hearing Vernor testified that

Mrs. Thornewill had foreclosed under a chattel mortgage upon all the property he acquired from her, including the trucking business and the contracts therefor, and that he had relinquished all interest in the business and at the time of the hearing had no interest therein. It further appeared at this hearing that Mrs. Thornewill, after reclaiming the property and business under foreclosure of the chattel mortgage, had transferred the business and property to respondents Martin L. Smith, Peter Farnaco, Ray M. Leitz, Malvin Blacklock and Albert Buck, who formed a copartnership (Exhibit No. 39), took possession and continued the operation of the business. These transactions all occurred as of June 29, 1932.

In view of this shifting of responsibilities during the progress of the hearings, the Commission issued the order in the above mentioned case, No. 3318, citing all the parties to appear and show cause why each, any or all of them should not be ordered to cease and desist from the transportation of property as a common carrier between Santa Cruz and San Francisco.

William F. Vernor, respondent, testified that he had turned over all the property acquired from Mrs. Thornewill under the foreclosure of the chattel mortgage and had relinquished all claim thereto, except as to one truck. He further testified that all the trucks which he turned over are now in operation in the Thornewill service. In relinquishing his ownership, Vernor testified, he understood he was to be employed by the Thornewill Trucking Company under the partnership; that he had reported at the office daily for the purpose of filling such employment, but that nothing had ever been given him to do and he had received no pay.

Respondent Helene G. Thornewill testified that when Vernor became unable to make his payments on the property acquired

by him under the chattel mortgage, she had foreclosed the mortgage and recovered the property; and that thereupon the partnership had entered into an arrangement with Mrs. Thornewill to take over and operate the property under a new bill of sale and chattel mortgage. All the essential documents relating to these transactions are on file as exhibits in this proceeding.

Martin L. Smith, one of the copartners and manager and bookkeeper for the business, testified that the business conducted by the partnership was the same in all respects as that conducted by Vernor and Mrs. Thornewill, and by Mr. Thornewill himself before his death. Certain contracts had been listed during the Vernor ownership; and while the partnership did not have the contracts made with certain shippers in its possession by assignment, Smith, who had been bookkeeper for Vernor, knew generally their import and observance.

The claim was made by the partnership that the business was a contract business, which claim had previously been set up in the proceedings against Helene G. Thornewill and against Vernor. The contracts were of a type frequently held by this Commission not to be true contracts. The shippers who were parties to the contracts testified that they simply signed them in order to retain the Thornewill service and that the contents or provisions meant nothing to them and that they were understood to impose no obligation whatsoever. In all, thirty-four contracts were set up by the respondents. The contracts themselves are not in the record and neither Vernor nor Mrs. Thornewill nor the partners seemed to know where they were. At any rate, they were the same contracts, it was stipulated, as were produced in Case No. 3104.

Examination of the shipping records subsequent to June 28, 1932, shows that the service conducted transportation for

59 shippers in Santa Cruz alone, none of whom was a party to a written contract. This was not inclusive of such shippers in San Francisco as may have used the service without contract. Mr. Smith admitted that all these customers had been served in addition to the ones said to be under contract.

The testimony of Peter Farnaco, Roy M. Leitz and Malvin W. Blacklock was to the effect that scheduled operations were conducted daily between termini and that the volume of business required the use of seven or eight trucks daily, together with two trailers, in the line haul and pickup and delivery service. Terminals are maintained at San Francisco and Santa Cruz and regular pickup and delivery service is given as far south of Santa Cruz as Capitola and as far north as Davenport. Service has also been rendered by pickup at Alma, an intermediate point, for delivery at San Francisco.

By agreement with Mrs. Thornewill, who is also executrix of the estate of Leslie A. Thornewill, deceased, the business and property were sold as a part of the estate; such sale to be confirmed by the court in its order of final distribution. Under the terms of the agreement, the partnership paid no money, but agreed to take over the business and property under the sole obligation that the partnership would pay Mrs. Thornewill the sum of \$9,600. for the physical property, payable at the rate of \$200. a month; would pay \$100. a month for the lease of the Thornewill terminal owned by the estate of Leslie A. Thornewill, of which Mrs. Thornewill is the sole legatee; pay all the expenses of the operation of the business, including the maintenance and preservation of the equipment, and whatever excess accrued would be divided equally among the five partners. The testimony shows that all of the obligations had been met by the partnership with the exception that the profits had not been sufficient to make a division, nor had the salaries been paid in full to the members of the partnership for their services, but rather, each had drawn only a limited amount for living expenses.

Mr. Smith, who is acting as manager for the partners, testified that it was their intention, as soon as possible, to file an application with this Commission for a certificate to conduct the business legally, but that such action was not deemed desirable, in view of the pendency before the Commission of a similar application by W.H. Crowe & Son (Application No. 18028), for authority to conduct service between the same points.

Giving due consideration to the entire record in the instant proceeding, we find that the business is actually in the possession of and being conducted by the five respondents Smith, Fornaca, Leitz, Blacklock and Buck, who are copartners; that they are conducting for the public, at established rates, partly under so-called contracts and partly without contracts, a transportation business as a common carrier between Davenport, Capitola, Santa Cruz and San Francisco, serving Alma as an intermediate point; that under the terms of that agreement, the property and the business has been transferred to the partnership, that the interest of Helene G. Thornewill is such that she has become and is the chief beneficiary of the conduct of such service, and as such mortgagee and lessee has a direct interest in the preservation of the illegal operation shown; that she and the five partners are so bound together that their interests are identical; and finally, that at the present time William F. Vernor retains an interest in the business in his admitted status as an employee.

We therefore conclude that the operation is being conducted by all the parties named and that an order to cease and desist should issue.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California

Constitution and the Public Utilities Act vests the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt; a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Truck Act (Statutes 1917, Chapter 213), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000.00, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

The Secretary of the Commission will be directed to mail certified copies of this opinion and order to shippers who are known to be using the service and facilities of respondents, upon the said opinion and order becoming final.

O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY FOUND AS A FACT that respondents Helene G. Thornewill, William F. Vernor, Martin L. Smith, Peter Fornaca, Roy M. Leitz, Malvin Blacklock and Albert Buck are engaged in the transportation of property by auto truck for compensation, and as a common carrier, between fixed termini and over a regular route on the public highways of this state, viz: between Santa Cruz and

San Francisco without first having obtained a certificate of public convenience and necessity for such operations, as required by the Auto Stage and Truck Transportation Act, Chapter 213, Statutes of 1917, as amended. Therefore,

IT IS HEREBY ORDERED that respondents Helene G. Thornewill, William F. Vernor, Martin L. Smith, Peter Fornaca, Roy M. Leitz, Malvin Blacklock and Albert Buck shall immediately cease and desist such common carrier operations, as described in the preceding paragraph, and notice is hereby given that such common carrier operations shall not be conducted by said respondents or any of them, either directly or indirectly, or by their agents, employees, representatives or assignees, unless and until a certificate of public convenience and necessity shall have been obtained, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause personal service of a certified copy of this decision to be personally served upon Helene G. Thornewill, William F. Vernor, Martin L. Smith, Peter Fornaca, Roy M. Leitz, Malvin Blacklock and Albert Buck; that he cause certified copies thereof to be mailed to the District Attorneys/ ^{of the Counties} of Santa Cruz, Santa Clara, San Mateo, the City and County of San Francisco and Department of Public Works, Division of Highways, Sacramento, and, upon this decision becoming final, he shall cause certified copies thereof to be mailed to shippers who are known to be using the service and facilities of respondents.

This order shall become effective twenty (20) days after the date of service above mentioned.

Dated at San Francisco, California, this 24th day of

October 1932.

W. C. Deane
Leon A. White
W. H. Cunn
W. B. Lewis
Jos. G. Stewart
COMMISSIONERS.