

Decision No. 25705

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC.,  
a corporation,

Complainant,

vs.

J. ELLIS, FIRST DOE, SECOND DOE, THIRD  
DOE, FOURTH DOE, FIFTH DOE, FIRST DOE  
CORPORATION, SECOND DOE CORPORATION,  
THIRD DOE CORPORATION, FOURTH DOE  
CORPORATION, FIFTH DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 3439.

R. L. Vaughan and Scott Elder, for Complainant.

Thomas Maul for Defendant Ellis.

WARE, Commissioner:

O P I N I O N

By complaint filed on December 15, 1932, complainant charges the defendant J. Ellis with unlawful common carrier operations by auto truck between Sacramento and Placerville.

The issues having been joined and the matter having been publicly heard and submitted in Placerville on February 21, 1933, the case is now ready for decision.

The facts as developed at the hearing may be summarized briefly as follows:

For more than ten years the Defendant has been peddling produce which he has hauled in his truck from Sacramento and sold to less than ten customers in Placerville. With no desire to dedicate himself to the public as a common carrier of freight and only to accommodate his handful of customers, all of whom are retailers in and near Placerville, he has over these many years sporadically carried small orders of merchandise from Sacramento wholesalers to his Placerville retailers.

All of his customers testified at the hearing and clearly established these facts: That this occasional service of accommodation by Ellis was rendered to meet emergencies, that all movements were in one direction, to wit from Sacramento to Placerville, that they only occurred when Ellis' truck space permitted, that they were infrequent, and that the total receipts paid to this peddler for hauling these emergency orders of merchandise over a period of six months prior to the filing of this complaint were less than One Hundred Dollars (\$100.00). All of the defendant's customers have been and will continue to be regular patrons of the two common carriers operating between Sacramento and Placerville, viz.: The Southern Pacific Company and the El Dorado Motor Transportation Company, Inc.

These identical facts were disclosed before this Commission in Case 2860 wherein El Dorado Motor Transport Company, Inc. was complainant and the same J. Ellis was defendant. Decision No. 23176, dated December 13, 1930, very properly dismissed said case. The complainant in this matter must have been cognizant of this previous adjudication, and it is proper to observe that said complainant would have profited by complying with the maxim "Once bitten, twice shy."

With many enormous, flagrant and unlawful truck operators glutting the highways of California, and constricting the legitimate flow of freight revenue, this attack against the defendant Ellis appears senseless and unfortunate. The regulatory forces of this Commission are, and shall continue to be actively and usefully dedicated to the common weal. Surely the day is not at hand when any department of government should expend its time, energy and equipment in straining at gnats when there are destructive hawks to combat. The institution of this case is regrettable and its present dismissal is obvious.

O R D E R

The above numbered complaint having been duly heard and submitted for decision, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the complaint herein be and the same hereby is dismissed.

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

Dated at San Francisco, California, this 7<sup>th</sup> day of March, 1933.

Osborne  
Leon White  
W. A. C.  
M. B. Harris  
W. H. ...  
Commissioners.