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BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

SCOTT, MAGNER AND MINNER,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

No. 222.

J. O. Bracken, for complainants,

G. W. Durbrow and George D. Squires for defendant.

DECISION.

Loveland, Commissioner.

This action is to recover alleged overcharges on shipments of hay from various points in California to Oakland, California, upon the ground that commodity rates to Oakland were applied, said rates being higher than Class C rate to Alameda. As Oakland is claimed to be intermediate to Alameda, complainants maintain that Class C rate should have been applied. Defendant claims that, under a proper interpretation of the tariff, Oakland is not intermediate to Alameda, as the logical and reasonable movement from points of origin on shipments in question would be from Tracy via Miles rather than by the longer and circuitous route via Martinez.

The Commission, however, does not consider it necessary to pass upon these conflicting contentions, for the reason that the claims in this case have all become barred by the statute of limitations. In this connection defendant has pleaded (1) that this commission has no

1 jurisdiction to award reparation on any claims accruing
2 prior to October 10, 1911, (the day on which Section
3 21 of Article XII of the Constitution was amended); and
4 (2) that even if the commission has such power as to such
5 claims, the particular claims which are the subject matter
6 of this action have become barred by the statute of
7 limitations.

8 The defendant's first contention we consider
9 to be without merit. Section 21 of Article XII of the
10 Constitution of this state, as amended on October 10, 1911,
11 reads in part as follows:-

12 "Nothing herein contained shall be construed
13 "to prevent the railroad commission from ordering
14 "and compelling any railroad or other transportation
15 "company to make reparation to any shipper on
16 "account of the rates charged to said shipper
17 "being excessive or discriminatory, provided no
18 "discrimination will result from such reparation."

19 That a shipper's rights were violated even
20 before October 10, 1911, by the imposition by a carrier
21 of an excessive or discriminatory charge is clear. Excessive
22 charges were forbidden by common law (see Hutchinson, Carriers
23 3rd ed. paragraph 521; Texas & Pacific Railway Company vs.
24 Abilene Cotton Oil Company, 204 U.S. 426). Charges in
25 violation of the long and short haul clause and discrimi-
26 natory charges were forbidden by Section 21 of Article XII
27 of the Constitution and by statute. On October 10, 1911,
28 the new remedy of a proceeding before the Railroad Commission
29 attached to any such right as had not been barred by the
30 statute of limitations. While it is familiar learning
that a statute creating a right or penalty is not to be so
construed as to have a retroactive operation, it is clear
that the state can at any time create an additional remedy

1 to apply to an existing right. To this effect see Chapman v.
2 State of California, 104 Cal. 690; Teralta Land Co. v.
3 Shaffer, 116 Cal. 518; Melvin v. State, 121 Cal. 16; Denning
4 v. State, 123 Cal. 316, 319.

5 There can be no question, under these authorities,
6 that the new remedy provided by Section 21 of Article XII
7 of the Constitution attached to such rights as were still
8 alive on October 10, 1911.

9 The next question to be considered is whether
10 the shippers' rights on the claims which are the subject
11 of this proceeding were still alive on October 10, 1911. All
12 these claims accrued in the year 1909. On March 19, 1909, the so
13 called Wright Railroad Commission act became effective. That
14 act, in Section 21, thereof, provided that shippers having
15 claims against a railroad or other transportation company should
16 first present them to the Railroad Commission, suit to be
17 thereafter brought in the superior court on the Commission's
18 award, in case the defendant refused to pay the award. Section
19 21 further provided a one year period for the limitation of
20 actions, in the following language:

21 "All complaints for the recovery of damages
22 shall be filed with the commission within one year
23 from the time the cause of action accrues and not
after-----."

24 The effect of this provision is that all causes
25 of action which accrued more than one year prior to February 10,
26 1911, on which date the Wright Act was repealed, were barred by
27 the provisions of that act. As the claims specified in the
28 complaint in this case all accrued, if at all, prior to
29 February 10, 1910, they had all become barred when the present
30 Railroad Commission Act, on February 10, 1911, repealed the

1 Wright Act. Nor did the enactment of the present Railroad
2 Commission Act remove the bar. Although there has been con-
3 siderable conflict of authority in other states, the Supreme
4 Court of California has uniformly held that if the bar of the
5 statute of limitations has once fallen, the right itself has
6 thereby become extinguished, and can not be revived by a sub-
7 sequent new statute of limitations. Billings v. Hall, 7 Cal. 1;
8 Swamp Land District v. Glide, 112 Cal. 85; Weldon v. Rogers,
9 151 Cal. 432; Doehle v. Phillips, 151 Cal. 468, 492. It may
10 be well to note also, in this connection, that the present
11 Railroad Commission Act, in repealing the Wright Act, made no
12 attempt to remove any bar which had theretofore fallen, but
13 confined itself (See Chapter 17, Laws of 1911, Section 48)
14 expressly to "actions or proceedings.... involving a violation
15 of any of the provisions of this act."

16 It follows that the claims in this action, having
17 accrued prior to February 10, 1910, were barred by the pro-
18 visions of the Wright Act, and that the shipper had accord-
19 ingly lost his right, if any, before Section 21 of Article XIII
20 of the Constitution, as amended on October 10, 1911, conferred
21 upon the Commission the power to order reparation.

22 The action is ordered dismissed.

23
24 The foregoing decision is hereby approved and
25 ordered filed as the decision of the Commission.

26
27 John M. Eschleman
28 W. H. Donaldson
29 W. H. Gordon
30 Commissioners.

San Francisco, California,
January 29, 1912.