

Decision No. 9878

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

C. W. CURPHEY,

Complainant,

-vs-

ED ROYCE,

Defendant.

Case No. 1502.

H. W. Kidd and Rex Hardy, for Complainant.

Dave F. Smith, Walter T. Casey and
Ross & Whitelaw, for Defendant.

BY THE COMMISSION:

OPINION

This is a contempt proceeding against Ed Royce, instituted upon the affidavit of C. W. Curphey, filed May 31, 1921.

On June 8, 1921, the Commission made an order substituting M. R. Downing, as administrator of the estate of C. W. Curphey, deceased, in lieu and place of said C. W. Curphey.

On June 1, 1921, the Commission issued an order directing said Ed Royce to show cause why he should not be punished for contempt, as set forth in said affidavit. The matter was heard at El Centro before Examiner Satterwhite on June 20, 1921. Evidence was received on behalf of both complainant and defendant and the matter was submitted.

The order of the Railroad Commission, which it

was alleged that said Ed Royce had disobeyed, was made May 21, 1921, and read, in part, as follows:

"IT IS THEREFORE ORDERED, that Ed Royce be, and he is hereby directed to discontinue forthwith said auto truck service as a common carrier of freight between El Centro and Calipatria and Calexico and intermediate points, and between El Centro and Holtville and intermediate points, within Imperial County, California."

It will be observed that this order did not direct said Ed Royce to cease operations in violation of the Auto Stage and Truck Transportation Act, nor to cease operations as a contract carrier, but it ordered him to discontinue his service as a common carrier.

Unless the evidence established that said Ed Royce was operating as a common carrier, he cannot be held for contempt in this proceeding even though his operations may have been unlawful in other respects. A thorough examination of the evidence convinces us that complainant failed to prove that Ed Royce was operating as a common carrier. The most that was established was that he had made not more than twelve trips over the routes in question, and that all of these trips were made under some arrangement with the Sperry Flour Company for hauling flour. There was evidence that, by means of newspaper advertisements, said Ed Royce did hold himself out to the public as a common carrier, but there was no evidence that he ever actually engaged in any form of hauling which could be classed as that of a common carrier. The most that can be said is that Royce showed an attitude of disregard for the order of the Commission and a willingness to violate the order; but, as already stated, the evidence did not show that he ever actually operated as a common carrier. It follows, therefore, that the proceeding must be dismissed.

The Commission desires to make it plain that in dismissing this proceeding it does not sanction the operations which it was shown were being carried on by said Ed Royce. The question of the legality of these operations is not before the Commission in this proceeding.

ORDER

For the reasons stated in the foregoing opinion,
IT IS HEREBY ORDERED that the said order to show cause be, and the same is hereby dismissed.

Dated at San Francisco, California, this 16th day
of December, 1921.

H. B. Underhill
H. S. Garland
Robert D. Royce
L. J. ...
Commissioners.