

Decision No. 9915

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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Motor Carriers' Association,
(a voluntary association)

Complainant

ORIGINAL

vs.

McCormick Steamship Line, J. L.
Criswell, E. Johnson, J. W. Ashford,
Zeck Cigar Co., Chas Sansome, T. E.
Eutson, E. Marcoux, The Ambassador
Transfer & Storage Company, Dixon
Transfer & Storage Co., John Doe
Murphy, C. Christie, T. O. Frazier,
C. W. Bowman, Richard Roe Fowler,
Harry Coe Reed, Frank R. Freitas,
Harry McDonald, Harry Doc Ammon,
E. Rhodes, G. L. Dennison, Chas. W.
Dyson, Jas. A. Sanguinetti, N. J.
Ferrand, Richard Webb, J. E. Gurney,
Jack M. L. Hall, Dewey W. Thomas,
C. W. Vroom, C. E. Murray, Jos. A.
Green, Sol Davis, John Doe Sanders,
E. H. Johnson, M. C. Smith, Mrs. Ethel
Eakin, Augusta Juenemann, J. E. Gurney,
J. M. Fowler, R. L. Ritter,

CASE NO. 1638

Defendants.

N. C. Folsom and Nutter, Hancock & Rutherford
For Motor Carriers' Association, complainant.

Joseph A. Brown, for Carl Freitas, William J. Carr,
F. R. Freitas, T. O. Frazier, C. W. Bowman, Claude
Christie, Jack Hall, Charles Sansome, C. R. Peck,
Charles B. Eakin, D. W. Thomas, E. W. Cummings,
J. E. Gurney, W. J. Shrader, E. J. Cook and C. W.
Vroom, Defendants.

Frank B. Austin, C. W. Cornell for Southern Pacific
Company, Intervenor.

N. Levy, Platt Kent and E.T. Lucey for The Atchison,
Topeka & Santa Fe Railway, Intervenor.

C. I. Spangler for Sol Davis, defendant.

H. W. Kidd for Motor Transit Company

S. W. Thompson for United Stages, Inc.

Harry N. Blair, for Hodge, Mershon & Rose.

BENEDICT, Commissioner,

O P I N I O N

This proceeding was brought by the Motor Carriers Association, a voluntary association organized for the promotion and protection of the motor carrying industry, the complaint alleging that each of the defendants hereinafter named has been and was at the time of filing of this complaint engaged in the transportation of passengers and/or property for compensation over a regular route or between fixed termini over the public highways within the State of California in violation of the provisions of Chapter 213, Statutes of 1917, as amended, or are acting as agents for individuals so engaged:

McCormick Steamship Line, L. J. Criswell, H. Johnson, J. W. Ashford, Zeck Cigar Company, Chas. Sansone, T. E. Eutson, H. Marcoux, The Ambassador Transfer & Storage Company, Dixon Transfer & Storage Company, John Doe Murphy, C. Christie, T. O. Frasier, C. W. Bowman, Richard Roe Fowler, Harry Coe Reed, Frank R. Freitas, Harry McDonald, Harry Doe Ammon, E. Rhodes, G. L. Dennison, Chas. W. Dyson, Jas. A. Sanguinetti, M. J. Ferrand, Richard Webb, J. E. Gurney, Jack M. L. Hall, Dewey W. Thomas, C. W. Vroom, C. E. Murray, Jos. A. Green, Sol Davis, John Doe Sanders, E. H. Johnson, M. C. Smith, Mrs. Ethel Eakin, Augusta Juanemann, J. E. Gurney, J. M. Fowler, R. L. Ritter, Mrs. I. G. Dial and Chester A. Nelson, doing business under the fictitious name of California Highway Express.

Public hearings were held at San Francisco on October 18th and October 20th, 1921 and at Los Angeles on November 2nd, 1921, at which time the matter was submitted and it is now ready for decision.

Complainant in connection with its allegation that defendants are operating in violation of the provisions of Chapter 213, Statutes of 1917, as amended, claims that the Association has been subject to great and irreparable damage and has suffered a great loss in revenue through such operations and it petitions the Commission to find that the commission of acts alleged in such complaint constitute the defendants and each of them common carriers under Section 22 of Article 12 of the Constitution of the State of California; and that such operation is unlawful and to require each of said defendants to forthwith desist.

Section 1, Sub-section (c) of Chapter 213, Statutes of 1917, as amended, provides as follows:-

"The term 'transportation company', when used in this act, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any automobile jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier, for compensation, over any public highway in this State between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city or town or of a city and county; provided, that the term 'transportation company' as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, insofar as they own, control, operate or manage taxicabs, hotel busses or sightseeing busses, or any other carrier which does not come within the term 'transportation company' as herein defined."

And Section "2"

"The words 'between fixed termini or over a regular route' when used in this act, mean the termini or route between or over which any transportation company usually or ordinarily operates any automobile; jitney bus, auto truck, stage or auto stage, even though there may be departures from said termini or route, whether such departures be periodic or irregular."

Considerable evidence was introduced by complainant particularly as regards the method of operation of defendants engaged in the transportation of passengers for compensation between San Francisco and Los Angeles, this evidence being to the effect that certain of defendants hold themselves out as being regularly engaged in the business of transportation of persons between the points named and continuously advertise to that effect in various daily papers published in San Francisco and Los Angeles.

It appears from such evidence that certain of defendants herein maintain regular terminals and agencies and advertise more or less regularly in the daily papers soliciting passengers desiring transportation between San Francisco and Los Angeles; that such agencies regularly collect deposits and book passengers desiring transportation; that defendants so engaged have a regular fixed amount to be charged for transportation service rendered and arrange among themselves to provide sufficient automobiles to leave at an approximately regular leaving time to care for all passengers desiring transportation.

Very little evidence was introduced by defendants herein. Their principal contention was that they are not transportation companies as defined by Chapter 213, Statutes of 1917, as amended, but are engaged solely in the rent car service, holding themselves out as being willing to go any where at any time and not operating over any regular route or between any fixed termini; and that, while the majority of their business has been between San Francisco and Los Angeles, they have occasionally made trips to other points, such as San Diego, Santa Barbara, etc. These occasional and infrequent trips do not warrant the Commission in determining, at least as to certain of the defendants, that they are not common carriers. The evidence herein introduced shows that they were actually holding themselves out as engaged solely in the transportation of persons or property for compensation over a regular route and/ or between fixed termini, not only by means of advertisements regularly published in daily papers at both termini, but through the action of agents who secured, booked and turned over to them passengers desiring such class of transportation. Testimony to this effect was offered by various witnesses who patronized the facilities offered by such defendants.

Doubtless, various persons have carried passengers for compensation between San Francisco and Los Angeles in connection with a pleasure or a business trip between such points. Occasionally,

sires to drive from San Francisco to Los Angeles or Los Angeles to San Francisco and wishes to lessen the expense of the trip. He advertises for passengers to travel with him and share the expenses. I cannot hold that any one so doing in good faith is violating the provisions of Chapter 213, Statutes of 1917, as amended, in that they are not holding themselves out as engaged in the business of transportation over a regular route or between fixed termini. This, however, should not be construed as authorizing any evasion of the plain terms of the law by persons seeking to engage in transportation business.

Certain others of these defendants, however, clearly appear, from the evidence, to have no other means of livelihood nor are they engaged in any other business than that of transportation of passengers or property over a regular route or between fixed termini, irrespective of the fact that on infrequent occasions, there may be departures from said termini or route. Such operators advertise in the daily papers, that an automobile is leaving at a specified time on a particular date and when prospective passengers apply for transportation, a deposit is collected, their names taken and grouped according to the seating capacity of the automobile or automobiles scheduled to leave at the time desired.

Furthermore, a considerable number of individuals engaged in this class of transportation business are not bonded and passengers are not provided with any protection against accident, loss or damage due to accident or negligence of the owner or driver of the automobile. A particular instance of this kind was shown in connection with the present proceeding. While this proceeding was pending there were several serious accidents to automobiles operated by individuals engaged in transportation business between San Francisco and Los Angeles. In one of such accidents three lives were lost. Attempts by passengers of this automobile to obtain damages, disclosed the fact that the owner and operator of such automobile had no indemnity insurance of any kind whatsoever and the passengers were obliged to look out for themselves after the accident, the operator claiming to be financially unable to arrange for other means of transportation from the point of accident to passengers'

collected in advance. This class of transportation is extremely dangerous in other ways, particularly due to the distance between termini which one driver attempts to cover on a single trip. In my opinion no individual, irrespective of his experience in driving automobiles, can regularly drive a large and heavy automobile continuously for a distance of approximately 500 miles without endangering the lives of his passengers, and it is my belief that insofar as is possible under the provisions of Chapter 213, Statutes of 1917, as amended, such methods of operation should be eliminated.

Considerable evidence was introduced as regards certain of the defendants herein who subsequently formed what they term "Rent Drivers Association". These defendants, it appears, conduct regular terminals at both San Francisco and Los Angeles and operate under a joint agreement by which advertisements are published continuously in the daily papers at both termini and arrangements are made to care for all passengers presenting themselves for transportation, - automobiles of each individual being loaded with passengers in rotation in accordance with their arrival at either terminal.

As illustrative of their method of operation, a day book kept by such Association was introduced in evidence, showing the following: The operators running out of the San Francisco terminal made 92 trips from San Francisco to Los Angeles during the period August 3 to September 30th, 1921. This would indicate a total of about 184 trips in both directions during the period mentioned and while such operation was conducted subsequent to the filing of the complaint in this proceeding and as such is not proper evidence as regards their operation at the time and prior to the filing of this complaint, from other evidence introduced in this case it can be taken as indicative of the operation of the individuals as such during the period of time complained of.

Five of the defendants herein named own no automobiles and were not actually engaged in the transportation of persons or property over a regular route or between fixed termini. The evidence showed, however,

that they regularly booked passengers for transportation between San Francisco and Los Angeles, accepted deposits for such transportation and issued receipts therefor. These defendants include, Sol. Davis, J. L. Criswell, W. E. Saunders, G. L. Flowers and E. C. Martens.

Under the provisions of Section 8, Chapter 213, Statutes of 1917, as amended, "every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provisions of this Act,** is guilty of a misdemeanor****".

It clearly appears that in the conduct of their business in acting as agencies for carriers, defendants herein, they were guilty of violation of the provisions of Chapter 213, Statutes of 1917, as amended. It further appears from the evidence, however, that each of the above named defendants immediately ceased such business upon being notified that they were violating the provisions of the above named Chapter and I believe that insofar as they are concerned the complaint should be dismissed with the understanding, however, that any future violations of this nature will be considered in the same light as that of the principals who are actually engaged in the transportation of passengers or freight.

Two freight carriers were also made defendants in this proceeding, namely, The Ambassador Transfer and Storage Company and Chester A. Nelson, doing business under the fictitious name of California Highway Express. The Ambassador Transfer Company, it would appear was regularly holding itself out as being engaged in the transportation of property consisting principally of furniture and household goods between San Francisco and Los Angeles, advertised in the daily papers and accepted and transported at fixed rates all such class of commodities offered for transportation.

The California Highway Express publishes a regular schedule of rates between Los Angeles, San Francisco, Oakland and Sacramento and intermediate points and Mr. C. A. Nelson, owner, testified that his trucks continuously operate between the points named whenever sufficient tonnage is offered to make a paying load.

The Commission held in Decision No. 9599:

"If one engaged in the business of automotive transportation could avoid the regulatory provisions of the law by merely operating at irregular times, a handsome premium would be placed on poor service to the public for one of the essentials of transportation service is regularity of operation."

While such carriers do not maintain what can be termed a regular schedule nor do their trucks operate entirely through particularly in case of a truck load destined, Los Angeles to Modesto with a return load Modesto to Los Angeles, I do not believe that such operation in itself exempts them from the provisions of Chapter 213, Statutes of 1917, as amended, in view of the fact that they are holding themselves out as being regularly engaged in the business of transportation of property for compensation over a regular route or between fixed termini, although it be confined to a particular class of commodities.

I submit the following form of order :

O R D E R

Hearings having been held, evidence submitted and the Commission being fully advised,

IT IS HEREBY FOUND AS A FACT that the following named defendants were at the time of filing of the complaint herein and previous thereto holding themselves out as being engaged and actually were engaged in the business of transportation of persons and/or property for compensation over the highways of this State between fixed termini or over a regular route and not operating exclusively within the limits of an incorporated city or town or of a city or county, and

IT IS HEREBY FURTHER FOUND AS A FACT that the following named defendants were at the time of filing of the complaint herein and previous thereto holding themselves out as being engaged and actually were engaged in the business of transportation of persons and/or property as common carriers over the highways of this State between fixed termini or over a regular route and not operating exclusively within the limits of an incorporated city or town or of a city or county, and

IT IS HEREBY FURTHER FOUND AS A FACT THAT such operation constitutes a violation of the provisions of Chapter 213, Statutes of 1917, as amended, and

IT IS HEREBY ORDERED that the following named defendants immediately discontinue such operation:

C. Christie, T. O. Frazier, Chas. A. Sansome, F. R. Freitas, Jack M. L. Hall, C. W. Vroom, E. J. Ferrand, L. J. Austin, J. E. Gurney, Roy Fisher, E. A. Fletcher, W. Juancemann, Carl Freitas, William J. Carr, C. W. Bowman, C. R. Peck, Charles B. Eakin, D. W. Thomas, E. W. Cummings, W. J. Schrader, E. J. Cook, Geo. L. Dennison, Mrs. I. G. Dial, Chester A. Nelson, doing business under the fictitious name of California Highway Express and Ambassador Transfer and Storage Company, and

IT IS HEREBY FURTHER ORDERED that the above entitled complaint insofar as it refers to other defendants not hereinabove named, 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 23rd day of December 1921.

J. H. ...
H. D. ...
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Commissioners.