

Decision No. 25302

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation,)
Complainant,)
vs.)
W. A. SALE, J. R. RUGGLES, W. A. SALE and)
J. R. RUGGLES, doing business under the)
fictitious name and style of WINTERS DRAY)
LINE, First Doe, Second Doe, Third Doe,)
Fourth Doe, Fifth Doe, First Doe Corpora-)
tion, Second Doe Corporation, Third Doe)
Corporation, Fourth Doe Corporation and)
Fifth Doe Corporation,)
Defendants.)

Case No. 3386.

ORIGINAL

Reginald L. Vaughan and Scott Elder,
by Scott Elder, for Complainant.

E. M. Ball for Defendants.

BY THE COMMISSION:

O P I N I O N

Regulated Carriers, Inc., a corporation, has filed complaint and amended complaint against W. A. Sale, J. R. Ruggles, W. A. Sale and J. R. Ruggles, doing business under the fictitious name and style of Winters Dray Line, First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, First Doe Corporation, Second Doe Corporation, Third Doe Corporation, Fourth Doe Corporation and Fifth Doe Corporation, alleging that said defendants, and each of them, are operating trucking service between Winters and Oakland and San Francisco and between

Winters and Sacramento as a transportation company as such is defined in Chapter 213, Statutes of 1917, as amended, and without the authority of a certificate of public convenience and necessity or any prior right authorizing such service.

Defendants W. A. Sale and J. R. Ruggles as individuals and as co-partners operating under the fictitious name of Winters Dray Line, duly filed their answers herein, said answers denying generally the material allegations of the complaint.

A public hearing on this complaint was conducted by Examiner Handford at Winters, the matter was duly submitted and is now ready for decision.

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

W. A. Sale and J. R. Ruggles, as co-partners, operate the Winters Dray Line which is engaged in local drayage in the town of Winters. During the fruit season of each year, approximately from May 15th to the end of the season, trucks are operated from the fruit orchards in and near Winters to the packing house at Winters and to Oakland and San Francisco. During the height of the season practically daily trips are made carrying green and fresh fruits. Compensation is paid by the markets to which the fruit is delivered and such is charged back to the grower or shipper, practically all being sold on consignment. Occasional trips are made to Sacramento to transport merchandise and supplies from wholesale houses to stores at Winters. Trips are also made to Newcastle and other foothill points to transport fruit which may be required in carload consolidation for eastern shipment. A number of witnesses testified that they had used this service frequently

during the fruit season and had found it to be useful and efficient. The defendants offer to haul for any grower or other person having shipments to any point, San Francisco, Oakland, Sacramento or to the foothill towns.

Defendants admit operating as above shown and claim that they have so operated for some years. On July 7, 1925, defendants filed their application No. 11390 for a certificate of public convenience and necessity for this service. This application was dismissed by the Commission by Decision No. 17057 on July 2, 1926, the application being dismissed without prejudice because applicants had not elected to amend the application to show fixed points and regular routes over which operation was proposed. Defendants contend that the operation complained of is identical to that then applied for and that there has been no intentional violation of the statutory law. The record is clear that the operations as complained of are such that require a certificate or approval of prescriptive rights.

An order to cease and desist such operation should issue herein.

An order of this Commission finding an operation to be illegal 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 vest the Commission with power and authority to punish for contempt in the same manner and 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 Stage and Truck Transportation Act (Statutes of 1917, Chap. 213, as amended), 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 any 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.

O R D E R

IT IS HEREBY FOUND that said defendants W. A. Sale, J. R. Ruggles, W. A. Sale and J. R. Ruggles, doing business under the fictitious name and style of Winters Dray Line, and each of them is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Stage and Truck Transportation Act. (Chapter 213, Statutes of 1917, as amended) with common carrier status between Winters and Oakland and San Francisco, and between Winters on the one hand and Sacramento and Newcastle and other foothill communities on the other hand, and without a certificate of public convenience and necessity or prior right authorizing such operation.

Based upon the finding herein and the foregoing opinion,

IT IS HEREBY ORDERED that said defendants W. A. Sale, J. R. Ruggles, W. A. Sale and J. R. Ruggles, operating under the

fictitious name and style of Winters Dray Line, and each of them, shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operation within sixty (60) days from date hereof unless, within thirty (30) days from date hereof, defendant shall file his petition to reopen Application No. 11390 for further hearing or shall file a new application for a certificate of public convenience and necessity covering operations herein found to be unlawful.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this order to be personally served on said defendants, W.A. Sale, J.R. Ruggles, W.A. Sale and J.R. Ruggles, doing business under the fictitious name and style of Winters Dray Line, that he cause certified copies thereof to be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of Alameda, Contra Costa, Solano, Yolo and Sacramento Counties and to the Department of Public Works, Division of Highways, at Sacramento.

IT IS HEREBY FURTHER ORDERED that this complaint insofar as it refers to defendants First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, First Doe Corporation, Second Doe Corporation, Third Doe Corporation, Fourth Doe Corporation and Fifth Doe Corporation be and the same is hereby dismissed.

The effective date of this order shall be twenty (20) days after the date of service upon defendants.

Dated at San Francisco, California, this 1st day of

May 1933.

O. L. Leaney
Leon O. Whiteley
W. A. Lane
W. B. Lewis
W. H. Thomas
Commissioners.