

Decision No. 28520

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Investigation
on the Commission's own motion into
the practices, operations, regula-
tions, rates, rules, charges, and
classifications, or any of them, of
PATRICK JOSEPH KELLY, JANE DOE KELLY,
FIRST DOE, SECOND DOE, THIRD DOE,
JANE DOE, JOHN DOE AND RICHARD ROE,
a copartnership, and JOHN DOE COMPANY,
operating as "passenger stage corpora-
tions" and/or as "motor carrier trans-
portation agents."

ORIGINAL
FILED

) Case No. 3369

Orla St. Clair for Pacific Greyhound Lines,
Motor Carriers' Association, and F. A.
Savage

Robert F. Brennan and William F. Brooks for
Atchison, Topeka and Santa Fe Railway Com-
pany, interested party.

BY THE COMMISSION:

OPINION. FINDINGS, AND JUDGMENT

Decision 25434, 38 C.R.C. 311, dated December 10,
1932, (effective twenty days after personal service)⁽¹⁾ found
in part that Patrick Joseph Kelly was operating as a common car-
rier passenger stage corporation, under Public Utilities Act,
section 50½, without a certificate, between San Francisco and
Los Angeles, and ordered cessation of such operation.

Affidavit of F. A. Savage was filed September 19,
1933. It recites prior proceedings, service of desist order,

(1) Personal service was made on respondent on December 20,
1932. (Exhibit 2.)

and alleges continuance of common carrier operation. In addition to the general allegations, the first separate cause of action alleges specific violations on August 5, 1933, while the second cause of action relates to alleged specific violations on August 16, 1933. By order to show cause dated September 27, 1933, Kelly was ordered to show cause on November 2, 1933, before Commissioner Whitsell, why he should not be punished for contempt. Personal service of the order to show cause and the affidavit was made upon Kelly on October 11, 1933. (Exhibit 3.) Kelly was not present on the return date nor was any appearance entered on his behalf.

Witness J. P. Warren, on August 4, 1933, saw Kelly at the Seneca Hotel on Sixth Street, San Francisco, in a small room "off the desk" used as a travel bureau, and upon inquiry was advised by Kelly that he (Warren) could go to Los Angeles that night, and that "the fare was still \$5.00." Later Kelly advised the witness that because of inability to obtain a load, Kelly would not leave until the following morning, whereon Mrs. Kelly suggested that she would telephone the witness "in the morning."

At nine a.m., August 5, 1933, witness was advised by telephone to be at the hotel at 10:30 a.m. He arrived at 10:15 a.m., saw Kelly and Mrs. Mary Kelly in the travel bureau room, was informed that Kelly would leave for Los Angeles that morning, and paid Mrs. Kelly \$5.00. Three other persons paid their fares at the same time. Kelly and Mrs. Kelly then conducted the passengers to an automobile (Lincoln sedan, license P C F 7137, registered to Kelly), Kelly carrying the baggage. Kelly transported eight passengers, including witness, via the Valley Route to Los Angeles, witness leaving the car at Sixth and Flower Streets, Los Angeles. Witness occupied the front

seat next to Kelly, who stated to the witness that he (Kelly) "would run until thrown in the can."

Miss Ramos, on August 16, 1933, at 768A Howard Street, San Francisco, stated to one Stelling that she desired to go to Los Angeles, and was advised by the latter that the fare was \$5.00. Stelling told the witness not to pay the fare to him but to the driver, because if Stelling collected the money he would "come under some act", and therefore it was necessary to pay the driver. Subsequent to the arrangement with Stelling, a car called for Miss Ramos at her home and she was taken to the St. Marlow Hotel, 190 O'Farrell Street, San Francisco. While standing in front of the hotel, a Miss Evelyn came out and asked about the fare. While getting into the front seat of an automobile (Lincoln sedan, license P C F 7137, registered to Kelly), and while Kelly was getting into the front seat at the other side of the car, Miss Ramos paid \$5.00 to Miss Evelyn. The latter collected money from three passengers. Another man collected \$4.00 from an additional passenger. Miss Evelyn then went into the hotel, followed by Kelly. Upon Kelly's return, he drove the car, containing six passengers, including Miss Ramos, to Los Angeles via the Valley Route. Miss Ramos was taken to the San Carlos Hotel, Los Angeles, by respondent.

F I N D I N G S

1. On December 10, 1932, by Decision 25434, the Railroad Commission found as a fact that Patrick Joseph Kelly was operating as a common carrier passenger stage corporation under Public Utilities Act, section 50 $\frac{1}{2}$, without a certificate of public convenience and necessity, between San Francisco and Los Angeles, and ordered that he desist from such operation. Said decision has never been revoked, stayed, or annulled, and is now in full force and effect.

2. A certified copy of Decision 25434 was personally served upon Patrick Joseph Kelly on December 20, 1932, and said Patrick Joseph Kelly had personal knowledge and notice of said decision and its contents on and prior to the effective date thereof, and was at all times thereafter able to comply therewith.

3. The affidavit of F. A. Savage was filed on September 19, 1932, alleging in substance that the said Patrick Joseph Kelly, notwithstanding the order in Decision 25434, with full knowledge of its contents, and subsequent to its effective date, had failed and refused to comply with said order in that he had continued to operate as a common carrier passenger stage corporation between San Francisco and Los Angeles, and particularly on August 5 and 16, 1933.

4. On September 27, 1933, the Railroad Commission issued its order directing Patrick Joseph Kelly to appear on November 2, 1933 before Commissioner Whitsell and show cause why he should not be punished for contempt. Said order to show cause, together with the affidavit upon which based, was personally served upon Patrick Joseph Kelly on October 11, 1933. On the return date hearing was had and the matter submitted.

5. Notwithstanding the order of the Railroad Commission contained in Decision 25434, said Patrick Joseph Kelly failed and refused to comply therewith, and continued to and did operate as a common carrier passenger stage corporation within the meaning of Public Utilities Act, section 50½, between San Francisco and Los Angeles, and specifically on August 5 and 16, 1933.

6. The failure of said Patrick Joseph Kelly to comply with said order and his continuance to operate as a common carrier passenger stage corporation as aforesaid was and is in contempt of the Railroad Commission of the State of California and its order, and in violation of Public Utilities Act, section 50½.

J U D G M E N T

IT IS HEREBY ORDERED AND ADJUDGED that Patrick Joseph Kelly has been and is guilty of a contempt of the Railroad Commission in disobeying its order made on December 10, 1932, in Decision 25434, by having failed and refused to desist from operation as a common carrier passenger stage corporation between San Francisco and Los Angeles, and specifically on August 5 and 16, 1933.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for his said contempt of the Railroad Commission and its order, said Patrick Joseph Kelly be punished by a fine of five hundred dollars (\$500.00) and by five (5) days' imprisonment in the County Jail of the City and County of San Francisco; said fine to be paid to the Secretary of the Railroad Commission within five (5) days after the effective date of this opinion, findings, and judgment; and that in default of payment of the aforesaid fine, said Patrick Joseph Kelly be committed to the county jail of the City and County of San Francisco until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars thereof that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, upon this order becoming effective, prepare and issue appropriate order or orders of arrest and commitment in the name of the Railroad Commission of the State of California, to which shall be attached and made a part thereof a certified copy of this opinion, findings, and judgment, and providing for the incarceration of said Patrick Joseph Kelly for a period of five (5) days; and further, if said fine is not paid within the time specified above, prepare and issue further appropriate order or orders of arrest and commitment in the name of the Railroad Commission of the State of California,

to which shall be attached and made a part thereof a certified copy of this opinion, findings, and judgment.

IT IS HEREBY FURTHER ORDERED that this opinion, findings, and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon Patrick Joseph Kelly.

Dated at San Francisco, California, this 13th day of November 1933.

C. C. Seamy
Leon G. Whittell
M. A. Carr
M. B. Harris
M. H. [illegible]
Commissioners