

Decision No. 27747

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

-vs-

S. C. THOMPSON, L. A. FARNEAM, and
S. C. THOMPSON, doing business under
the fictitious name and style of
General Trucking Company and/or
General Forwarding Company, First
to Fifth Doe, inclusive, and First
to Fifth Doe Corporation inclusive,

Defendants.

ORIGINAL

Case No. 3859

R. L. Vaughan and Scott Elder
for Complainant

Harry A. Encell for S. C. Thomson,
Defendant

BY THE COMMISSION:

O P I N I O N

By complaint filed on July 31, 1934, complainant charges defendants with unlawful common carrier operations by auto truck between San Francisco, Oakland, Berkeley, Alameda, Richmond, Emeryville and San Leandro on the one hand, and between Los Angeles and adjacent territory and intermediate points on the other.

A public hearing was had before Examiner Johnson on November 13, 1934, the matter was submitted as of December 17th, pending the filing of written briefs, and is now ready for decision.

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

Defendants Thomson and Farnham started the business of the General Forwarding Company during March, 1934, Thomson at first being an employee of Farnham and later the purchaser from Farnham by bill of sale. Both defendants participated in the profits of the business which were obtained by a twenty per cent commission of the gross receipts from the trucks hired by the General Forwarding Co. This business of the General Forwarding Company was the immediate successor to the Buck Transportation Company which was ordered to cease and desist in Case 3337, Decision 26826. This decision was rendered on February 26, 1934, and about the time it became effective the General Forwarding Company went into business. This appears from the testimony of the defendants without dispute. So that, while the public witnesses called by complainant did not indubitably prove the public carrier phase of defendants' business, yet the testimony of the defendants themselves established them as public carriers to entire satisfaction. Thomson estimated the number of consignors in San Francisco between 40 and 45 and the number of consignees from 60 to 100. We think that the case of Regulated Carriers vs. K. C. Buck, supra, resolved all doubts that were raised by the argument of the defendants in this case as to character of their operations.

A cease and desist order should issue.

An order of this Commission finding an operation to be unlawful 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 to 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. 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.No.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 Truck Transportation Act (Statutes 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., or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise a shipper or 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.

ORDER

IT IS HEREBY FOUND that S. C. Thomson, and L. A. Farnham, and S. C. Thomson, doing business under the fictitious name and style of General Forwarding Company, are operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chap. 213, Stats. 1917, as amended), with common carrier status between San Francisco,

Oakland, Berkeley, Alameda, Richmond, Emeryville and San Leandro on the one hand, and between Los Angeles and adjacent territory and intermediate points on the other and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the Opinion,

IT IS HEREBY ORDERED that S. C. Thomson, L. A. Farnham, and S. C. Thomson, doing business under the fictitious name and style of General Forwarding Company, shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon S. C. Thomson, L. A. Farnham, and S. C. Thomson, doing business under the fictitious name and style of General Forwarding Company, that he cause certified copies thereof to be mailed to the District Attorney of the City and County of San Francisco, and the district attorneys of San Mateo, Santa Clara, Santa Cruz, Monterey, San Benito, San Luis Obispo, Santa Barbara, Ventura and Los Angeles counties and to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works, Division of Highways, Sacramento.

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

Dated at San Francisco, California, this 11th day of February, 1935.

Leon A. Williams
M. A. Cum
M. B. Harris
Arthur H. Jones
Samuel R. Williams
Commissioners.