

Decision No. 27959.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

G. C. SCRIBNER and G. C. SCRIBNER doing business under the fictitious name and style of Commercial Shippers, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST DOE CORPORATION, SECOND DOE CORPORATION, THIRD DOE CORPORATION, FOURTH DOE CORPORATION, FIFTH DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 3374.

Reginald L. Vaughan and Scott Elder, for Complainant.

L. M. Phillips, for Defendants, G. C. Scribner and Mrs. G. C. Scribner.

A. S. Groocox, for Board of Public Utilities and Transportation, Interested Party.

CARR, Commissioner.

O P I N I O N

By complaint, filed on July 23rd, 1934, complainant charges G. C. Scribner and G. C. Scribner doing business under the fictitious name of Commercial Shippers, as well as various defendant Does, with unlawful common carrier operations by auto truck between Fresno, on the one hand, and (a) various East Bay Cities, (b) Los Angeles and various communities in Southern California, and (c) Stockton and Sacramento, as well as between Los Angeles and communities in Southern California and the East

Bay Cities. Intermediate point operations are also charged.

Mrs. G. C. Scribner, sued as First Doe, appeared by counsel, who also appeared for G. C. Scribner and G. C. Scribner doing business under the fictitious name of Commercial Shippers.

A public hearing was had on May 7th, when the case was submitted.

The facts as developed at the hearing may be summarized  
(1)  
briefly as follows:

For at least six months prior to the filing of the complaint until well into the present year, the defendant, G. C. Scribner, at first under the name of Scribner Truck Company and later under the name of Commercial Shippers, conducted an extensive trucking business between Los Angeles and San Francisco and the East Bay Cities and between Los Angeles and Sacramento. Intermediate points were served. Burbank, adjacent to Los Angeles, was a shipping point. At first he had two trucks but as the

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(1) Among the witnesses who testified as to the scope and character of the operations complained of were the following:

W. J. Young, General Manager of Grandma Baking Company; L. M. Rathenburg, Office Manager of Jergens Woodbury Sales Corporation; C. L. Peterson, Auditor of Sontag Drug Stores; Wm. Hagenbaugh, President of Master Lubricants Company; W. A. McBride, Auditor of Clover Leaf Products Company; R. Halm, Partner in Pacific Coat Hangers; Paul Ryan, Traffic Manager of M. A. Newmark & Company; Walter W. Jordan, Traffic Manager of Canada Dry Ginger Ale Company; F. H. Miller, Shipping Clerk of Germain Seed & Plant Company; B. E. Berghoff, Bookkeeper of North Ontario Dried Fruit Company; George R. Burgess, Shipping Clerk of Union Hardware and Metal Company; Frank Seehorn, Manager of Jennings Nibley Warehouse Company; H. C. Fertig, Secretary-Treasurer of Syrup Products, Ltd; Clarence A. Shoop, Traffic Manager of the Los Angeles Brewing Company; Erma Smith, Bookkeeper of Straser Candy Company; E. R. Demmler, Shipping Clerk of Pacific Chemical Company; Nicolas Arbiso, Shipping Clerk of the United Battery Company; and J. Biely, who was Los Angeles Office Manager of Pacific Commercial Shippers until about November, 1934.

No evidence was adduced on behalf of any of the defendants.

business expanded two additional trucks were acquired; also, trucks were leased to supplement the operations. Business was solicited. He acquired about fifty customers who sometimes gave him truckload shipments; frequently, however, the shipments were of lesser volume than this. Consignments, in many instances at least, were made under uniform bills of lading. Scribner had regular shipping and bill forms and apparently carried on his operations in a businesslike fashion. Claims for loss or damage were adjusted. Rarely was equipment inadequate to transport all shipments tendered. The operations assumed a high degree of regularity. While some of Scribner's cards and stationery contained the designation "contract hauler," the evidence is convincing that he was in fact engaged in common carrier operations. The evidence clearly requires a cease and desist order but not as to all of the points specified in the complaint or as against all of the defendants.

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 \$500.00, 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 Truck Transportation Act (Statutes 1917, Chapter 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 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.

I recommend the following form of order.

O R D E R

IT IS HEREBY FOUND that G. C. Scribner is operating as a transportation company, as defined in Section 1 (c) of the Auto Truck Transportation Act, Statutes 1917, Chapter 213, as amended, with common carrier status, between fixed termini and over regular routes and public highways, between Los Angeles and Burbank, on the one hand, and (a) San Francisco, Oakland and Berkeley, on the other hand, and points intermediate, and also (b) Sacramento and Stockton, on the other hand, and points intermediate, without having obtained a certificate or certificates of public convenience and necessity or without having any prior operative right for any or all of such operations.

Based upon the opinion and findings herein,

IT IS HEREBY ORDERED that G. C. Scribner shall cease and desist, directly or indirectly, under the name of Scribner Truck Company or Commercial Shippers, or under any other name or description, or by any subterfuge or device, from continuing any or all of such operations, hereinabove in the finding preceding this order set forth, and more specifically shall so cease and desist from continuing such common carrier operations between any or all of the following points, to-wit: Los Angeles and Burbank, on the one hand, and San Francisco, Oakland and Berkeley, on the

other hand, and between said points or any of them, and points intermediate; also Los Angeles and Burbank, on the one hand, and Sacramento and Stockton, on the other hand, and between said points or any of them and points intermediate, unless and until a certificate of public convenience and necessity shall have been obtained from the Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission is directed to cause personal service of a certified copy of this decision to be made upon G. C. Scribner; and that the complaint as against defendants other than G. C. Scribner be dismissed.

This order shall become effective twenty (20) days after the date of personal service.

The foregoing Opinion and Order are hereby adopted as the Opinion and Order of the Commission.

Dated at San Francisco, California, this 13<sup>th</sup> day of May, 1935.

John A. Sullivan

M. J. Lee

M. B. Hanna

William H. Miller

Frank R. Wenzel

Commissioners.