

ORIGINAL

Decision No. 28010

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC.,  
a corporation,

Complainant,

vs.

L. A. FARNEAM, N. A. DICKIE, D. E.  
LINDSAY, and L. A. FARNEAM, N. A. DICKIE  
and D. E. LINDSAY doing business under  
the fictitious name and style of Jobbers  
Forwarding Company, FIRST DOE, SECOND DOE,  
THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST  
DOE CORPORATION, SECOND DOE CORPORATION,  
THIRD DOE CORPORATION, FOURTH DOE CORPORA-  
TION, FIFTH DOE CORPORATION,

Defendants.

Case No. 3953.

Reginald L. Vaughan and Scott Elder, for  
Complainant.

Smith, Southwell & Smith, for L.A. Farnham and  
D. E. Lindsay, Defendants.

CARR, Commissioner:

O P I N I O N

By complaint filed on January 7, 1935, complainant charges L. A. Farnham, N. A. Dickie, D. E. Lindsay and L. A. Farnham, N. A. Dickie and D. E. Lindsay doing business under the fictitious name and style of Jobbers Forwarding Company, as well as various defendant Docs, with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Richmond, Emeryville, San Leandro and Hayward on the one hand and Stockton, Los Angeles, Vernon, Southgate, Sunnington Park, Long Beach and intermediate points on the other hand.

L. A. Farnham, N. A. Dickie, D. E. Lindsay and Steve Zellanock (sued as First Doe) were duly served with process. The

Defendants Farnham and Lindsay filed a verified answer.

A public hearing was had on May 23rd. When the case was called the attorneys of record for Farnham and Lindsay appeared but stated that their clients had gone out of business. The case was heard and submitted on said date.

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

By Decision No. 26826 of date February 26, 1934, in Case No. 3537, Regulated Carriers, Inc. vs. K. C. Buck, et al., C. L. Buck, operating under the name of Buck Transportation Company, was ordered to cease and desist operations between San Francisco and certain San Joaquin Valley and Coast points.

By Decision No. 27747 of date February 11, 1935, in Case No. 3859, Regulated Carriers, Inc. vs. S. C. Thompson and L. A. Farnham, the complaint in said case having been filed on June 21, 1934, Thompson and Farnham, doing business under the name of General Forwarding Company, were ordered to cease and desist operations between San Francisco and East Bay points and Los Angeles and adjacent territory and points intermediate.

By Decision No. 27846 of date March 25, 1935, modified by Decision No. 27958 of date May 13, 1935, in Case No. 3812, Regulated Carriers, Inc. vs. K. J. Sackett, the complaint in said case having been filed on March 29, 1934 and the hearings thereon concluded on December 4, 1934, K. J. Sackett, doing business under the name of Atlas Shipping Agency, was ordered to cease and desist operations between Los Angeles and San Francisco.

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(1). Among the witnesses who testified were:  
A. G. Kangrowitz, Assistant Cashier of Bank of America;  
E. J. Mibach, Bookkeeper of J. C. Millet Company; M. J. Stern,  
Manager of Kay Mfg. Corporation; C. L. Liss, Supt. of Rome Company;  
E. L. Warner, Shipping Clerk of West Coast Distilleries; E. L. Ross,  
Office Manager of World Importers; C. Von Wagenen, Secretary,  
Western Nipple Mfg. Co.; A. W. Collins, Office Manager of Keystone  
Lubricating Co., and N. A. Dickey, one of the Defendants.

The Atlas Shipping Company had had a San Francisco office at 490 Fifth Street, where the defendant N. A. Dickey had his office. The business conducted under this name ceased about the middle of December. The defendant, L. A. Farnham, who had worked for Buck and later with Thompson under the name of General Forwarders and still later had worked for the concern operating under the name of Atlas Shipping Agency, associated himself with the defendants Lindsay and Zellanock, and as none of them had anything, they approached the defendant Dickey to act as "financial angel" for the business which they proposed to start. Dickey was agreeable and thereupon a transportation service under the name of Jobbers Freight Forwarders came into existence, which service, in part at least, succeeded to the patronage and business theretofore conducted by Sackett under the name of Atlas Shipping Agency.

Under this name a moderately extensive transportation business by auto truck between San Francisco and Los Angeles, with service at the intermediate points of Fresno and Bakersfield, was carried on until about May 13th, when it folded up to be succeeded by a new service with some, at least, of the same customers under the name of Southern Fast Freight. The service in question enjoyed the patronage of approximately 100 customers, trucks plying almost daily between San Francisco and Los Angeles. There was no pretense that the service was other than common carrier in nature.

Under the evidence as developed there can be no doubt of the responsibility for the service of the three defendants, Farnham, Lindsay and Zellanock, at the time the complaint was filed. (The interest of Zellanock in the business was acquired by Farnham some time in February.)

The most serious question in the case has to do with the status and responsibility of the defendant Dickey. According to his testimony he rented space in his office on Fifth Street as a

headquarters for the service. Later it became necessary to vacate these premises. Thereupon a new headquarters was leased, but by Jobbers Freight Forwarders, on Eighth Street. Dickey followed to the new location and maintained an office there but paid no rent. According to his testimony, he discounted for the Jobbers Freight Forwarders all freight bills, crediting Farnham, Lindsay and Zellanock (later Farnham and Lindsay) with 95 percent of the amount of such bills. When checks were received for the freight these checks, which would be payable to Jobbers Freight Forwarders, would be endorsed in the name of the payee by a rubber stamp, usually affixed by Dickie, and then deposited by him in his account. He kept an elaborate set of books which were, in fact, the main if not the only records kept of the business. Practically all of the expenses of conducting the business, including telephone bills, rent, pay of drivers, bills for stationery, were paid by him on order of Farnham and Lindsay and charged to their (or their and Zellanock's) accounts. Farnham, Lindsay, and presumably Zellanock, were allowed to draw against the 95 percent of the gross of the freight bills with which they were credited. Dickie was in quite constant attendance at the offices of the concern, had his name in the telephone directory under the same telephone number, and when no one else was in the office answered telephone calls and booked telephonic orders for transportation, occasionally directed drivers to make pickups for such orders, and receipted for freight when left at the office. When the business conducted under the name of Jobbers Freight Forwarders folded up on May 13th, one King appeared upon the scene to carry on about the same business under the new name of Southern Fast Freight, Dickie continuing to act as financial agent for him, just as he had for Farnham, Lindsay and Zellanock and later for Farnham and Lindsay.

That the arrangement may have represented a carefully formulated attempt on Dickie's part to evade the inhibitions of the act is of course immaterial. As said by Mr. Justice Holmes in Superior Oil Company v. Mississippi, 280 U.S. 390: "The fact that it (the Oil Company) desired to evade the law, \* \* \* is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can, if you do not pass it."

On the other hand, the power of the Commission "to make injunctive orders in the exercise of the jurisdiction conferred upon it" (Motor Transit Co. v. Railroad Commission, 189 Cal. 573, 577) is essentially equitable in nature. (Kern Island Land Co. v. Railroad Commission, 88 Cal. Dec. 471, 475.) And it is not inappropriate for the Commission in the execution of such power to draw upon the experience and precedents of courts of equity in exercising an analogous jurisdiction, for aid and guidance in so molding its process both as to form and as to its incidence upon the parties before it, that the specious disguise in which an operation is garbed may be pierced and the parties in reality responsible for the operation may be made subject to the hand of public authority.

That Dickie was not merely a money lender may be deduced from the record as developed. He was thoroughly aware of the nature of the business being carried on and was in fact a motivating and indispensable element in its make-up. To limit the incidence of the Commission's order to the individuals who were in fact but passing elements of the organization (it is significant that shortly before the hearing, Farnham and Lindsay dropped out, the name of the business was changed and a new man came in, but the business itself went right on) would be to unduly

ignore substance and reality.

A cease and desist order should issue as against each of the defendants served.

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 the Defendants L. A. Farnham, D. E. Lindsay, Steve Zellanock and N. A. Dickie are 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 San Francisco on the one hand and Los Angeles on the other hand, serving Fresno and Bakersfield as intermediate points, 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 Defendants L. A. Farnham, D. E. Lindsay, Steve Zellanock and N. A. Dickie shall cease and desist jointly and severally, directly or indirectly, under the name of Jobbers Forwarding Company or 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 and all of the following points, to-wit: Los Angeles on the one hand and San Francisco on the other hand, or between either of said terminal points and the intermediate points of Fresno or Bakersfield, unless and until a certificate of public convenience and necessity shall have been obtained from this Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission is hereby directed to cause personal service of a certified copy of this decision to be made upon L. A. Farnham, D. E. Lindsay, Steve Zellanock and N. A. Dickie, and that the complaint as against defendants other than L. A. Farnham, D. E. Lindsay, Steve Zellanock and N. A. Dickie be dismissed.

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

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 3rd day of June, 1935.

Leon Auldell  
M. G. Carr  
M. S. Harris  
Walter M. ...  
Walter R. ...  
Commissioners.