Decision No. 30945.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

A. LEVY & J. ZENTNER CO.
SUNSET PRODUCE CO.
VALLEY PRODUCE CO.
RICKETT PRODUCE CO.
De BACK & CO.
JOHN DEMARTINI CO. INC.
L. J. HOPKINS COMPANY
TRIANGLE PRODUCE CO.
HALF MOON FRUIT & PRODUCE CO.

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

ORIGINAL

Case No. 3515.

BY THE COMMISSION:

SUPPLEMENTAL OPINION

By Decision No. 26948 of April 16, 1934, as amended, in the above entitled proceeding, the Commission directed the defendant Southern Pacific Company to refund to complainants and interveners by way of reparation all charges collected in excess of charges therein found reasonable.

Being unable to reach an agreement with defendant, Triangle Produce Company, one of the complainants therein, filed a petition seeking a further order of the Commission fixing the amount of reparation due. The matter was submitted upon briefs.

Triangle Produce Company was incorporated July 2, 1932. Prior to that date the business was carried on by E. A. Thomas, A. F. Ness, H. E. Williams, Fred Redding and R. A. Johnson, copartners, operating as the Triangle Produce Company. The complainant corporation seeks reparation for the two-year period immediately preceding February

17, 1933, the date of filing the complaint in this case, thereby involving shipments transported for the copartnership. Reparation has been paid on shipments moving subsequent to the date of incorporation.

Section 71(a) of the Public Utilities Act provides in part: " * * * no assignment of a reparation claim shall be recognized by the Commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership or order of court." The issue thus resolves itself into the right of a corporation to recover reparation in its own name on shipments transported for a copartnership, the latter paying and bearing the freight charges and assigning all rights and liabilities to the corporation prior to dissolution.

Complainant argues that the corporation is merely a successor in interest to the copartnership and that its claim is within the excepted class of the statute cited. It contends further that if the corporation may not lawfully maintain this action, then the right of action remains in the copartnership, which, it asserts, is entitled to be substituted as a party to the complaint in its own name, reserving for the corporation the proceeds thereby recovered.

Defendant contends that there is nothing in the complaint which would have the effect of tolling the statute in favor of the copartnership, and that, inasmuch as the copartnership did not file a complaint within two years from the accrual of the cause of action, the remedy is barred and liability destroyed by the operation of the statute of limitations.

The transfer to a corporation of the assets of a copartnership cannot be termed an assignment "by operation of law," which is the only class of assignments excepted by Section 71. (Exchange Securities Corporation vs. San Diego Consolidated Gas & Electric Co., 39 C.R.C. 354). While it may be the real parties in interest, individual members of the dissolved copartnership, might have asserted their claim before the Commission by appropriate and timely procedure, such action was not taken by them.

Upon consideration of the facts here involved we are of the opinion and find that complainant Triangle Produce Company, a corporation, is not entitled to recover reparation accruing on shipments on which Triangle Produce Company, the copartnership, paid and bore the charges. Reparation having been paid by defendant on shipments moving subsequent to the date of incorporation, no further order is necessary.

Dated at San Francisco, California, this 16th day of August, 1937.

Commissioners.