

Decision No. 32575

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SANTEE SUPPLY COMPANY  
a copartnership,

Complainant,

vs.

SAN DIEGO AND ARIZONA EASTERN  
RAILWAY COMPANY, a corporation,  
and THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY,  
a corporation,

Defendants.

ORIGINAL

Case No. 4384

BY THE COMMISSION:

OPINION AND ORDER

Complainant seeks reparation in connection with two tank carloads of blackstrap molasses transported by defendants from Los Angeles Harbor to Santee, one on January 31, 1935, and the other on December 11, 1935, to the basis of a rate of 17 cents per 100 pounds. No direct allegation of any violation of the Public Utilities Act is made in the complaint, the basis upon which complainant seeks reparation being predicated, apparently, on an alleged misquotation and subsequent publication by defendants of a rate of the volume of that sought.

Defendants contend that the action is barred by the provisions of Subdivision (d) of Section 71 of the Public Utilities Act. They ask that the Commission dispose of this issue before considering the merits of the complaint. All parties have stipulated the facts necessary to be known in

order to pass upon this question.

According to the complaint and stipulations, charges for the transportation of the shipments involved were initially collected at a rate of 17 cents per 100 pounds. Subsequently, defendants issued balance due bills seeking collection of undercharges in the amount of the difference between the charges initially collected and those accruing under a rate of 22½ cents per 100 pounds. Suit for collection of these undercharges was filed in the Municipal Court of the City of San Diego on January 31, 1938, and a summons in said action was served on complainant in July, 1938. The trial in said proceeding was had on November 4, 1938, after which judgment was rendered by the Court ordering complainant herein to pay the undercharges. The judgment was paid in December, 1938.<sup>1</sup>

Under Section 71 of the Public Utilities Act complaints for damages resulting from a violation of Section 17 (a) 2, and 17 (b) must be filed within three years, and complaints for damages resulting from a violation of any other sections of the Act must be filed within two years, from the time the cause of action accrues and not after, subject, however, to certain exceptions. The exception with which we are here concerned is contained in Subdivision (d) of Section 71. It provides that in cases where suit for collection of undercharges is filed in any court, the periods of limitation otherwise

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Complainant's stipulation shows that the summons was served on July 5, 1938, and that the undercharges were paid on December 27, 1938, whereas defendants' stipulation shows that the summons was served on July 6, 1938, and that the undercharges were paid on December 28, 1938. However, the one day difference in these dates is not material to the disposition of the issue herein.

provided shall be extended for a period of ninety days from the date of the service of summons in such suit. In the instant case the complaint was filed January 5, 1939, which was more than ninety days subsequent to the service of summons. Subdivision (d) further provides that in cases where a claim is presented by the public utility in writing within the three year period and collection of such claim is made without filing suit the period of limitation for filing reparation complaints with this Commission shall be extended for a period of ninety days from the date of such collection. Here, however, suit was filed, and this provision is not applicable. We find that the reparation award sought is barred; the complaint will be dismissed.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that the above entitled complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 21<sup>st</sup> day of November, 1939.

Barbara J. [Signature]  
Frank P. [Signature]  
Ray & Rice  
Justus J. [Signature]  
Commissioners