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Clerk, Supreme Court of Appeals
Richmond, Virginia

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Record No. 6194

In the
Supreme Court of Appeals of Virginia
at Richmond

LEWIS TRUCKING CORPORATION AND MARVIN LEWIS
v.
COMMONWEALTH OF VIRGINIA

FROM THE STATE CORPORATION COMMISSION

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6194

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 27th day of July, 1965.

LEWIS TRUCKING CORP. AND MARVIN LEWIS, Appellants,

against

COMMONWEALTH OF VIRGINIA Appellee.

From the State Corporation Commission

Upon the petition of Lewis Trucking Corp. and Marvin Lewis an appeal of right was awarded them by one of the Justices of the Supreme Court of Appeals on July 26, 1965, from an order entered by the State Corporation Commission on the 8th day of February, 1965, in a certain proceeding then therein depending wherein the Commonwealth of Virginia, at the relation of the State Corporation Commission, was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said Corporation Commission in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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AT RICHMOND, OCTOBER 29, 1964

CASE NO. 17073

COMMONWEALTH OF VIRGINIA,
AT THE RELATION OF
STATE CORPORATION COMMISSION

v.

LEWIS TRUCKING CORP.,
MARVIN LEWIS Defendants

RULE

It appearing that Lewis Trucking Corp., a Delaware corporation, has obtained from the State Corporation Commission ten classification plates issued under §56-304 of the Code of Virginia for use on vehicles displaying Virginia license plates; that it has leased said vehicles to Marvin Lewis, a citizen of Virginia, who is operating said vehicles in interstate commerce into and out of Virginia; that said vehicles do not display license plates issued by the Division of Motor Vehicles, and that such use of said classification plates is illegal;

A rule is hereby issued requiring Lewis Trucking Corp. and Marvin Lewis to appear before the State Corporation Commission in its courtroom in the Blanton Building in the City of Richmond at 10 o'clock, a.m., on November 18, 1964 and show cause, if any it can, why the exemption cards and classification plates issued to the defendant, Lewis Trucking Corp., should not be surrendered by it for cancellation and why both defendants should not be subjected to the penalties prescribed by §56-304.12 of the Code of Virginia.

A True Copy

Teste: WILLIAM C. YOUNG
Clerk of State Corporation Commission

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AT RICHMOND, NOVEMBER 13, 1964

CASE NO. 17073

COMMONWEALTH OF VIRGINIA,
AT THE RELATION OF
STATE CORPORATION COMMISSION

v.

LEWIS TRUCKING CORP.,
MARVIN LEWIS Defendants

At the request of Counsel for the defendant and for good cause appearing, it is

ORDERED that the hearing of this matter be, and is hereby, continued until December 8, 1964 at 10 o'clock, a.m., in the courtroom of the State Corporation Commission in the Blanton Building in the City of Richmond.

A True Copy

Teste: WILLIAM C. YOUNG
Clerk of State Corporation Commission

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COMMONWEALTH OF VIRGINIA, AT THE
RELATION OF STATE CORPORATION COMMISSION

v.

LEWIS TRUCKING CORP.,
MARVIN LEWIS Defendants

MOTION

Now comes the Commonwealth of Virginia, at the relation

of the Attorney General, and represents to this Honorable Commission the following:

1. That the defendants have not paid the registration and license taxes (fees) required by law on the vehicles for which they obtained ten classification plates under §56-304, of the Code of Virginia.

2. That applying the information received and the rate schedule required under §46.1-154 of the Code of Virginia the indicated fees for Virginia license plates are as follows:

SCC Class No.	*Delaware License No.*	*Make*	*Type*	*Serial No.*	*License Fees*
91	C-8700	Int'l	tractor	FA22663F	$ 694.00
293	C-34893	Int'l	tractor	FA78587F	694.00
295	C-21835	Int'l	tractor	R195FR45779	694.00
296	C-41469	Int'l	truck	S8230688F	362.00
297	C-32001	Int'l	tractor	FV12281	694.00
298	C-7969	Int'l	tractor	FA35440F	694.00
299	C-8316	Int'l	tractor	FA76249F	694.00
300	C-8259	Int'l	tractor	FA10171	694.00
301	C-8028	Int'l	tractor	FR45703	694.00
302	C-1420	Int'l	tractor	FR46019	694.00
				Total fees	$6,608.00

3. That said vehicles are operating in Virginia without displaying license plates issued by the Division of Motor Vehicles, in violation of §46.1-64 of the Code of Virginia.

page 4]

4. That the State Corporation Commission determined these vehicles to be required by law to display license plates issued by the Division of Motor Vehicles as evidenced by the issuance of classification plates under §56-304 of the Code of Virginia.

5. That the defendants have registered and licensed their trailers and semitrailers in Virginia; that these trailers are drawn upon the highways of this State by the vehicles herein described and that said trailers are identified as follows:

Virginia License No.	*Gross Weight*	*Registered Owner*	*Registered Owner's Address*
TRH18912	56800	Marvin Lewis	Tasley, Virginia
TRH18913	56800	Marvin Lewis	Tasley, Virginia

TRH18914	56800	Marvin Lewis	Tasley, Virginia
TRH18915	56800	Marvin Lewis	Tasley, Virginia
TRH18916	56800	Marvin Lewis	Tasley, Virginia
TRH18917	56800	Marvin Lewis	Tasley, Virginia
TRH18918	56800	Marvin Lewis	Tasley, Virginia
TRH18919	56800	Marvin Lewis	Tasley, Virginia
TRH18920	56800	Marvin Lewis	Tasley, Virginia
TRH19146	56800	Marvin Lewis	Tasley, Virginia
		Lewis Trucking Corp.	

6. That under §56-304.1 of the Code of Virginia the State Corporation Commission's decision that a vehicle is required by law to display license plates issued by the Division of Motor Vehicles shall be binding on the Division and on the trial courts.

7. That this Commission has jurisdiction to enter judgment in favor of the Commonwealth pursuant to §56-304.12 of the Code of Virginia.

Therefore, the Commonwealth moves this Honorable Commission to enter judgment in her favor against the defendants in the sum of $6,608.00, the same being the amount due the Commonwealth as set forth in paragraph 2 hereof.

COMMONWEALTH OF VIRGINIA
By ROBERT Y. BUTTON
Counsel

D. GARDINER TYLER
page 5] Assistant Attorney General

A. R. WOODROOF
Assistant Attorney General

CERTIFICATE

This is to certify that a copy of the within Motion was mailed on November 25, 1964, to Mr. William King Mapp, Mapp & Mapp, Attorneys at Law, Keller, Virginia, counsel of record for defendants.

A. R. WOODROOF

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AT RICHMOND, DECEMBER 1, 1964

CASE NO. 17073

COMMONWEALTH OF VIRGINIA,
AT THE RELATION OF
STATE CORPORATION COMMISSION

v.

LEWIS TRUCKING CORP.,
MARVIN LEWIS Defendants

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At the request of counsel for the defendant and for good cause appearing, it is

ORDERED that the hearing of this matter be, and is hereby, continued until December 18, 1964, at 10 o'clock, a. m., in the courtroom of the State Corporation Commission in the Blanton Building in the City of Richmond.

A True Copy

Teste: WILLIAM C. YOUNG
Clerk of State Corporation Commission

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COMMONWEALTH OF VIRGINIA,
AT THE RELATION OF
STATE CORPORATION COMMISSION
CASE NO. 17073

v.

LEWIS TRUCKING CORP.,
MARVIN LEWIS, Defendants

RULE.

PRESENT:

COMMISSIONERS
H. LESTER HOOKER (Chairman)
JESSE W. DILLON
RALPH T. CATTERALL
(Chairman Hooker presiding)

APPEARANCES:

BERRYMAN GREEN, IV,
Counsel for Lewis Trucking Corp., Defendant

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GEORGE WALTER MAPP, JR.,
and
WILLIAM KING MAPP,
Counsel for Marvin Lewis, Defendant

A. R. WOODROOF, Assistant Attorney General,
and
D. GARDINER TYLER, Assistant Attorney General,
Commonwealth of Virginia, Intervener

WILLIAM C. SEIBERT,
Commerce Counsel for the Commission

MARGARET P. WOOTTON
Official Court Reporter
State Corporation Commission
Richmond, Virginia

Date of Hearing
December 18, 1964

Chairman Hooker: Proceed, Mr. Seibert.

page 9] Mr. Seibert: This case is before the Commission on a rule against Lewis Trucking Corp., and also against Marvin Lewis, and relates to authority issued by the Commission concerning the type of license plates required by the present law.

Chairman Hooker: Any of you gentlemen want to make an opening statement?

Mr. Mapp: I am William King Mapp, Counsel for Marvin Lewis; and at the outset we would like to make a motion to dismiss the rule, and motion is on the ground that the same is contrary to the Constitution of the United States

and Constitution of Virginia. We are not in position to argue that motion at this time, but I am asking the Commission to dismiss the rule.

Chairman Hooker: Motion overruled. Proceed, Mr. Seibert.

page 10] FRED GREENWOOD,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. Will you give your name?

A. Fred Greenwood.

Q. What is your position?

A. Assistant Director of Motor Transportation, State Corporation Commission of Virginia.

Q. Under your direction are the registration cards and resulting plates issued in your office?

A. Yes.

Q. Did you issue to Mr. Marvin Lewis and Lewis Trucking Corp. certain cards for the year 1964-65?

A. Yes.

Q. Are these the cards?

A. Yes, Sir.

Q. What type of card is that?

A. It is an exemption card and transportation plate.

Q. In other words, it shows an "I" number?

A. Yes.

Q. That means it is interstate?

page 11] A. Yes.

Q. How are they issued?

A. Issued to Lewis Trucking Corp., residence 225 South State Street, Dover, Delaware; and Marvin Lewis, Tasley, Virginia.

Mr. Seibert: I have had those photographed, and would like to offer them.

Chairman Hooker: They will be received as Exhibit No. 1.

Mr. Seibert:

Q. That "I" plate is issued for interstate operation?

A. Yes, only.

Q. Under the law what does that "I" call for in the way

of license plates from the Division of Motor Vehicles?
A. Virginia for hire license plates.

Mr. Green: I object to the conclusion of that by this witness. It is up to the Commission to pass on that.
Commissioner Catterall: He is not saying that as a conclusion of law. He is saying that is the way they are considered in his office.
page 12] Mr. Green: He asked what type of license plates they had to supply.
Chairman Hooker: He just asked him under the law what type of plate was issued. He would be an expert witness on that.
Mr. Green: The question is whether they had a right to determine it. That is for the Commission to say.
Commissioner Catterall: Under our rules, when a member of our staff takes an action, that is the action of the Commission until it is reversed.
Mr. Seibert: I simply asked him what sort of plate an "I" classification represented.
Commissioner Catterall: I think that he should explain what exemption that is for.

Mr. Seibert:
Q. What does that refer to?
A. That means that it could not be used for intrastate in Virginia, but simply interstate.
Q. They are not required to file insurance with you?
A. That is correct.
page 13] Q. Could Mr. Marvin Lewis have secured authority to operate intrastate in Virginia with this particular type of equipment?
A. Yes, he could have if he wanted to.
Q. Because of the way it was issued?
A. Yes.
Q. Did you also issue 1963-64 a number of cards to Lewis Trucking Corp.?
A. Yes.
Q. Were they similarly issued for "I" plates?
A. Yes.

Mr. Seibert: I would like to have those received as the next exhibit.

Fred Greenwood

Chairman Hooker: They will be received as Exhibit No. 2.

Mr. Seibert:
Q. Do you customarily issue this type of card?
A. To certain operators.
Q. With this card what do you then give them?
A. We give them an "I" plate.
Q. That is the long plate?
A. Yes.

page 14] Q. And the presence of an "I" plate on a motor vehicle means that, in your opinion, he should have a Virginia license plate on the motor vehicle?
A. Yes, Sir.

Mr. Green: I would like the Commission to consider my objection as running to all of that testimony.
Commissioner Catterall: All right.

CROSS EXAMINATION

By Mr. Green:
Q. The type of card you issue is predicated upon what information is received by you?
A. That is right.
Q. Where do you secure the information on the type of card to be issued?
A. From the card that Lewis Trucking Corp. presents to our office.
Q. Does he furnish the card?
A. We furnish the cards, and he completes them.
Q. You determine the card, and you send it to him, and Lewis Trucking Corp. sends it back to you?

Commissioner Catterall: There is an ambiguity in that question. He sends him a blank card.
A. There are places for him to fill in.

page 15] Commissioner Catterall: You are talking about the card the applicant sends in, the card that authorizes him to operate?
Mr. Seibert: I think it well for the Commission to know that there are two types of cards.
Chairman Hooker: It would be well to put them in the record, like you send them to the operator.

Fred Greenwood

Mr. Green: There is one type of card issued to the resident operator that is a warrant or exemption certificate.

Commissioner Catterall: You mean if he is interstate commerce only?

Mr. Green: I am not thoroughly familiar with how the Commission issued those, but the statute refers to a warrant or exemption certificate. Maybe, if I point these sections out—do Your Honors have a copy of title 56 of the Code?

Commissioner Catterall: Yes.

Mr. Green: Section 56-304 refers to Warrant Cards, exemption cards and classification plates for vehicles required by law to be issued on motor vehicles in Virginia.

page 16] Section 56-304.1 refers to Registration Cards and identification markers for vehicles operating in Virginia, that are not required by law to display license plates issued by the Division of Motor Vehicles.

Mr. Green:

Q. It is my understanding that the Commission sent to Lewis Trucking Corp. cards to be used under 56-304?

A. That is right.

Q. And, if the Commission thought they were nonresidents, you would have sent the card under 56-304.1?

A. Yes.

Q. What information did you use to determine which card should be sent to Lewis Trucking Corp.?

A. All right, Sir. In the year 1963-64 Mr. Lewis made out a "B" card.

Chairman Hooker: Describe what that is.

A. That is the card for the type of application issued. The reason we issued this particular card is because it shows Lewis Trucking Corp., lessor, as owner of the vehicle, 225 South State Street, Dover, Delaware; Marvin Lewis, lessee, Tasley, Virginia. That is the operator, and we did not make them out in our office.

page 17] Q. So the decision as to what card should be sent was dependent upon the residence of the lessee rather than the owner?

A. Yes.

Fred Greenwood

Q. And those cards were completed and returned to you?
A. Yes.
Q. The decision had been made in sending the cards rather than a determination by the information rendered by Mr. Lewis?
A. Yes.

Chairman Hooker: Based on information Mr. Lewis sent in?

A. Based on information that Mr. Lewis was a resident of Tasley.

Mr. Green:
Q. Based on the fact that the lessee was a resident of the State of Virginia?
A. Yes.
Q. And no attention was paid to the owner of the vehicle?
A. No; the operator was a resident of Virginia.
Q. And the decision, in making that decision,
page 18] relied solely on the residence of the lessee?
A. That is right.
Q. I hand you a letter dated September 15, 1964, directed by you to Mr. Marvin Lewis, and Lewis Trucking Corp., and ask you if that is a letter directed by you to these two defendants in your official capacity?
A. Yes.
Q. And in that letter you state these vehicles are properly registered?
A. Yes, Sir.

Mr. Green: I would like to introduce that as an exhibit.
Chairman Hooker: It will be received as Exhibit No. 3.

Mr. Green:
Q. I believe you testified that these trucks were licensed for interstate operation only?
A. That is correct.
Q. And from your information they are not operating in intrastate commerce?
A. That is correct.
Q. Solely in interstate commerce?
page 19] A. Yes.
Q. And these vehicles have been licensed in

this particular manner for a considerable time?

A. I don't know how long, but I can only give records for the last two years.

Q. And they were licensed in this way prior to the effective date of the latest amendment to 304.1, which based the decision on whether a truck is entitled to reciprocity?

A. Yes.

CROSS EXAMINATION

By Mr. William King Mapp:

Q. Only the lessor of the truck is licensed for the truck in its name, and not the lessee?

A. It could be either way. The law says, "owner or operator."

Q. But the owner would be normally the one who would license it?

A. Yes, I would say that is correct.

Mr. Green:

Q. At the time the decision was made as to the type of card which Lewis Trucking Corp. or Marvin
page 20] Lewis had to complete, was any consideration given by you to any reciprocal agreement by any of the affected States?

A. Yes.

Q. Did you consider in this case that the vehicles were based in Virginia?

A. Yes.

Q. And was that considered in making your decision?

A. Yes.

Q. And your whole decision was based on the fact that the vehicles were based in Virginia?

A. Yes.

RE-DIRECT EXAMINATION

By Mr. Seibert:

Q. In all cases you issue the card as to the carrier in interstate commerce; in other words, if his vehicles are based in the State, you issue the card as for the State of Virginia?

A. Yes.

Q. If he operates as a Virginia operator, you issue under

Fred Greenwood

the authority that is required for Virginia license
page 21] plates?
A. Yes.

CROSS EXAMINATION

By Mr. Woodroof:
Q. I did not understand this letter. Is that when he asked to apply for out of State "I D" cards?
A. Yes.
Q. And you turned them down on the ground that, if he was properly registered as to equipment, that must be registered by the Division of Motor Vehicles?
A. Yes.

Mr. Green:
Q. In other words, this was in response to a letter that this be issued in regard to 56-401?
A. That is correct.
Q. And he actually requested that these be registered as a nonresident vehicle?
A. Yes.
Q. And you refused to do that, and applied your own standards as to whether they should be licensed as a nonresident or resident vehicle?
A. No. We make the decisions on where the vehicles are based.
page 22] Q. Your decision is based on where the vehicles are based rather than the residence of the party?
A. On where the vehicle is based, and whether operated by a Virginia resident.

CROSS EXAMINATION

By Mr. Tyler:
Q. One other question. When he applied for out of State S. C. C. identification markers, you had already issued classification plates at that time?
A. Yes.
Q. You had previously already classified the vehicles to the best of your ability and issued the classification plates?
A. That is right.

Witness stood aside.

page 23] JAMES S. BAIRD,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. Give your name, Mr. Baird.
A. James S. Baird.
Q. By whom are you employed?
A. Virginia State Police.
Q. You are a Trooper with Virginia State Police?
A. Yes.
Q. Where are you located?
A. Accomack County.
Q. How long in Accomack County?
A. Since March, 1956.
Q. Do you know Mr. Lewis?
A. Yes.
Q. How often do you see Mr. Lewis?
A. When I am routine patrolling the Shore, I see him quite often; in fact, every day, if I am patrolling the County.
Q. In the course of your investigation here, did you have pictures taken of Mr. Lewis' place of business?

page 24] A. Yes.
Q. Have you got a copy of the photograph?
A. Yes.
Q. This is a picture of it showing Lewis' Grocery Store?
A. Yes.
Q. Is that Mr. Marvin Lewis' business?
A. Yes, in Tasley, on Route 13.

Mr. Seibert: We offer that as the next exhibit.

Chairman Hooker: It will be received as Exhibit No. 4.

Mr. Seibert:

Q. Did you also have taken a picture of the house which is used by Mr. Lewis in Tasley?
A. Yes, I did.
Q. Is this a picture of it?
A. Yes.

James S. Baird

Commissioner Dillon: Described as a residence?
A. Yes.

Mr. William King Mapp: We don't understand the purpose of this line of questioning.

Chairman Hooker: We understand it. It will
page 25] be received as Exhibit No. 5.

Commissioner Dillon: They are trying to show that he lives there and operates from there.

Mr. Mapp: We admit that he lives there.

Commissioner Dillon: And operates from there?

Mr. Mapp: We admit that Mr. Lewis lives at Tasley, Virginia, and has a home there, and also a grocery business there.

Chairman Hooker: Whatever business he does, it emanates from there.

Mr. Mapp: We consider it is not relevant to that.

Mr. Green: The reciprocity agreement is based only on the ownership of the vehicle, and not where the vehicle is based.

Commissioner Catterall: Will you offer evidence on those lessees?

Mr. Green: No; there is no question - - -

Commissioner Catterall: You know one-half of the vehicles are leased?

Mr. Green: Yes.

Commissioner Catterall: But your position is that a truck company that leases vehicles to a Virginia citi-
page 26] zen could do all of his trucking business using those leased vehicles, and not have to have any plates.

Mr. Green: No. The over the mile axle is the governing thing mostly. The Virginia license plate is based on where based. In the Delaware case it was held - - -

Commissioner Catterall: The leased equipment to Virginia residents would never have to pay a license tag fee.

Mr. Green: I can see what thought is running through your mind.

Commissioner Catterall: I want to know what is the situation.

Mr. Green: The decision here is one involving the reciprocal agreement. The effort has been made by the Attorney General's office to have this reciprocity agreement changed, and it could be changed at a meeting of the Reciprocity

Board by the order of the Governer; and in the case of *A. and D.* vs. *Hooker*, it dealt with the same question, and the Court held that it was not the province of the Court to enter into a reciprocal agreement, that these were executive matters and policy matters that the Court could

page 27] not go into, and the proper way to rectify it was through the Governor.

Commissioner Catterall: You do agree with my hypothetical case, that every Virginia operator having a Virginia license, due to the lease of his equipment from out of State, would not have to have the license plates?

Mr. Green: No, but he would have to meet the other requirements. He would have to be a common carrier or - - -

Commissioner Catterall: That does not limit it to a common carrier.

Mr. Green: No. It refers to common carrier, buses and the like, and this agreement has been in force since 1943 and tested in many courts, and I have frankly tried a number that have arisen recently, and the reason it has arisen is that the enforcement they have tried is trying to enforce the Multi-State agreement as to the Delaware vehicle, and the question is as to the granting of this gratuity, what the gratuity is.

Commissioner Dillon: Don't we all agree on

page 28] the facts?

Mr. Green: Virginia is asking to compete with Delaware. Mr. Lewis is operating a grocery business, and that is a competitive business, and, as far as his trucks are concerned, they are operating all over the Country and have to follow the market, and the reason for reciprocal agreement is in order to permit a Virginia resident or Delaware resident to compete on a fairly equal basis.

Now, the alternative for the reciprocal agreement is for any Virginia resident to move to the State of Delaware, and then he could operate anywhere in the Country.

Mr. Green:

Q. You do not claim that Lewis is a Delaware citizen?

A. No.

Mr. Mapp:

Q. You admit he is a citizen and resident of Virginia, but he leases the trucks from the Delaware corporation?

James S. Baird

page 29] Commissioner Catterall: Is he going to testify?

Mr. Mapp: We have not decided. We want to see how things progress.

Commissioner Catterall: You thought there was some question as to whether he would say he was a Delaware citizen. The only question is whether they are operating.

Commissioner Dillon: We all agree that the lessee is a resident of Virginia, and the trucks are based in Virginia.

Mr. Mapp: We can't stipulate that the trucks are based in Virginia. The trucks are based where they are at the time.

Commissioner Dillon: Aren't they based right here?

Mr. Mapp: They are based in Virginia, in Florida, and in New York; but Virginia does receive a great deal of revenue from the tax on the gas that Mr. Lewis buys. He operates the store and buys from his own tanks.

Mr. Seibert:

Q. You have observed trucks of Mr. Lewis around Tasley?

A. Yes.

page 30] Q. Have you see them serviced in that area?

A. Yes.

Q. Where does he service his equipment?

A. At the Texaco Station at Whispering Pines, and at Crockett's Esso Station at Melfa, and Parks Motor Company at Parksley, and at various locations throughout the County.

Q. Is this one of the trucks?

A. That is one of the trucks being serviced at Melfa.

Q. Did you go to Dover, Delaware, at this place referred to as the "Lewis Trucking Corp.?"

A. In 1963.

Q. Did you take a picture of that place at 225 South State Street?

A. Yes.

Q. Have you that picture?

A. Yes. This is a picture of 225 South State Street.

Q. It is a picture of 225 South State Street?

A. Yes.

Chairman Hooker: Received as Exhibit No. 6.

Q. This is the office of the Secretary of the

page 31] State, is it not?

A. This is the office of the Attorney General

of the State of Delaware, Mr. David P. Buckson.

Q. Is there a service station there?

A. No.

Q. Is there a parking lot for trucks?

A. No.

Q. Is there any terminal at any time at that particular place?

A. No, Sir.

Q. Did you make another trip with respect to the insurance on this equipment?

A. Yes.

Q. Did you develop anything with respect to insurance for Mr. Lewis in Maryland?

A. Yes. On November 9, 1964, Investigator Switzer, of the State Corporation Commission, and myself went to the Hardester Insurance Company of Maryland, and learned from it that Mr. Lewis had insurance with them.

Q. Did you see his policy?

A. No.

page 32] Q. You could not see it?

A. We were not allowed to do that.

Q. And then that was referred back to this office?

A. Yes.

Q. Has Mr. Lewis lately arranged to go to a place in Delaware about once a week; do you know anything about that?

A. Just what I have heard.

Q. You don't know?

A. No, Sir.

Chairman Hooker: If there are no further questions of this witness, he may stand aside.

Witness stood aside.

page 33] G. E. SWITZER,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. Mr. Switzer, give your name, please, to the Reporter?

A. G. E. Switzer.

G. E. Switzer

Q. What is your position?
A. I am an Investigator with the Enforcement Division of the State Corporation Commission of Virginia.
Q. Where are you located?
A. I live at Onancock, in Accomack County.
Q. Where is your territory?
A. Accomack, and Northampton Counties.
Q. Do you know Mr. Marvin Lewis?
A. Yes, Sir.
Q. How often do you see Mr. Lewis?
A. I see Mr. Lewis quite frequently in my travels through Tasley, and the general vicinity that he goes through.
Q. You see him almost every day when you go by Tasley?
A. I would say most every day. I would not say every day.
page 34]
Q. How about his trucks; are they located, and do you see them, in Tasley?

Mr. Green: You are referring to "his trucks." I assume they are Lewis Trucking Corp.'s trucks?
Mr. Seibert: When they are leased, they are the same as if they are his trucks.

Mr. Seibert:
Q. The trucks operated by Mr. Lewis, do you see them often?
A. Yes.
Q. Where do you see them, in the County?
A. Yes.
Q. I believe Mr. Lewis moved into a house trailer in Delaware for one day a week?
A. I am not familiar with that. Mr. Trolan investigated that.
Q. I believe you have given several reports of the times when you have seen the trucks of Mr. Lewis. Refer to your report of October 12th, and tell us about that. What did you see as to the equipment operated by Mr. Lewis?
A. I observed Mr. Lewis's truck or the truck of the Lewis Trucking Corp. on the following days and times:
page 35]

On September 29, 1964, at 12:00 noon, at the Texaco Filling Station at Whispering Pines, with Delaware license number C34-893, and with SCC plate I 293.

Q. Did you see that same vehicle on the 30th?

A. Yes.

Q. And again on October 1st?

A. Yes, Sir.

Q. And also on the 2nd of October?

A. That was a different vehicle.

Q. On the 2nd of October?

A. Yes, I did see that vehicle on that date with another one.

Q. Did you see a vehicle on October 4, 1964?

A. On the 4th of October, 1964.

Q. Give a description of that vehicle.

A. At approximately 9:45 A. M., October 4, 1964, I saw the truck located at the Texaco Filling Station at Whispering Pines with tractor license number C8316, Delaware license, and with SCC plate I 299.

Q. October 2nd, again, did you see a different tractor at Lewis' Store with plate I 295?

page 36] A. Yes, Sir.

Q. What was the license number of that?

A. At approximately 11:00 A. M., on October 2, 1964, the vehicle was parked at Lewis' Store at Tasley, Virginia, license number C21-835, Delaware license; Virginia State Corporation Commission plate I 295.

Q. Again, on October 2, 1964, did you see another vehicle with State Corporation Commission plate I 297?

A. Yes.

Q. Where was that located?

A. That was at approximately 9:50 A. M., on October 2, 1964, in Tasley, parked in lot north side of Shore Diner, which is located in Tasley, tractor license number C32001, Delaware license, SCC plate I 297.

Q. You also saw that vehicle on October 12th; is that correct?

A. Yes.

Q. You have reported a number of those vehicles to this office, have you not?

A. I have several reports of the location of the vehicles being parked, and also of where I stopped the vehicle when it was moving.

page 37] Commissioner Catterall: Does he haul his own products in the vehicles or haul products for hire?

A. I do not have a report of a loaded vehicle in my file. The vehicles I have checked were empty at the time. My statement would be an opinion only, Sir.

Q. You have not checked the loads?
A. In going through my notes, I find the vehicles I have checked were empty at the time that we checked the operation.

Chairman Hooker: Any cross examination of the witness?
Mr. Green: We have no questions.
Mr. Mapp: No questions.

CROSS EXAMINATION

By Mr. Woodroof:
Q. Did you name all of those vehicles you checked in answer to Mr. Seibert's questions?
A. No.
Q. Would you be good enough to identify the other vehicles you saw there?

Mr. Seibert: Give them all.

A. On September 10, 1964, at approximately 1:20 P. M., I checked a vehicle, a tractor registered in the
page 38] name of Lewis Trucking Corp., at the New Church Scales in Accomack County, Route 13, bearing Delaware license number C8700, displaying SCC plate I 91.

Commissioner Catterall: That plate authorizes services for hire?
A. Yes.

Q. He had the right to haul for hire. What plates did the trailer have?

Mr. Seibert: They don't have them from us.

G. E. Switzer

Commissioner Dillon: They have the Virginia plates?
A. Yes.

Q. Parked in Virginia?
A. Yes.

Mr. Seibert: We have a witness who will go into that.

A. At the time of the operation of the tractor I just stated, it was pulling a trailer with Virginia license TRH18-913, registered to Marvin C. Lewis, Tasley, Virginia.

On September 21, 1964, at approximately 4:30 P. M., at the Texaco Station at Whispering Pines on Route 13 a tractor bearing license number C-8259, Delaware
page 39] license, SCC plate I 300, trailer Virginia license TRH18-919.

On September 22, 1964, at approximately 10:20 A. M., I observed two trucks parked at the Farmers Exchange at Tasley, Virginia. One truck was the same as I have immediately described above; and the other one had license C21835, Delaware license, with SCC plate I 295, trailer Virginia license TRH18-917.

On October 12, 1964, at approximately 1:45 P. M., on Route 13 in Accomack County, approximately five miles north of Accomac, tractor, license number C32001, Delaware, trailer Virginia license TRH18-916. The tractor was licensed to Lewis Trucking Corp., and the trailer to Marvin Conway Lewis, Tasley, Virginia.

Some of these I have already been through.

Mr. Woodroof:

Q. Just call the SCC number.

A. September 29, 1964, at approximately 12:00 noon, at Texaco Service Station, at Whispering Pines, SCC plate I 293. That has been identified as C34-893, trailer TRH18920.

Another one, September 30, 1964, approxi-
page 40] mately 10:20 A. M., parked headed east on shoulder, Route 13, tractor license number C34893, Delaware license, SCC plate I 293, trailer Virginia license TRH18-920.

October 1, 1964, approximately 3:15 P. M., at Farmers Exchange in Tasley, tractor license C34893, Delaware license,

SCC plate I 293, Virginia trailer TRH18-920.

October 2, 1964, approximately 11:00 A. M., parked at Lewis' Store, in Tasley, tractor license number C21835, Delaware license, SCC plate I 295, Virginia trailer license TRH18-917.

October 2, 1964, approximately 11:05 A. M., at Farmers Exchange, at Tasley, tractor, Delaware license number C34893, SCC plate I 293, trailer Virginia license TRH18-920.

October 4, 1964, approximately 9:45 A. M., Texaco Station at Whispering Pines, tractor license Delaware C8316, Virginia plate I 299. At that time I was unable to see the trailer license on this vehicle.

Then, prior to that, on October 2, 1964, at approximately 9:50 A. M., at Tasley, parked in lot north side
page 41] of Shore Diner, tractor, Delaware license C-32001, SCC plate I 297, trailer Virginia license TRH18-916.

The same date, October 2, 1964, approximately at the same time, another vehicle parked in the same location at the Farmers Exchange, which is the lot that extends across from the Shore Diner; this tractor had Delaware license C34-893, with SCC plate I 293, trailer license Virginia number TRH18-920.

On October 12, 1964, approximately 12:55 P. M., parked in lot on the north side of Shore Diner, in Tasley, two vehicles, one Delaware license C-32001, SCC plate I 297, trailer Virginia license TRH18-916.

The Number Two vehicle, the tractor license was C34-893 Delaware, with SCC plate I 293, trailer Virginia license TRH18-920.

On October 15, 1964, in Accomack County, Route 13, New Church Scales, I checked a truck owned by Lewis Trucking Corp., licensed Delaware C-41469, SCC plate I 296. I do not have the trailer license number, but there was a trailer attached thereto on this one.

Also on October 15, 1964, Route 13, Accomack County, approximately five miles north of Accomac, a
page 42] truck owned by Lewis Trucking Corp., Delaware license number C7969, SCC plate I 298, trailer Virginia license TRH18-918.

On October 13, 1964, parked at Lewis' Store, around 2:45 P. M., I was unable to see the Delaware license plate number displayed on the front, but SCC plate I 297, and on the trailer TRH18-916, Virginia license.

G. E. Switzer

On October 14, 1964, at approximately 9:00 A. M., parked in the lot in the rear of the Shore Diner at Tasley, tractor Delaware license C34-893, SCC plate I 293, trailer SCC TRH-18-920.

On October 14, 1964, 12:25 P. M., in the drive of Floyd's Restaurant, approximately one mile from Melfa, I was unable to check the license on the front of the truck, but it had SCC plate I 295.

On October 20, 1964, at approximately 3:15 P. M., the Farmers Exchange lot at Tasley, a tractor bearing Delaware license C34-893, SCC plate I 293, trailer Virginia license TRH18-920.

On October 22, 1964, at approximately 3:15 P. M., at Farmers Exchange, the same vehicle I just described, same number on tractor and trailer.

On October 22, 1964, at 4:30 P. M., at the Texaco
page 43] Station at Whispering Pines, a three axle tractor. I was only able to see SCC plate I 295.

Mr. Mapp: If it please the Commission, we have admitted the relevant facts, and I was wondering, for the sake of brevity, if we could file a statement stating where and when he saw these vehicles; and we would have no objection to it.

Mr. Woodroof: I would like for him to finish it.

A. I have about eight more.

Commissioner Catterall: You have listed all of these in your intervening motion, and, if you stipulated that those facts are correct, that will take care of that.

Mr. Woodroof: Those don't refer to the time. He could show the vehicles.

A. On November 5, 1964, approximately 9:15 A. M., parked at Lewis' Store, I was unable to see the license plate. Delaware license plates are displayed on the rear of the truck, but it bore SCC plate I 300, trailer Virginia license number TRH18-919.

On November 5, 1964, approximately 3:00 P. M.,
page 44] same vehicle, it was parked at the same location.

On November 5, 1964, approximately 3:05 P. M., I met tractor-trailer headed north, in front of Farmers Exchange in Tasley; and only identification I could pick up was SCC plate which was I 799.

On December 8, 1964, approximately 7:15 P. M., at New

Church Scales, Accomack County, tractor Delaware license C-34893, SCC plate I 293, trailer Virginia license TRH18-920.

On December 8, 1964, approximately 9:30 P. M., at New Church Scales, Accomack County, tractor Delaware license C8028, SCC plate I 301, Virginia trailer license TRH18-912.

On December 8, 1964, approximately 10:00 P. M., at New Church Scales, Accomack County, tractor Delaware license C8259, SCC plate I 300, Virginia trailer license TRH18-919.

On December 9, 1964, approximately 12:15 A. M., at Texaco Station at Whispering Pines, three axle tractor, Delaware license C41-469, SCC plate I 296.

On December 9, 1964, approximately 12:15 A. M., at Texaco Station at Whispering Pines, tractor Delaware
page 45] license C8316, SCC plate I 299, Virginia trailer license TRH18-915.

Commissioner Catterall: Do you mean A. M.?

A. This was in the morning.

Q. Do you work twenty-four hours a day?

A. No, Sir. Since that time I have seen some of the vehicles, but I did not register them. I identified these vehicles as ones I had seen, and all of them near the front have the name "Marvin Lewis, Tasley, Virginia," and on the tractor, on the saddle tank on each side of the tractor, you see on these "Lewis Trucking Corp."

Commissioner Dillon: The trucks have Lewis Trucking Corp., and the trailers have licenses showing licensing in Virginia?

A. The trailer licenses are in Virginia; in other words, the tractors are Delaware, and the trailers, Virginia.

Commissioner Catterall: Did you ever have any conversation with Mr. Lewis about how he happened to have it this way?

A. I contacted Mr. Lewis on August 18, 1964, in reference to a letter from Mr. Greenwood's office in refer-
page 46] ence to MC Application for a registration of a vehicle; and I talked with him at that time, and, when I discussed it with Mr. Lewis, he stated he was going to move to Delaware.

Q. As an individual?

A. Yes.

Q. Did he say anything about his corporation?

G. E. Switzer

A. I don't recall anything particular, but I do recall he stated his corporation was a resident of Delaware, and that he was going to Delaware, that he had bought a service trailer, and was going to park it next to the service station at Laurel, Delaware.

Q. That is all he said about the corporation?

A. I am unable to state anything further.

Q. Do you recall whether he used the word "my" in regard to the equipment?

A. I am unable to recall.

CROSS EXAMINATION

By Mr. William King Mapp:

A. You are employed by the State Corporation Commission, and not by the Motor Vehicle Division?

A. Yes.

page 47] Q. And you were assigned to Accomack County to conduct certain investigations, which included Mr. Lewis and the Lewis Trucking Corp., by the Commission?

A. Yes.

Q. When did you first come to that area?

A. I went to the Eastern Shore on August 10, 1964.

Q. And you have been there continuously since performing those duties?

A. Yes.

Q. During that time has Mr. Lewis made any attempt to keep any of these vehicles out of your view? You have seen them at public places and all places you have outlined?

A. Yes, Sir. I have seen a lot more than I have listed. They were parked in various locations.

Q. Various locations throughout the County?

A. Yes.

Q. And Mr. Lewis knew he was under investigation by you?

A. Yes.

CROSS EXAMINATION

By Mr. Green:

page 48] Q. This was not the only investigation you were making?

A. No.

G. E. Switzer

Q. You have a number of other truckers involved in a similar type of operation?

A. I have been engaged in investigation of some other operators on the Eastern Shore.

Q. You stated that all of the trucks were empty?

A. I stated all I stopped were empty.

Q. Did you check to see where they were going or where they originated?

A. In one instance I have on October 12, 1964, approximately 1:45 P. M., five miles north of Accomac, the truck was pulled over on the shoulder of the road next to a potato field, and the driver was getting out, and stated he was there to pick up a load of potatoes; and I asked him where he was going, and he said Mr. Lewis was coming out to tell him, but he thought he was going to New Jersey.

Q. In all of these vehicles you have investigated, you have nothing to indicate that these vehicles were going to be operated in intrastate commerce?

A. No.

page 49] Q. Has any information come to you that these vehicles were not being operated in interstate commerce?

A. Yes.

Commissioner Dillon: You have a copy of the Delaware agreement?

Mr. Green: Yes. That is on file.

Commissioner Dillon: It says "motor vehicles to be permitted into and through Virginia." It does not say "out of Virginia."

Mr. Green: We have had that matter litigated in Norfolk, and that was determined in Norfolk some months ago, involving the same situation; and the Court ruled in that case that it was ridiculous to say that they could be operated in Virginia, and not out of Virginia.

Commissioner Dillon: Sure; but why did they not put "out of?"

Mr. Green: If you should follow this to its logical conclusion - - -

Commissioner Dillon: I don't think it was intended to operate out of Virginia.

Mr. Green: This agreement has left out much to be desired,

but this has been operating since 1963, and there
page 50] have been a number of people operating under it,
and there was not one scintilla of disagreement until the decision came out from the Attorney General to Senator Stone, where he made inquiry of the Attorney General; and the Attorney General prepared an opinion on the Multi-State agreement which was based on the base of the vehicle, and all of these were based on the basis of the agreement between Delaware and Virginia.

This matter has been in question ever since that came out, and the Legislature has never changed it; and the repeated argument has been that, if there is something wrong with the reciprocal agreement with the State of Delaware, then it is a very small thing to have the Reciprocal Board to meet and make changes to rectify it; and the fact that it has not been done is a clear indication that the executive people do not think it should be done. I say, in all candor, to the Commission that, if there is something wrong with this agreement, then it is up to the Governor to correct it, and it can be corrected in ten days.

page 51] Commissioner Dillon: I don't think there is anything wrong with the agreement, but in the interpretation.

Mr. Green: Any vehicle that operates through Virginia has got to operate out of Virginia.

Commissioner Dillon: Not when he operates empty out of the State.

Mr. Green: Suppose a truck coming from Florida stops here and unloads, he has to go out.

Commissioner Dillon: It says "operates in and through."

Mr. Green: The ramifications are infinite, but I would like to point out to you that the *Atlanta and Danville* case—in that case, the question was raised *bout* the fact that the agreement was not clear, and not precisely worded, and the Court of Appeals in that case stated:

"While the wording of the Reciprocity Act is not as clear as it might be, we think the answer to the question whether the Governor's declaration of June 25, 1952, is in compliance with it, is to be found in the statute construed
page 52] as a whole, in the spirit and purpose of its enactment, and in the realities of the situation.

Subtleties of meaning should not be allowed to circumvent the legislature's manifest purpose and destroy a formulated scheme of reciprocity, tho inartificially expressed."

Then, it goes on to say:

"We find no merit in the argument that the declaration of June 25, 1952, does not promote the interests of the Commonwealth. The legislature entrusted the Governor, aided by the advice of the Board, to agree to such terms and conditions as in his judgment are best calculated to promote the interests of the Commonwealth. It is for the Governor and not for us to determine whether the reciprocity proposed in his declaration is favorable to the interests of this State. The uncontradicted evidence shows that the imposition of a gross receipts, ton-mileage or similar tax by other states upon Virginia motor interstate carriers would result in a curtailment in the service of such carriers and an increase in transportation page 53] rates which would adversely affect, either directly or indirectly, the best economic interests of Virginia. The Governor has determined that the advantages gained by reciprocity are greater than the disadvantages, and the evidence supports his judgment.

"The fact that a large sum might be collected in gross receipts taxes but for the reciprocity agreement complained of is not the controlling factor in determining whether or not that agreement promotes the interests of this State. The welfare of a state is not measured by the amount of taxes it imposes on a particular subject. The situation must be considered in relation to the advantages gained by not collecting the tax as opposed to the disadvantages in the loss of revenue. Taxation is, or ought to be, along with other requirements, based on the needs of a state, the ability of the taxable subject to bear it, and its impact upon the economic welfare of the state. Subsidization or the waiver of taxes is often granted to promote the interest of the taxable subject, and thereby ad- page 54] vance the welfare of the state as a whole."

That is the opinion found in *Atlantic and Danville Railway Company* vs. *Hooker*, 194 Va. 496, 74 S. E. 270.

This is a matter of considerable importance, not only to Mr. Lewis but a number of operators involved in a similar situation, and it is a policy decision. And other arrangements

could be made. Mr. Lewis would have no difficulty in moving to Delaware, and the State would lose money from his trucks and other revenue from his business operations.

Commissioner Dillon: I don't think we could consider the fact that, in trying to avoid taxes, he was moving out of Virginia.

Mr. Green: Whoever thought this out was a very able lawyer.

Commissioner Dillon: You don't think that the statute that was changed in January, putting the burden on the Commission as to whether they should have DMV tags, makes any difference?

page 55] Mr. Green: Yes; I think it makes this difference, someone has to be charged with reciprocal agreements, and in any case to administer the law.

Commissioner Dillon: By doing away with previous administrative practice?

Mr. Green: We did not do that. Mr. Gordon called it to the Motor Vehicle Commission's attention.

Commissioner Dillon: It was his duty to do that, and in January it was put on the Commission to administer this.

Chairman Hooker: Without our consent or acquiescence.

Mr. Green: It makes your task more binding then on the lower court.

Commissioner Dillon: It is binding on the trial court.

Mr. Green: We had another situation in Norfolk in which we received a notice that every truck would receive a ticket. I went to see Major Crizer, of the Virginia State Police Department. We discussed that, and Major Crizer said, "I thought that was controlled by the Multi-State Agreement." That is what our position is predicated on. The vehicles were

page 56] based in the City of Norfolk, but the matter was pursued through the Virginia courts; and I have personally tried twenty-nine of these cases in the lower courts, and there has been an acquittal in each case.

Commissioner Dillon: All had to do with the Delaware corporation?

Mr. Green: Yes, Sir.

Commissioner Catterall: In other words, if anybody does not like the Virginia license plate, go to Delaware. Are you the lawyer for the company?

Mr. Green: Yes.

Commissioner Catterall: Who are the stockholders?

G. E. Switzer

Mr. Green: Mr. Lewis and his family. I am not trying to argue the legality, but the equity. Looking at the revenue end of it, look at the revenue the State of Virginia is getting.

Chairman Hooker: We don't get it. The Motor Vehicle Department gets it.

Commissioner Dillon: How do you justify having the trailers registered in Virginia?

Mr. Green: Because they are licensed in Virginia.

page 57] Commissioner Dillon: Where are they operated from?

Mr. Green: The same way as the tractor.

Commissioner Dillon: Where would that be?

Mr. Green: I don't know.

Commissioner Catterall: You don't have to be a resident?

Mr. Green: Delaware has not come in and started taxing a Virginia trailer?

Commissioner Dillon: No, Sir, because you don't operate through Delaware.

Mr. Green: Here is a situation of operation. If Virginia tags are put on these vehicles, and they operate through Maryland and Pennsylvania, and so on, they lose their reciprocity. You are not concerned with whether they are required to pay for Maryland tags. You are only concerned with where they operate.

Commissioner Catterall: Did not Maryland give up reciprocity?

Mr. Green: Yes. I don't believe it is on road taxes.

11:30 A.M. Chairman Hooker: The Commission will recess for ten minutes.

page 58] 11:40 A.M. The Commission resumes its session.

Witness: I would like to correct a statement I made when I stated the trucks were all empty. I overlooked the fact that on September 13th on Route 13 I checked tractor registered Lewis Trucking Corp., tractor C-200, Virginia license TRH18916. This vehicle was loaded with empty baskets traveling from Swedesboro, New Jersey, to Accomac, Virginia.

Chairman Hooker: You may stand aside.

Witness Stood Aside.

page 59] WILLIAM G. FLOURNOY,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. Will you give your name to the Reporter?

A. William G. Flournoy.

Q. By whom are you employed?

A. Bureau of Insurance, Director of Agency and Brokers' Licenses.

Q. Were you requested by the Enforcement Division of the State Corporation Commission to secure the insurance policies of Lewis Trucking Corp. and Marvin C. Lewis?

A. Yes, Sir; and to get copies of them.

Q. Did you do that?

A. Yes.

Q. Is that it?

A. Yes.

Q. That is a copy?

A. Yes.

Mr. Green: I wonder if we might see that.

Mr. Seibert: Certainly.

page 60] Note: Policy handed Mr. Green.

Mr. Seibert:

Q. What is the address shown by Lewis Trucking Corp.?

A. Tasley, Virginia.

Q. What is the address shown for Marvin C. Lewis?

A. They have it jointly. They have the Lewis Trucking Corp. and Marvin C. Lewis shown jointly.

Mr. Seibert: I ask that this be received as the next exhibit.

Chairman Hooker: It will be received as Exhibit No. 7.

CROSS EXAMINATION

By Mr. Green:

Q. You, as I understand, did not have any connection with this policy other than furnishing a copy to Mr. Seibert?

A. Yes, that is correct.

William G. Flournoy

Q. Who put this address as to the location of the trucking company?

A. Either the issuing agency or the company.

page 61] Q. Not the assured?

A. No.

Commissioner Dillon: Do you think it was put on there from information given by the trucking company?

A. Yes.

Mr. Green: I don't think it is relevant, but where the truck is located is not conclusive.

Commissioner Catterall: It is not a declarant. They usually have a declaration by the assured.

Mr. Green: I don't think it is material.

Commissioner Dillon: It would tend to show the vehicles were based in Virginia, which Mr. Greenwood stated.

Commissioner Catterall: You cheerfully agree they are based in Virginia, but on lease.

Mr. Green: I don't know. These trucks operate out of Delaware hauling watermelons and different products. They are now in Florida.

Commissioner Catterall: They pick up the produce wherever it is located?

Commissioner Dillon: But they are dispatched

page 62] from Tasley.

Mr. Green: No.

Commissioner Dillon: You don't think that the Attorney General in the State of Delaware dispatches them?

Mr. Green: No.

Commissioner Dillon: And they are leased to Mr. Lewis?

Mr. Green: Yes.

Commissioner Dillon: And they are dispatched from Tasley?

Mr. Green: I don't say the Lewis Trucking Corp. is the operator. They are the lessor.

Mr. Mapp: I think the truck drivers arrange for their own loads. If they are in Florida, the people will contact the driver, and he will take them through.

Commissioner Dillon: Most of it done through brokerage firms?

Mr. Mapp: Yes.

William G. Flournoy

Commissioner Dillon: And the brokerage firm gets their orders from Mr. Lewis?

Mr. Mapp: To some extent the driver comes in

page 63] there.

Commissioner Dillon: Who tells the driver to go to Florida?

Mr. Mapp: Perhaps Mr. Lewis, and, while there, he gets another load.

Commissioner Catterall: Who sends him to Florida?

Mr. Mapp: Sometimes he sends himself. The driver is trying to get as much business going to and from as possible.

Chairman Hooker: Where would this driver be sent from if he sent himself?

Mr. Mapp: Originally he is sent out by the Lewis Trucking Corp. or Mr. Lewis.

Chairman Hooker: And, after he gets out, he is on his own?

Mr. Mapp: Yes. There is no terminal.

Chairman Hooker: The only terminal he has is Tasley, Virginia?

Mr. Mapp: He would not have one there.

Chairman Hooker: You almost said he did.

Mr. Green: It would not make any difference, if he did, to the Lewis Trucking Corp.

page 64] CROSS EXAMINATION

By Mr. Woodroof:

Q. Will you state the date there?

A. The photo copy expiration date is April 22, 1965, so I assume the inception was on October 22, 1964.

Mr. Woodroof: Let the record show that it was issued on October 22, 1964, and this insurance covers the same tractor trucks all the way as numbered by the State Corporation Commission.

Commissioner Catterall: You don't have to read them.

Mr. Woodroof: I want to make it clear that this covers the same ten vehicles we have been dealing with.

Chairman Hooker: No further questions of this witness? You may stand aside.

Witness Stood Aside.

page 65] D. M. TROLAN,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Seibert:

Q. What is your name?

A. D. M. Trolan.

Q. What is your position?

A. Special Investigator in the Enforcement Division of the State Corporation Commission.

Q. Did you make an investigation of the operation of Lewis Trucking Corp. and Marvin Lewis at Tasley, Virginia?

A. Yes, I did.

Q. Did you check into the operations at Tasley; and I believe the statement has been previously made that Mr. Lewis was going to Delaware and establish residence there?

A. The statement was made that Mr. Lewis earlier made the statement that he was going to Delaware to establish residence. The major portion of my investigation was in Delaware.

Q. Did you make a photograph of the situation in
page 66] Delaware?

A. Yes, I did.

Q. Is this photograph No. 1 a picture of a house trailer located at a service station in Delaware?

Commissioner Catterall: You stated that it was stated that he was going to acquire a residence in Delaware. I want the witness to state who stated that. Do you understand the question?

A. I believe the testimony of Mr. Switzer, in answer to a question from Judge Catterall as the whether he had any conversation with Mr. Lewis on the matter, and I believe Lewis told Mr. Switzer that he was going to Delaware.

Mr. Green: I would object to that question.

Mr. Seibert: I will withdraw that, and ask if you made an investigation as to whether Mr. Lewis had a residence in Delaware?

A. Yes; I made an investigation as to that.

Q. Did you find that he had a trailer?

Commissioner Catterall: He admits that he is a resident of Virginia, and the record is complete on that.

Mr. Seibert: I wanted to show about the trailer.

page 67] Mr. Seibert:

Q. Did you get a copy of the agreement report of the Lewis Trucking Corp. in Delaware?

A. Yes.

Q. Is that a copy of that?

A. Yes.

Mr. Seibert: I would like to offer that as the next exhibit in this case.

Chairman Hooker: It will be received as Exhibit No. 8.

Mr. Green: We have no objections to that.

Mr. Seibert:

Q. Did you check as to license plates secured in Delaware of the Lewis Trucking Corp.?

A. Yes, Sir.

Q. Do you have a list of them?

A. Yes.

Q. Is this the list, Mr. Trolan?

A. Yes.

Mr. Seibert: I ask that this be received as Exhibit No. 9.

Chairman Hooker: It will be received as Exhibit No. 9.

page 68] Mr. Seibert:

Q. Have you got a list of motor trailers licensed in Virginia by Marvin C. Lewis?

A. Yes, Sir, I have.

Q. Is this it?

A. Yes, Sir.

Mr. Seibert: I ask that this be received as the next exhibit.

Chairman Hooker: It will be received as Exhibit No. 10.

Mr. Seibert:

Q. Have you got a statement showing commercial and trailer fees for the State of Delaware?

A. Yes, Sir.

Mr. Seibert: We offer this as the next exhibit.

Chairman Hooker: It will be received as Exhibit No. 11.

Mr. Green: With respect to the fees and that kind of thing, I don't see where it would be relevant.

Mr. Seibert: I think it is relevant.

Mr. Green: The courts have held that it is not a matter for consideration. We would be happy to stipulate that the trailer license fees are cheaper in Virginia than in Dela-

page 69] ware.

Mr. Seibert:

Q. Some statement has been made as to how Delaware relates its tractor to the trailer. How does it do that?

Mr. Green: Let the record show my objection to this whole line of examination.

A. The relationship of the fee is in regard to the semi-trailer in relation to the tractor. This was explained to me by the people in the Division of Motor Vehicles. Delaware permits a gross load of sixty-five thousand pounds in combination and with a tandem semi-trailer they permit eighteen thousand pounds to each axle. So, assuming they carry eighteen thousand pounds on each axle, they move on the semi-trailer, and the remainder can go on the tractor in this combination.

Q. What is the weight used usually on the tractor and trailer in Delaware?

A. All of the tractors assessed to Lewis Trucking Corp. are licensed at twenty-eight thousand pounds. There is one three axle that is licensed at eighteen thousand.

Q. With license at twenty-eight thousand, that

page 70] allows them to carry how much?

Mr. Green: I have let all of this come in. This witness is not competent to testify as to what he is testifying about.

Chairman Hooker: That license gives him authority to carry sixty-five thousand pounds.

Commissioner Catterall: What he is developing is that in Delaware it costs more to register a semi-trailer than in Virginia.

Mr. Seibert: No. I was developing that what this company should do is buy a license for twenty-eight thousand pounds, and the trailer in Virginia would be sixty-five thousand pounds in Virginia.

Commissioner Dillon: Isn't it sufficient to say that the Delaware trailer license is higher, that the tractor is cheaper in

Delaware, and the trailer is cheaper in Virginia, or he would register them in Delaware?

Mr. Green: I agree with the first part of your statement.

Mr. Green:

Q. Did you help work it out?

page 71] A. No, Sir. I can tell the Commission in all candor I did not.

Commissioner Catterall: What is the fee for the trailer you have just described in Delaware?

A. Assuming that there were eighteen thousand pounds on each axle of a tandem semi-trailer, the full year fee would be one hundred and sixty dollars and ten cents.

Commissioner Dillion: What would be the fee in Virginia on the same trailer?

A. Twenty-two dollars and fifty cents.

CROSS EXAMINATION

By Mr. Green:

Q. You say you checked with the Delaware Division of Motor Vehicles?

A. Yes.

Q. Did you hear any question there to indicate Delaware was not granting reciprocity to Virginia trailers?

A. I did not hear anything that they were not granting reciprocity to Virginia trailers. I heard another statement made there.

Q. Just confine your answers to what I ask you. Has your investigation indicated that Delaware is not granting reciprocity to Virginia trailers?

page 72]

A. No. The reciprocity is still being granted.

Q. The allocation is made that, if these trucks were licensed in Virginia, they would have to be licensed at six hundred and sixty-four dollars each; is that correct?

A. Without the chart before me, I could not answer that.

Q. Both the tractor and Virginia trailer could be licensed in Delaware for considerable less than just the tractor could be licensed in Virginia?

D. M. Trolan

A. Yes, Sir, according to this chart, and the figure you gave, and the combination of the tractor and trailer could be licensed cheaper in Delaware than in Virginia.

Mr. Green: It would be about one-third of the entire rig.
Commissioner Dillon: If you say so, I will accept that.

A. If you say so, Mr. Green, I will accept it, but I don't think the figure of one-third would do it.

Mr. Woodroof:
page 73] Q. Did you say what was the cost of a tractor license in Delaware?

A. Taking the Lewis Trucking Corp.'s tractors licensed in Delaware for twenty-eight thousand pounds, and checking it out on this plat for a full year, it would be one hundred and twenty-three dollars and thirty cents.

Q. In your discussion with him, Mr. Green asked you on this subject were any statements made to you. In your discussion with the Delaware authorities, was any statement made which indicated that they disapproved of licensing one vehicle in Virginia, and one in Delaware?

Mr. Green: I object to that question.
Mr. Woodroof: You opened up the subject.
Chairman Hooker: What is he objecting to?
Mr. Woodroof: Mr. Green opened up the subject as to what the authorities said to him as to whether the authorities liked the situation they found in regard to reciprocity in regard to licensing the vehicles.
Commissioner Catterall: He can ask for hearsay evidence in cross examination of the witness. I don't think that opens the door.
page 74] Mr. Woodroof: I was just asking him as to the statement made. He started to give it, but Mr. Green stopped him.
Commissioner Catterall: Let's see what his answer would be. What is the question?
Mr. Woodroof: I asked him whether the Delaware authorities approved of or disapproved of the tractor being registered in Delaware and the trailer being registered in Virginia.
Mr. Green: And I object to it.
Commissioner Catterall: You don't think what the man in Delaware said would have anything to do with it?

Chairman Hooker: It would not have any effect on us in deciding this case. You may stand aside.

Witness stood aside.

page 75] Chairman Hooker: Does the Attorney General have any evidence?

Mr. Woodroof: Yes.

Chairman Hooker: Proceed.

ELTON L. LATHAM,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Woodroof:

Q. State your name and occupation.

A. Elton L. Latham, Investigator for the Division of Motor Vehicles.

Q. Mr. Latham, I hand you a statement, and ask if you are able to identify it.

A. This is a certificate from the Division of Motor Vehicles as to certain vehicles licensed in Virginia for 1964, and certain vehicles not licensed.

Mr. Green: We have no objection to that.

Mr. Woodroof: These are all in the exhibit. There are sixteen vehicles registered in Virginia in the name of Marvin Lewis at Tasley, and certified are ten tractor-trailers which page 76] have been referred to by Mr. Switzer, most of them as being connected with the tractors used, and this also certifies that the ten International tractors which are here under discussion have not been registered for the current year in Virginia.

Chairman Hooker: It will be received as Exhibit No. 12.

Mr. Woodroof: As a part of that, we have photostatic copies of the registration cards of each of the vehicles.

Chairman Hooker: That is part of Exhibit No. 12.

Commissioner Catterall: You don't know how long they have not been registered in Virginia.

A. I can't answer that.

Mr. Woodroof:

Q. Were they registered for this year at all?

A. They were not registered in 1964 at all.

Commissioner Dillon: Will you interpret another section for me? Section 10 of the Reciprocal Agreement reads:

"The privileges extended shall apply only to those who retain their status as non-residents with respect to
page 77] the reciprocating state, and are licensed in their home State only, except as provided in Section 1 of this agreement."

What does that mean?

Mr. Green: If you look at the Motor Vehicle Law under "Definitions," it says that every person not domiciled, except any corporation authorized to do business in the State, shall be deemed a resident of Virginia.

Commissioner Dillon: What foreign corporation is authorized to do business in Virginia? Isn't he a foreign corporation? Aren't we dealing with an operator that is not a resident of Virginia?

Mr. Green: If you look at the Attorney General's opinion, it is predicated on the residency of the owner of the vehicle, and I say, by definition, that this corporation is a nonresident.

Commissioner Dillon: We all agree that the Delaware corporation is a nonresident corporation, but don't agree that the operator is a nonresident.

page 78] Mr. Green: If this agreement applied to the lessee or operator, it would not be true. If you refer to paragraph 2, it says:

"Privately owned and operated trucks, tractor trucks, combination of truck and trailer or semi-trailer, operated by the owner thereof or his duly authorized agent for the transportation in interstate commerce," and so forth.

He does not have to be the carrier. That is qualified that the vehicle has to be operated also by the owner, but when you come to No. 7, it says:

"Motor vehicles, operated as common carriers, shall be permitted to operate into and through the reciprocating state in interstate commerce * * *."

There is no requirement that the vehicles have to be operated by the owner or agent or, if operated - - -

Commissioner Dillon: I see what you are talking about, but I don't think you explained it to me.

page 79] Commissioner Catterall: Is there any evidence that these vehicles are operated in common carrier service?

Mr. Green: There will be.

Witness stood aside.

Mr. Green: I wonder if we could recess for a few minutes, or perhaps for lunch.

12:15 P.M. Commissioner Caterall: The Commission will recess until 1:45 P. M.

1:45 P. M. The Commission resumes its session.

Mr. Woodroof: I would like to present one witness.

Chairman Hooker: I understood you were through.

Mr. Woodroof: I want to put Mr. Trice on. He has not had the oath.

page 80] MELVIN B. TRICE,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Woodroof:

Q. Will you state your name and occupation?

A. Melvin B. Trice; Deputy Commissioner of the Division of Motor Vehicles of the State of Virginia.

Q. Mr. Trice, it is already in evidence here — a certificate made by the Motor Vehicle Commission, signed by yourself as Deputy Commissioner, listing sixteen vehicles registered in Virginia, and ten not registered in Virginia. Will you certify that that is your certification?

A. Yes, Sir.

Q. The question I want to ask you, Sir, is, had these tractors been registered in Virginia, on the information given you on the trailer certificates, what would be the fees in Virginia if they were listed in Virginia?

A. The full license fee in Virginia, based on the fifty-eight

thousand pounds, would be six hundred and ninety-four dollars; and the trucks would be based on the fee applicable to the gross weight which, in this case, as I check it

page 81] out, would be three hundred and sixty-two dollars.

Q. Would you state the dollar amount Virginia claims is owing for 1964 in registration fees, as shown in this chart?

A. Six thousand, six hundred and eight dollars.

Commissioner Catterall: When were those vehicles registered in Virginia, the year before?

A. No.

Q. You are only taking one year?

A. Yes.

Commissioner Dillon: Aren't you entitled to three?

A. I can't answer that.

Commissioner Catterall: We don't know how long they have been in operation. You don't know how long the vehicles have been operating.

Mr. Woodroof: The evidence is only for this year.

CROSS EXAMINATION

By Mr. Green:

Q. Does the Division of Motor Vehicles, as an agency, contend that these vehicles should be registered in

page 82] Virginia?

A. I can't speak for the Division on that.

Q. Do you know whether this claim originated through the Division of Motor Vehicles and the Attorney General's office?

A. Between the two. I have worked with the Attorney General on it.

Q. It was at the instance of the Attorney General's office?

A. Yes.

Q. Do you recall speaking with me on the telephone, advising me at that time that you did not know whether they should be registered in Virginia or not?

A. Truthfully, I can't answer that because I have so many inquiries on the telephone that, truthfully, I cannot say.

Witness stood aside.

Marvin Lewis

Mr. William King Mapp: We would like to have
page 83] Mr. Marvin Lewis sworn.
Chairman Hooker: Come around, Mr. Lewis.

MARVIN LEWIS,

a witness introduced on behalf of Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. William King Mapp:
Q. Will you state your name?
A. Marvin Lewis.
Q. You are a resident of Tasley, Virginia?
A. Yes.
Q. As President of that corporation, did you make application for the ten classification plates here under consideration?
A. Yes, Sir.
Q. In your application did you state the facts as being true and correct, to the best of your knowledge and belief?
A. To the best of my knowledge.
Q. Based on that information, were you issued ten classification plates?
page 84] A. Yes.

By Mr. Green:
Q. You were issued certain classification plates by the State Corporation Commission?
A. Yes.
Q. And you at a subsequent time applied for a different type of plate?
A. Yes.
Q. Why was that?
A. I figured the ones that had been issued me were improper, so I went down to the office of Jeff Barnes' widow, who files the tax reports for a number of people, and we got in a conversation and figured that the ones I had filed were illegal, so I re-ordered, and they sent my letter and check back and said I was properly registered.
Q. Is this the letter referred to as Exhibit No. 3?
A. Yes, Sir.

Marvin Lewis

Q. That is the letter you received?
A. Yes.
Q. You are the operator of these vehicles?
A. Yes.
page 85] Q. Are these vehicles licensed in any State other than Delaware?
A. No other than Delaware.
Q. Are they operated as a common carrier?
A. It is products on there, what we call a "gypsy operation."
Q. Are these vehicles operated in interstate commerce?
A. Yes.
Q. Do they carry any gasoline other than that connected with the engine?
A. No, only at the fuel pump.
Q. Do you purchase gasoline in Virginia to cover the leakage of those tractors?
A. Yes.
Q. Describe your operations. You call it a "gypsy operation." Tell them whether the trucks go anywhere.
A. Anywhere on the East Coast, as far West as Chicago. I don't go any further West than Chicago. I send them out to Florida, and they see every Tom, Dick and Harry to see if they can get a load, and they gypsy load, and they gypsy around and get a load there.
page 86] Q. Do you follow the produce market?
A. Yes.
Q. Where do your trucks carry in Florida?
A. Some from Belle Glade, some from Hastings, and some from Pompano.
Q. Where do they haul to?
A. New York, Philadelphia, Chicago, and Cleveland.
Q. And after they take a load, what do they do?
A. They go somewhere to get a load to come back with. If you don't, you won't trade your money.
Q. When do you operate out of Delaware?
A. The watermelon season, and a few cucumbers.
Q. When is that?
A. From the 10th of July until a week after Labor Day, watermelons.
Q. How are the drivers of the trucks paid?
A. Twenty per cent.
Q. Twenty per cent of what?
A. Twenty per cent of the freight.

Marvin Lewis

Q. Are they charged with getting a load?
A. No.
Q. How do they do that?
page 87] A. They go to the farms or brokers.

Chairman Hooker: If they don't get freight, they don't get any pay?
A. Yes.

Commissioner Catterall: What sort of certificate do you hold? Do you get a certificate from the Interstate Commerce Commission?
Mr. Green: He hauls only produce.
Commissioner Catterall: You have no certificate at all?

A. No. The only thing we do is keep our safety logs.

CROSS EXAMINATION

By Mr. Seibert:
Q. You are a common carrier?
A. Yes.
Q. How can you be a common carrier if you don't have a certificate from the Interstate Commerce Commission?

Commissioner Catterall: That is a legal question. You are not going to argue it?
Mr. Seibert: No. I wanted to know how he could operate without a certificate.

page 88] A. That is the commonest thing you can get.
Q. It is produce freight?
A. Yes.
Q. In 1963 what type of registration did you have from the State Corporation Commission?
A. The same as I have now, as far as I know.
Q. You talk about sending these trucks out. How do you decide where to send them?
A. They have to move wherever the produce is.
Q. Do you decide where that is?
A. They do.
Q. Do you tell them where to go?
A. No; they come in and say "Give me a hundred dollars:

Marvin Lewis

I am going to Florida or New York."
Q. What back loads do they haul?
A. Potatoes, carrots, anything in the produce line.

Commissioner Catterall: Let me ask you about the Lewis Trucking Corp. When was that licensed?
A. Offhand, I can't recall.
Q. 1964 or 1963?

Mr. Green: We have a copy of the incorporation papers.
Commissioner Catterall: When was it?
page 89] Mr. Green: February 25, 1960.
Commissioner Catterall: How many shares of stock have been issued?

A. I don't know.
Q. How many shares do you own?
A. I don't know.
Q. Anybody else own any shares?
A. It is a family corporation.
Q. Have you issued any shares?
A. The attorneys fixed it up. I just told them to fix me up a legal operation.
Q. You don't know whether Lewis Trucking Corp. has issued any shares of stock?
A. No.

Witness stood aside.

Mr. Green: That is our case.
page 90] Mr. Mapp: We rest.
Chairman Hooker: Do you want to file briefs?
Mr. Green: Yes, Sir. I might say this, that there are some right subtle points involved in this case.
Chairman Hooker: You may file your brief by February 1, 1965, and, if the Commonwealth wants to file a brief, you can file them simultaneously.
The Commission will take this case under advisement.
Mr. Green: One further matter with respect to the Attorney General's office requesting a revision, I think Mr. Woodroof could agree that such a letter was written.
Mr. Woodroof: Mr. Green brought the matter up. The only opinion that the Attorney General has issued on these vehicles doing this business was at the request of the Commonwealth's

Attorney of Accomack County, and they had two questions—whether the truckers operating from Accomack County, Delaware corporations, were required to purchase Virginia registration licenses; and, No. 2, were they required to
page 91] pay local taxes; and the Attorney General answered both of those questions in the affirmative, and this is the only opinion he has written.

Mr. Green: I am not referring to the opinion, but I understood there was a letter written from the Attorney General's office to Mr. Chester Lamb requesting that the law be amended.

Mr. Woodroof: That is correct. Mr. Green asked me if such a letter had been written, and I said, "Yes, it had;" and, again, Mr. Green referred to a case decided in Norfolk.

Back in 1964 three cases came up in Norfolk. Two of those were similar to the one we have today. Two of them were decided against the Commonwealth, and one in favor of the Commonwealth; and they are the only cases of this nature I have been involved in in recent years. Several years ago there were some in Tappahannock, all of which were decided in favor of the Commonwealth.

I understand that this particular question we have here today has come up in county courts, always on charges of the operator of the motor vehicle; and I further
page 92] understand that the county court did not know how to decide it, and they were carried to the circuit court to give guidance, and when it went back, I could not say.

Mr. Green: The only thing I want to make clear is that this is a matter for the Reciprocal Board, and the Governor, and that the Attorney General has brought it to the attention of the Reciprocal Board, and the Governor.

Commissioner Catterall: What does that prove?

Mr. Green: It proves that it has been brought to the attention of the Governor who is the party charged with entering into the agreement.

Commissioner Dillon: You don't think the Stone Commission report indicates that, do you?

Mr. Green: No. The Stone report had to do with the Multi-State agreement, but not this agreement.

Commissioner Dillon: I don't know.

Commissioner Catterall: Everybody wants us to decide this question, and then it will be a public record.

Mr. Green: I don't want the Commission to de-
page 93] cide it the wrong way.

Commissioner Dillon: You mean the Supreme

Court will be at you next.

Mr. Green: This is not a matter just involving one individual. There are a number of people operating under similar problems.

Commissioner Catterall: But under the new law they all end up here. If you are going to write a brief, I wish you would say something one way or the other on the last sentence in 56-304.12.

Commissioner Dillon: If we could get the Virginia operator to pay more taxes.

Mr. Green: They would not do so. They would pay less. That is what will happen when Mr. Lewis moves to Delaware; Virginia loses the revenue.

Commissioner Catterall: They won't have to support the vehicle.

Mr. Green: It is a management operation.

Chairman Hooker: You would not expect the Commission not to rule on this case because somebody will move out of the State?

Mr. Green: That is why we have the reciprocal
page 94] agreement, and we should stick to the points that it covers.

Mr. Woodroof: We can't, and don't, intend to stop them from moving from Virginia, but we can break them up from violating the law.

Commissioner Catterall: If you want the pleasure of living in Virginia, it is necessary to comply with her laws.

Mr. Green: I don't see why Virginia wants a reciprocal agreement with Delaware if they don't want to comply with it; and I think that is why Delaware is not a party to the Multi-State agreement.

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AT RICHMOND, FEBRUARY 8, 1965

COMMONWEALTH OF VIRGINIA
AT THE RELATION OF THE
STATE CORPORATION COMMISSION

v.

LEWIS TRUCKING CORP, and
MARVIN LEWIS

CASE NO. 17073

JUDGMENT

The Commission, having considered the evidence and the arguments of counsel, is of the opinion and finds, for the reasons set forth in its opinion of even date herewith, that during the tax year commencing April 15, 1964, the defendants operated on the highways of this state ten motor vehicles that should have been but were not registered with and licensed by the Division of Motor Vehicles. Accordingly, it is

ADJUDGED AND ORDERED

1. That the Commonwealth do recover of the defendants, for the use of the highway maintenance and construction fund, the sum of $6,608.00 with interest at 6% per annum until paid.

2. That all exemption cards and classification plates issued to the defendants or either of them by this Commission be suspended and be surrendered to the State Corporation Commission on March 1, 1965, unless before that date this judgment be paid to the Division of Motor Vehicles or the Treasurer of Virginia.

3. That no exemption cards, classification plates or other evidences of authority to operate motor vehicles on the highways of Virginia be issued by this Commission to the defendants or either of them until this judgment is paid.

4. That a writ of *fieri facisa* issue if this judgment is not paid on or before March 1, 1965.

5. That attested copies of this judgment be sent to Berryman Green, IV, Virginia National Bank Building, Norfolk 10, Va., George Walter Mapp, Jr., Accomac, Va., William King Mapp, Keller, Va., A. R. Woodroof, Box 1298, Richmond 20, Va., D. Gardiner Tyler, Assistant Attorney General, to the Division of Motor Carrier Taxation and to Commerce Counsel of the Commission.

A True Copy

Teste: WILLIAM C. YOUNG
Clerk of State Corporation Commission.

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Opinion, Catterall, *Commissioner:*

The reason the record in this case is so long is that the

Commonwealth could not know in advance that the defendants would admit the truth of the only two material facts, namely, that Marvin Lewis is a resident of Virginia and that his Delaware corporation is a sham.

At page 79, Lewis testified:

"Q. Will you state your name?
"A. Marvin Lewis.
"Q. You are a resident of Tasley, Virginia?
"A. Yes.
"Q. As President of that corporation, did you make application for the ten classification plates here under consideration?
"A. Yes Sir."

At page 85, he testified:

"Commissioner Catterall: How many shares of stock have been issued?
"A. I don't know.
"Q. How many shares do you own?
"A. I don't know.
page 97] "Q. Anybody else own any shares?
"A. It is a family corporation.
"Q. Have you issued any shares?
"A. The attorneys fixed it up. I just told them to fix me up a legal operation.
"Q. You don't know whether Lewis Trucking Corp. has issued any shares of stock?
"A. No."

Virginia license plate fees on tractors cost a great deal more than Delaware license plate fees on tractors, and Virginia license plate fees on trailers cost a great deal less. With those facts in mind, Lewis consulted a lawyer, who told him that he could operate on Delaware tractor plates and Virginia trailer plates if he registered his tractors in the name of a Delaware corporation. The lawyer got him a Delaware charter, Lewis registered his tractors in the name of the corporation, and continued to operate them thereafter in the same way that he had always operated them.

Lewis operates for compensation in interstate commerce. He does not haul anything from one point in Virginia to another point in Virginia. Although vehicles operated solely in interstate commerce are not expressly exempt from state regula-

tion under §56-274, they are exempt from state regulation (but not from state taxation) by the commerce clause of the Federal Constitution. Accordingly, the State Corporation Commission issued in the name of Lewis' corporation exemption cards and classification plates. The exemption cards showed that Lewis was the operator of the vehicles, and the classification plates showed that he could not haul anything from one point in Virginia to another point in Virginia.

page 98] The Commission issues a dozen different kinds of classification plates. Each classification plate carries a letter that signifies the particular kind of service the carrier is authorized to perform on Virginia highways. Classification plates are issued only for vehicles operated for compensation. Vehicles not operated for compensation display "identification markers." Identification markers are also issued to vehicles that are operated for compensation but that are not required by law to purchase Virginia license plates issued by the Division of Motor Vehicles. The purpose of these elaborate and complicated requirements is to make it easy for a law enforcement officer to tell at a glance whether a vehicle is obeying the law. As applied to the present case, an officer who sees a vehicle displaying an S.C.C. classification plate and a Delaware license plate knows at once that the vehicle is being operated illegally, because §56-304 makes it the duty of the State Corporation Commission to issue a *classification plate* to a vehicle "that is required by law to display license plates issued by the Division of Motor Vehicles."

Before 1964, the S.C.C. might decide that a vehicle need not be licensed in Virginia and the D.M.V. might decide that the same vehicle must be licensed in Virginia. If the vehicle operated in six counties, three of the county courts might decide one way and three the other. In 1964, for the sake of uniformity, the General Assembly designated a single tribunal to make the decision. It added to §56-304.1 the paragraph:

"The Commission's decision that a vehicle is or is not required by law to display license plates issued by the Division of Motor Vehicles shall be binding on the Division and on the trial courts."

page 99] When an applicant registers his vehicle with the S. C. C., the issuing clerk can, of course, act only on the facts furnished by the applicant. If the applicant

demands an identification marker, but the clerk tenders him a classification plate, the applicant has the right to complain successively to the division head, the Commissioner who supervises the division, the full Commission, the Supreme Court of Appeals and the Supreme Court of the United States. The defendants in this case did not follow that course but operated with Delaware tags in violation of the law. Consequently, the State Corporation Commission, after a thorough investigation of the facts, instituted this proceeding. Because of the importance of the precedent to be made in this case, the Division of Motor Vehicles and the Attorney General intervened.

Counsel for the defendants insist that a citizen of Virginia can escape the heavy license fees imposed by Virginia law on tractors by the cheap and easy device of purchasing a corporate charter from the State of Delaware. If they are right, a citizen of Virginia who operates only in interstate commerce would be ill-advised indeed not to get himself a Delaware charter.

In this particular case we have no occasion to consider the question of reciprocity, because it is plain that Mr. Lewis's corporate charter is a sham and an illusion.

Chief Justice Marshall, in the *Dartmouth College Case*, 4 Wheat. 518 at page 636 said:

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law."

page 100] A corporation can exist only by virtue of statutory authority. When a group of individuals obtain a charter of incorporation the law treats the group *as if* it were an organism separate from the individuals who own, operate, control and compose it. Such an entity serves many useful and necessary purposes, but is sometimes capable of being used for purposes that the legislature did not intend it to be used for. The doctrine that the courts will, when necessary to prevent wrongdoing, "ignore the corporate fiction" and "pierce the corporate veil" is very well settled. Since the doctrine cannot be defined by metes and bounds, there is endless argument over whether it should be applied in a particular case. There are no rules of thumb, and, since every case turns on its own particular facts, the citation of authorities is useful only to confirm the fact that there is such a doctrine. As our court said in *Beale* v. *Kappa Alpha,* 192 Va. 382 at 399:

"Just when a corporation will be regarded as the adjunct, creature, instrumentality, device, stooge, or dummy of another

corporation is usually held to be a question of fact in each case . . . .; and courts will disregard the separate legal entities of the corporations only when one is used to defeat public convenience, justify wrongs, protect fraud or crime of the other."

The judicial cases in this branch of the law abound in epithets and metaphors; but they all converge on the one point that the corporate fiction cannot be used as a method of nullifying established policies of the law. The corporation statutes cannot be so mechanically applied as to render ineffective other equally important statutes. Fletcher on Corporations, §41 at page 166 sums up the doctrine in bold face type:

page 101] "The corporation may be disregarded as a form or a 'fiction' and the ultimate party regarded in law and fact, when necessary to the justice of the case."

Pepper v. *Dixie Splint Coal Co.,* 165 Va. 179 at 191 states and applies the doctrine thus:

"The actual and ultimate control and ownership of the property and business of the three companies was lodged in Litton and Long. Such complete dominance and control by them made the two corporations and the co-partnership, *quoad* the appellant, merely a veil or shadow through which the court will look to the substance of things whenever it would be unconscionable, through corporate fiction or otherwise, to permit the real and responsible parties to escape liability by turning over their property from one entity to another."

Michies's Jurisprudence, Corp., §5 summarizes the law of Virginia and West Virginia:

"Notwithstanding, when the facts justify it, the courts will look beyond the mere corporate entity to the persons who compose the corporation. This rule is applicable wherever reason and justice require it although the acts of the parties amount to constructive fraud only, the rule not being limited to cases where they have been guilty of actual fraud and criminal intent. While 'the legal conception of a corporation distinct from its members has often been regarded as a mere fiction adopted by the law for the purpose of enabling natural persons to transact business in this peculiar way, whenever it is necessary to do so, the law will look behind the corporate body and recognize the members and disregard the fiction.'

"In the case of the one-man corporation or the corporation in which all stock is owned by a single individual except a few shares necessary to qualify directors, courts have shown great liberality in lifting the veil of the corporate entity and holding the sole shareholder and the corporation to be one and the same. Where a corporation is so organized and controlled as to become the mere agent or instrumentality of another corporation, the courts have laid down the rule that the doctrine of corporate separateness may be ignored."

In *Moline Properties* v. *Commissioner of Internal Revenue,* 319 U.S. 436 at 439, the court said:

page 102] "In general, in matters relating to the revenue, the corporate form may be disregarded where it is a sham or unreal. In such situations the form is a bald and mischievous fiction. *Higgins* v. *Smith,* 308 US 473, 477, 478, 84 L ed 406, 410-412, 60 S Ct 355; *Gregory* v. *Helvering,* 293 US 465, 79 L ed 596, 55 S Ct 266, 97 ALR 1355."

In *Higgins* v. *Smith,* 308 U.S. 473 at 474, the court said:

"The Innisfail Corporation was wholly owned by the taxpayer, Mr. Smith. It was organized in 1926 under the laws of New Jersey. The officers and directors of the corporation were subordinates of the taxpayer. Its transactions were carried on under his direction and were restricted largely to operations in buying securities from or selling them to the taxpayer. While its accounts were kept completely separate from those of the taxpayer, there is no doubt that Innisfail was his corporate self."

And at page 476:

"It is clear an actual corporation existed. Numerous transactions were carried on by it over a period of years. It paid taxes, state and national, franchise and income. But the existence of an actual corporation is only one incident necessary to complete an actual sale to it under the revenue act. Title, we shall assume, passed to Innisfail but the taxpayer retained the control."

And at page 477:

"The Government may look at actualities and upon determination that the form employed for doing business or carry-

ing out the challenged tax event is unreal or a sham may sustain or disregard the effect of the fiction as best serves the purposes of the tax statute. To hold otherwise would permit the schemes of taxpayers to supersede legislation in the determination of the time and manner of taxation."

We find as a fact that Marvin Lewis is not only the operator of the vehicles but that he is the owner of them notwithstanding the formal transfer of paper title to his paper corporation. We enter judgment against both defendants so that execution can be levied on the vehicles without question as to the technical title.

page 103] The Attorney General's intervening motion shows, as to which there is no dispute, that the ten vehicles which should have been registered in Virginia should have paid license fees of $6,608.00 as of April 15, 1964. Judgment will be in favor of the Commonwealth for the use of the Highway Maintenance and Construction Fund in the amount of $6,608.00 with interest at 6% per annum from April 15, 1964 until paid. The entry of judgment for the fees is required by the last paragraph of §56-304.12.

Since Lewis was entirely frank in his testimony, we have decided not to impose on him the criminal penalty provided for in §56-304.12.

All exemption cards and classification plates issued to the defendants or either of them by the State Corporation Commission will be suspended and surrendered to the State Corporation Commission on March 1, 1965, unless before that date the judgment herein entered is paid to the Treasurer of Virginia; and the suspension shall remain effective until the judgment if paid.

Hooker, *Chairman,* and Dillon, *Commissioner,* concur.

Note: Following is a copy of the Reciprocity Agreement with Delaware referred to during the hearing.

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MEMORANDUM OF RECIPROCITY AGREEMENT
BETWEEN THE STATE OF
VIRGINIA AND DELAWARE
WITH RESPECT TO MOTOR VEHICLES

It is mutually agreed between the Commonwealth of Vir-

ginia, acting through the Governor of Virginia, and the State of Delaware, acting through its properly authorized officers, _____, that the contracting parties hereto in order to facilitate the convenience of their citizens and motor vehicle movements in interstate commerce of their several residents between and through their combined geographical territories, agree that when Virginia motor vehicles and Delaware motor vehicles have been licensed in full compliance with the laws of their home State, and not licensed in any other State, then such motor vehicles shall be exempt from paying any license plate tax to the reciprocating state, subject to the following limitations:

1. Private passenger vehicles, not operated for conpensation, shall be allowed to operate within the reciprocating state for a period of six months unless the owner or operator established temporary residence and becomes gainfully employed therein, in which event, such period shall be reduced to sixty (60) days; provided —

   Vehicles owned and operated by officers and enlisted personnel of the regular Army, Navy or Marine Corps, or their families, shall not be required to purchase Virginia license until the expiration of their foreign license; officers, enlisted personnel of the Army, Navy and Marine Reserves, and draftees under the Selective Service Act, or their families, shall not be required at any time to purchase Virginia license.
2. Privately owned and operated trucks, tractor trucks, combination truck and trailer or semi-trailer, operated by the owner thereof his duly authorized agent for the transportation in interstate commerce of the property of such owner, shall be allowed to operate into or through the reciprocating state during the full period of registration.
3. This agreement shall not apply to dealer's license except where the vehicle bearing such license is being operated by such dealer or his bona fide officer or employee who are residents of and actually domiciled in the State by which such dealer's license is issued and then only as a necessary incident to the business of such dealer, but shall not include vehicles operated for compensation received either directly or indirectly.

   The operation of motor vehicles bearing dealer's license will also be permitted for a period of ten days pending the procurement of license where the vehicle so operated

shall have been purchased from such dealer within ten days of such operation, and provided further that such purchaser has in his immediate possession a special ten-day permit authorized by motor vehicle licensing authority of the State whose dealer's license are being so used.

4. Special chartered and sightseeing buses carrying students and members of educational or religious organizations operating occasionally into or through either of the states party to this agreement shall receive full reciprocity provided such vehicles are properly registered and licensed in the home state, subject to the provisions enumerated in Section 8 of this agreement.
5. Taxicabs or other passenger motor vehicles operated for the transportation of passengers for compensation shall be allowed to operate into or through the reciprocating state when operated exclusively in interstate commerce, subject to his provisions enumerated in Section 8 of this agreement.

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6. Motor vehicle consisting of trucks, tractor trucks, or combination of truck and trailer or semi-trailer, operated as contract carriers, and in the transportation of commodities declared exempt under the Interstate Commerce Act, Part 2, shall be allowed to operate into and through the reciprocating state in interstate commerce subject to the provisions enumerated in Section 8 of this agreement.
7. Motor vehicles, operated as common carriers, shall be permitted to operate into and through the reciprocating state in interstate commerce subject to the provisions enumerated in Section 8 of this agreement.
8. The privileges extended by Sections (4), (5), (6) and (7) of this agreement are conditioned upon the fact that such carriers shall purchase within the reciprocating state motor fuel sufficient to cover the mileage traveled in the reciprocating state.
9. The privileges extended by this agreement shall not apply to any vehicle carrying a supply of motor fuel other than that contained in the usual tank or receptacle connected with the engine of the vehicle.
10. The privileges extended shall apply only to those who retain their status as non-residents with respect to the reciprocating state, and are licensed in their home State only, except as provided in Section 1 of this agreement.

11. It is further agreed and understood that nothing in this agreement shall relieve any motor vehicle from full compliance with all safety laws, rules and regulations, including laws regulating the length, height and width of vehicles. All operators of vehicles shall obey the laws governing the operation of and equipment of motor vehicles in the State wherein they are being operated.
The contracting parties hereto agree to cooperate with and furnish to each other such aid and assistance as may be within their possession and conducive to the appropriate enforcement of this agreement.
12. This agreement shall become effective on the _____ day of _____, 194__, and shall continue until thereafter modified or cancelled by either party upon thirty days written notice and is subject to any alterations which may be made by statute in either State.

IN WITNESS WHEREOF, the Commonwealth of Virginia and the State of Delaware, have caused this agreement to be signed by their respective officers this the 5 day of May, 1943.

FOR STATE OF DELAWARE

GEORGE S. WILLIAMS
Motor Vehicle Com.

FOR STATE OF VIRGINIA

COLGATE W. DARDEN, JR.
Governor

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AT RICHMOND, MARCH 22, 1965

CASE NO. 17073

COMMONWEALTH OF VIRGINIA
AT THE RELATION OF THE

STATE CORPORATION COMMISSION

v.

LEWIS TRUCKING CORP., Defendants
MARVIN LEWIS

Due notice of appeal having been filed in this case,

IT IS ORDERED that all of the original exhibits filed with the evidence, numbered and described as follows, be certified and transmitted to the Clerk of the Supreme Court of Appeals of Virginia, to be returned by him to this Commission with the mandate of that court:

DESCRIPTION

Exhibit No.

1. Copies of registration cards issued, 1964-65.
2. Copies of registration cards issued, 1963-64.
3. Letter, September 15, 1964, F. R. Greenwood to Mr. Marvin Lewis.
4. Photograph, Lewis' Grocery.
5. Photograph, Mr. Lewis' residence.
6. Photograph, 225 South State Street, Dover, Delaware.
7. Copy of insurance policy.
8. 1963 Annual Report—Delaware Corporation.
9. License plates secured in Delaware.
10. Vehicles licensed in Virginia by Marvin C. Lewis.
11. Commercial and Trailer Fees, Delaware.
12. Certificate as to certain vehicles licensed, and certain vehicles not licensed in Virginia.

END

A true Copy
Teste: WILLIAM C. YOUNG
Clerk of State Corporation Commission

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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CERTIFICATE

Pursuant to an order entered herein on March 22, 1965, the original exhibits listed therein are hereby certified to the Supreme Court of Appeals of Virginia, to be returned by the Clerk thereof to this Commission with the mandate of that court.

It is further certified to the Supreme Court of Appeals of Virginia that the foregoing transcript of the record in this proceeding, with the original exhibits, contains all the facts upon which the action appealed from was based, together with all of the evidence introduced before or considered by this Commission.

Witness the signature of Jesse W. Dillon, Chairman of the State Corporation Commission, under its seal and attested by its Clerk this 2nd day of April, 1965, at Richmond, Virginia.

JESSE W. DILLON
Chairman

Attest: WILLIAM C. YOUNG
Clerk

CERTIFICATE

I, William C. Young, Clerk of the State Corporation Commission, certify that within sixty days after the final order in this case Marvin Lewis and Lewis Trucking Corporation, by William King Mapp, Keller, Virginia, of Counsel, filed with me a notice of appeal therein which had been delivered to Counsel for the State Corporation Commission and to the Attorney General of Virginia, pursuant to the provisions of Section 13 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia.

Subscribed at Richmond, Virginia, April 2, 1965.

WILLIAM C. YOUNG
Clerk

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A Copy—Teste:

H. G. TURNER, Clerk

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