

Decision No. 23668

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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CHRISTENSON-HAMMOND LINE, LOS ANGELES STEAMSHIP COMPANY, a corporation, McCORMICK STEAMSHIP COMPANY, a corporation, NELSON STEAMSHIP COMPANY, a corporation, and PACIFIC STEAMSHIP COMPANY, a corporation,

Complainants,

vs.

LOS ANGELES-SAN FRANCISCO NAVIGATION COMPANY and A. E. GILLESPIE and J. P. BALETTE, a copartnership, doing business under the name and style of Los Angeles-San Francisco Navigation Company,

Defendants.

ORIGINAL

Case No. 2817

Hugh Gordon and Max Thelen for complainants

Sanborn, Roehl, Smith and Brookman, by A. E. Roehl, for defendants

BY THE COMMISSION:

O P I N I O N

The complainants and the defendants are common carriers as defined in Section 2 (1) of the Public Utilities Act, owning and operating vessels regularly engaged in the transportation of property for compensation on regular routes between points within this state. By complaint filed February 3, 1930, it is alleged that the defendants repeated-

ly within the past two years performed certain transportation services between points within the State of California and charged and collected, in violation of Section 17 of the Public Utilities Act, a less and different compensation than applicable under the rates and charges in the freight tariffs filed and in effect at the time such transportation services were performed. It is claimed that the defendants accepted individual shipments of less than carload freight and after consolidating them into carload lots, transported the freight at unlawful carload rates, that this freight was without additional charges given store-door delivery services, and that defendants absorbed drayage and switching charges not authorized by any tariff publication. Complainants pray that defendants by appropriate order be required to cease and desist from the alleged violations of the Public Utilities Act and that they be subjected to the fines and penalties required by the provisions of the Act.

Public hearings were held at San Francisco and Los Angeles, and the case having been duly submitted by receipt of final briefs on November 22, 1930, is now ready for our opinion and order.

For more than two years prior to the commencement of this action, defendants, doing business as Los Angeles-San Francisco Navigation Company, operated vessels as common carriers between San Francisco and Los Angeles Harbor under a schedule of rates, rules and regulations lawfully

on file with this Commission under Section 17 of the Public Utilities Act and designated as Pacific Coastwise Freight Tariff Bureau, Local Joint and Proportional Freight Tariff No. 1-A, C.R.C. No. 2, effective August 1, 1928. This tariff, to which other carriers, both rail and water, were concurring parties, named local port to port rates applying between docks in San Francisco and docks at San Pedro and Wilmington; also, through joint rates applying between docks in San Francisco and the freight terminals of the concurring rail carriers in Los Angeles. No provision was made in this tariff for pick up or delivery of shipments at any points other than the steamer docks or the rail terminals mentioned and no other schedule of rates, rules or regulations was lawfully filed and in effect governing the transportation service of the defendants between the points above named.

During the same period, the Los Angeles-San Pedro Transportation Company, a corporation, was operating a common carrier truck line between Los Angeles and Los Angeles Harbor, being principally engaged in transporting freight to and from the steamer docks. Its president and general manager was Mr. Fred A. Russell, and all the stock of the company was owned by Mr. Russell, his wife, his father and his secretary. These same individuals also owned, and Mr. Russell also managed, a business known as Los Angeles & San-Pedro Forwarding Company, the operations of which in the use of the same offices, interchange of equipment and unity of management were closely identified with those of

the Transportation Company, of which it was a subsidiary. This company, according to the testimony, owned and operated 15 or 20 trucks which were regularly used in the transportation of freight from the docks at San Pedro and Wilmington to points of delivery in Los Angeles following the same routes as those traversed by the Los Angeles & San Pedro Transportation Company. The Forwarding Company, however, filed no rates with the Railroad Commission and did not purport to operate under the Commission's jurisdiction.

In the fall of 1927, Mr. Russell, on behalf of the Forwarding Company, negotiated with the defendant, Mr. A. E. Gillespie, principal owner and manager of the Los Angeles-San Francisco Navigation Company, an arrangement whereby it was agreed that certain freight, originating in San Francisco and destined to Los Angeles, the routing of which was then controlled by Mr. Russell, would be routed via the vessels of the Navigation Company, and in consideration thereof the Navigation Company would pay to the Forwarding Company a commission on all freight so routed. As a part of the same arrangement, it was agreed that this freight would be transported by the Navigation Company from its dock at pier 17 in San Francisco to its dock at San Pedro as a consolidated carload shipment at a flat rate of 50¢ per 100 pounds covering all shipments included, irrespective of the classification or commodities handled. The arrangement also contemplated the transportation of said shipments from San Pedro and the delivery thereof to the store-door of consignees in Los Angeles by means of the trucks of the Forwarding Company.

With minor changes and adjustments, the arrangement was made effective as originally negotiated and continued in effect until the filing of the complaint in this proceeding.

In actual practice, this arrangement was conducted in the following manner: Shippers in San Francisco delivered their shipments to the Navigation Company at pier 17, San Francisco, and received either (1) a bill of lading, usually of the standard uniform type, signed by a representative of the Navigation Company, thereby evidencing a contract of carriage between the shipper and the Navigation Company; or (2) a receipt or "hand-tag" signed by a representative of the Navigation Company merely acknowledging receipt of the goods but containing none of the covenants or recitals of a bill of lading or any other provision evidencing an agreement on the part of the Navigation Company to do anything whatever with regard to the goods described by the receipt. The shipments thus delivered at pier 17 were received by the Navigation Company and placed aboard the vessels, all of the handling and loading being performed by employees of the Navigation Company (there being but one employee of the Forwarding Company in San Francisco who was absent from the dock 75% of the time) and were then conveyed to San Pedro where they were unloaded on to the dock by the Navigation Company's employees, to be picked up by the trucks of one or the other of Mr. Russell's companies and delivered to destination.

Many of the shippers in San Francisco knew little or nothing of the Forwarding Company other than that it was designated in the routing as the connecting carrier to perform delivery service and was also the company to which payments for transportation charges were made. These shippers delivered their goods to the Navigation Company under uniform bills of lading and regarded the Navigation Company as the responsible carrier employed by them to transport and deliver the shipments in accordance with their routing instructions.

The billing and collection of freight charges were accomplished in the following manner: When the shipments were all received at pier 17 in San Francisco, all of the bills of lading and shipping receipts covering shipments to be carried on a particular voyage were turned over by the Navigation Company to the representative of the Forwarding Company (Mr. Cole) who then made a detailed list or "manifest" setting forth in consecutive columns the names of shippers, names of consignees, designation of shipments, number of packages, description of packages, and weights. Duplicate copies of these manifests were then forwarded by mail to the Los Angeles office of the Forwarding Company and on one of the copies there was entered in the appropriate columns provided for the purpose the rates applicable to the various shipments according to classification and commodity, the tolls and advance charges if any, and the total freight charges to be paid thereon. From this copy of the manifest, with the rates thus entered and total freight charges extended, the Forwarding Company made up their

bills in the usual form covering the total transportation charges for each shipment from point of origin to point of destination, and these bills were then presented to and paid by the shippers or consignees in the usual course of business. The rates used by the Forwarding Company in their statement of charges to shippers were substantially the same rates as contained in the tariff schedule of the Pacific Coastwise Tariff Bureau. It is to be noted that under this arrangement the Forwarding Company charged and collected for the completed transportation service from the Navigation Company's docks in San Francisco to the consignees' store-door in Los Angeles the same rates provided under the Navigation Company's tariff for transportation from its docks in San Francisco to the rail terminals in Los Angeles.

The settlement between the Navigation Company and the Forwarding Company was accomplished in the following manner: On the second of the two copies of the manifest sent from San Francisco to the Los Angeles office of the Forwarding Company, there was entered opposite each shipment, according to its classification, commodity or name of shipper, a "rate" or figure applicable thereto for the determination of the commission to be paid by the Navigation Company to the Forwarding Company for the routing of that shipment via the Navigation Company in accordance with the arrangement between Mr. Russell and Mr. Gillespie, previously described. These "rates for determining commissions" were substantially lower than the rates charged the shippers and were also lower than the flat rate of 50¢ per 100 pounds purported to be charged by the

Navigation Company. This is shown by the following tabulation:

<u>Classification</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>drugs</u>	<u>candy</u>
Rates charged shippers by Fwd. Co.	80¢	65¢	57¢	50¢	68¢	65¢
Rates charged Fwd. Co. by Nav. Co. before deducting commissions	50¢	50¢	50¢	50¢	50¢	50¢
"Rates" for determining commissions (representing charges actually collected by Nav. Co.)	45¢	45¢	36¢	30¢	40¢	40¢

Thus by setting up these "rates" for the determination of commissions and making the proper extensions according to the weights of shipments, a total figure was obtained corresponding to a freight charge which in final analysis represented the amount actually accruing to the Navigation Company for its transportation service. In actual practice, however, the Navigation Company rendered its bill to the Forwarding Company for the total amount of all shipments shown on the manifests at the rate of 50¢ per 100 pounds. The Forwarding Company, in turn, billed the Navigation Company for its commission in an amount representing the difference between the total charge at the 50¢ rate and the total charge at the "rates" entered for the purpose of determining commissions in the manner just described. Manifestly, this method of settlement resulted in the Navigation Company being paid off at the "rates" used for determining commissions.



In accepting shipments and issuing bills of lading thereon to individual shippers, defendants became legally bound to transport and deliver such shipments in accordance with the terms of the bill of lading and to collect transportation charges thereon at the lawful tariff rates. Delivery of the shipments in any other manner or acceptance of transportation charges at any other rate constituted in each instance a violation of the law.

A summary of the evidence shows that 20 witnesses, representatives of shippers, appeared and testified that their l.c.l. shipments were delivered to the defendant, Los Angeles-San Francisco Navigation Company, at pier 17, San Francisco, for transportation to Los Angeles and that the defendant duly executed and delivered to these shippers and consignors its bills of lading therefor.

That the defendants did not charge their lawful rates on the l.c.l. shipments covered by individual bills of lading is conclusively shown by the testimony of Mr. Russell and of Mr. Mickel, and by the copies of manifests to which are attached the freight bills and recap sheets setting forth the basis of settlement between the Navigation Company and the Forwarding Company (Exhibits 23, 24, 25, 26 and 29).

In this connection Mr. Russell gave the following testimony:

Q. In connection with the shipments that are shown on the manifest sheets, such as Exhibit 23, did you, in any instance, pay an l.c.l. rate to the steamship line? A. You are referring now to the shipments on the manifest?

Q. Yes. A. I do not think so.

Q. As a matter of fact, you pay the regular port to port rate, did you not? They bill you a regular port to port rate for the entire cargo? A. Entire tonnage, yes."

\* \* \* \* \*

" EXAMINER GEARY: What is the 50 cent rate, the carload or less than carload? A. Carload rate, I understand.

MR. GORDON: Do you understand that rate of 50 cents to be the carload rate, port to port? Is that correct? A. That is my understanding.

Q. That is the rate that you paid, and have paid, on all shipments as shown on your manifest sheets, for the past six months? A. Yes.

Q. And to make it more specific, for each of the 4 months of August, October and December, 1929, and January, 1930. Is that correct? A. Yes."

\* \* \* \* \*

" MR. GORDON: May I ask, Mr. Russell, if this is not the practice: that the steamship company bills you, in the first instance, 50 cents per hundredweight, or \$548.71, as shown on this Exhibit 23, and that you then set up a tabulation of the various tonnage under the different classes, at the rates as shown in this tabulation of 45, 36, 30 and 40 cents, and in that way determine the total of \$412.07? A. Yes.

Q. And that you deduct that \$412.07, plus the adjusting figure that you mentioned here, of \$2.74, and that the balance of \$134.64 represents the charge that you make to the navigation company for your solicitation and handling? A. Right."

\* \* \* \* \*

" MR. GORDON: Now with reference to the freight bill in Exhibit 25, by the Navigation Company to the Forwarding Company I will ask you to state whether or not that bill was paid? A. I would say yes.

Q. And as to each of the manifests for the four months to which I have referred, August, October, December and January, the first 3 months of 1929 and January 1930; as I understand you there was attached a similar bill as the one shown here in Exhibit 25? A. Yes.

Q. And in that the rate was shown as the 50 cent per hundred rate, is that right? A. I think so.

Q. And were each of those bills paid by you to the Navigation Company? A. Yes sir."

Mr. Louis Mickel, the rate clerk at Los Angeles, who entered the rates on the manifests and made up the recap sheets for the current settlements between the Navigation Company and the Forwarding Company, testified as follows:

"What does the 50 cents represent? A. Represents the rate that we paid the steamship line.

Q. And are you able to state whether or not that is a carload port to port rate? Can you identify it? A. I can not say positively that it is. I think so.

Q. You think it is a carload port to port rate? A. Yes, I do.

Q. Are you able to state whether that applies on any particular class of freight? A. Yes that applies on any particular class of freight that was - a case like this, where all shipments were consolidated as one carload."

\* \* \* \* \*

Q. Will you state whether or not that is the rate that is used in all cases of shipments coming over the line of the Los Angeles-San Francisco Navigation Company, or was, during the months of August, October and December, 1929, and January, 1930? A. That was the only rate.

Q. That was the only rate. Now, referring again to the recap sheet on Exhibit 23, just above the figure which I read you a few moments ago, there appears a tabulation in which certain figures are set up representing pounds and a rate, 45 cents, 36 cents, 30 cents, and 40 cents, as the case may be, and a resultant figure, presumably representing the application of that rate to the number of pounds of shipment. What is the rate there shown, 45 cents and 36 cents and 40 cents? A. That is the means of arriving at our amount of commission for soliciting and sorting and handling freight.

Q. Do these various rates, 45, 36, 30 and 40 refer to the same figures appearing on the manifest sheet under the column "Rate" where certain shipments are bracketed and the figures set opposite those as a bracket? A. Yes, the same.

Q. They are the same? A. Yes, sir.

Q. So would you say, then, in your usual practice, you went over the manifest sheet and picked out the various shipments which these particular rates should apply to, and set them up in that way? A. Yes, I went over the manifest first, of course, and after I had the manifest all rated up, the weight divided, then I made a recap of the same on this yellow sheet.

Q. Are these your figures on the manifest sheets showing the rates? A. Yes, they are.

Q. How did you know what rates to put on the manifest sheets as to different commodities, these manifest sheets filed as Exhibit 23? A. Well, I got these rates from Mr. Russell at the time we started to forward this freight."

Q. Very well, Now will you explain, please, from that recap sheet on Exhibit 23, just what is represented by the total of \$241.81? A. 400, you mean?

Q. \$414.81. A. Well, that is the figure which is subtracted from the total amount paid to the steamship line, in this particular case in the amount of \$549.45, gives a difference of \$134.64, which is the commission on the solicitation, sorting and handling on that boat.

Q. I see. And is that practice followed in connection with each and every cargo that is received and distributed by the L. A. San Pedro Forwarding Company? A. Yes, sir.

Q. So in other words, you take the manifest sheets and, following this classification that you describe, you set up the various rates 40, 45, 36 and so forth, and then you make a summary of all those shipments that you set up on a recap sheet, applying those rates, and show what the total amount of freight would be applying such rates; is that right? A. Yes, sir.

Q. And then you add to that your figure for tolls and that gives you a figure that you-ultimate figure that you expect the Navigation Company to pay the Forwarding Company? A. No.

Q. That is in your final settlement that is what they pay, isn't it? A. We use that figure to subtract from the amount we do pay them; difference is solicitation -

MR. ROEHL: Just a minute; let him finish his answer. I think he has answered that two or three times, Mr. Examiner. He stated those figures are used for the purpose of determining the commission for solicitation, handling and sorting? A. Yes, sir.

MR. GORDON: And that commission is represented by the difference between these various rates and the 50 cent per hundred rate? A. Yes, sir."

Disregarding for the moment the refund or commission paid by the Navigation Company to the Forwarding Company for its so-called "solicitation and handling charge," the fact remains that this flat rate of 50¢ per 100 pounds which was charged by the Navigation Company for transporting the shipments from San Francisco to San Pedro was not the lawful rate applicable to l.c.l. shipments, but was in many instances substantially less than lawful rates as contained in the tariffs of the defendants on file with this Commission. From August 1, 1928 (effective date of tariff) to June 26, 1930 (date this proceeding was submitted), both dates inclusive, the less than carload class rates from San Francisco to San Pedro were published in Pacific Coastwise Freight Tariff Bureau, Local, Joint and Proportional Tariff No. 1-A, C.R.C. No. 2, and were as follows:

Classification	1	2	3	4	Drugs	Candy
Rates	75¢	60¢	50¢	45¢	65¢	60¢

The amount actually received and kept by the defendants as a result of its settlement with the Forwarding Company under the commission arrangement already described was

substantially less than 50¢ per 100 pounds. According to the testimony of Mr. Russell and Mr. Mickel, above quoted, and as indicated by the recap settlement sheets, the amount of the commission was the difference between the 50¢ rate and the "rates used for determining commissions," which Mr. Mickel stated were as follows:

Classification	1	2	3	4	Drugs	Candy
Rates.	45¢	45¢	36¢	30¢	40¢	40¢

These rates represent the amounts actually collected and received by the Navigation Company in its settlement with the Forwarding Company. Comparing these rates with defendants' lawful tariff rates, it is apparent that in every instance of an L.C.L. shipment defendants collected and received a less and different compensation than the rates and charges applicable to such shipments as specified in their schedules filed and in effect at the time.

Defendants concede that the shipments were consolidated for account of the Forwarding Company and the Navigation Company performed the transportation service for it from San Francisco to San Pedro. For this service the Navigation Company, as above noted, assessed in the first instance a flat rate of 50 cents, which it applied on all the freight in the consolidated shipment, regardless of classification. The tariff did not provide such rate. The only method by which the Navigation Company could lawfully apply a single rate for the entire shipment would have been by invoking Rule 10 of the Consolidated Freight Classification No. 3, C.R.C. 4d2. This rule provides that if a number of different articles, for which carload ratings

are provided, are shipped at one time by one consignor to one consignee and destination, they will be charged at the highest class rate applicable thereto. The lawful third class rate of the Navigation Company from San Francisco to San Pedro was 50 cents, but as all the consolidated shipments contained articles properly rateable higher than third class the 50-cent rate was inapplicable if Rule 10 of the Classification had been used. However, it is apparent from the record that defendants did not attempt to invoke Rule 10, but arbitrarily and without tariff authority assessed a flat rate of 50 cents which was later reduced by certain allowance for solicitation and handling.

Referring now to the imputation that these defendants illegally absorbed certain drayage charges at San Francisco and certain industrial track switching charges within the Oakland switching limits; Balance due bills were presented for the San Francisco drayage charges and these bills have been paid or are in the process of collection. The amount of the transbay switching charges claimed to have been absorbed is not positively proven for it would appear that these charges were in part incidental to and in lieu of sending the ocean-going vessels to the Alameda County side of the San Francisco Bay from which point the carload rates did apply. The record with reference to the absorption of drayage and switching charges is not convincing and this part of the complaint will be dismissed.

The law requires adherence by common carriers to their published tariff rates as an absolute standard of uniformity. The defendants have admitted that as a means of securing

the traffic they not only deviated from the lawful tariffs but in addition paid to the Forwarding Company certain rebates prohibited by law. The methods pursued gave to the defendant common carriers a concealed and decided advantage over their competitors, and to the Forwarding Company transportation at less than the published tariff rates, placing it in a position to secure a practical monopoly of the traffic via the ocean route.

From the foregoing we find as a fact that these defendants have committed numerous violations of the Public Utilities Act.

Section 17 (a) 2 of the Public Utilities Act reads:

"No common carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares or charges so specified, except upon order of the commission as hereinafter provided, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons."

Section 23(a) of the Public Utilities Act reads:

"No common carrier, or any officer or agent thereof, or any person acting for or employed by it, shall, by means of known false billing, classification, weight, weighing, or report of weight, or by any other device or means assist, suffer or permit any corporation or person to obtain transportation for any person or property between points within this state at less than the rates and fares then established and in force as shown by the schedules filed and in effect at the time. No person, corporation, or any officer, agent or employee of a corporation shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to contents or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees, seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor."



These sections of the statute have been knowingly and deliberately violated without any justification.

It should be noted that the provisions of Rule 23 of Consolidated Freight Classification No. 5, C.R.C. 412, F. W. Gompf, Agent, which by reference was made a part of defendants' tariffs, expressly prohibited the Navigation Company itself from acting as the shippers' agent in making consolidation of l.c.l. shipments into carloads. It must be concluded, therefore, that these shipments were not lawfully handled and transported by the Navigation Company as consolidated carload shipments, although they were, in fact, consolidated and so handled by defendants.

The Attorney for the Commission will be instructed and directed to bring an action in the name of the people of the State of California in the Superior Court of the State of California, in and for the City and County of San Francisco, for the recovery of penalties for the fifteen violations referred to, which are:

1. That on or about August 1, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles & San Pedro Forwarding Company; that said shipments consisting of approximately 2245 packages of drugs, candies and other articles of freight, weighing approximately 109,342 pounds, were transported by defendants on or about August 1, 1929, via the Steamer San Juan, Voyage 141 from San Francisco to San Pedro and there delivered to the Los Angeles

and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 2245 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$549.45; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$549.45 collected defendants subsequently unlawfully rebated the sum of \$134.64 to said Los Angeles and San Pedro Forwarding Company.

2. That on or about August 3, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 2668 packages of drugs, candies and other articles of freight, weighing approximately 130,653 pounds, were transported by defendants on or about August 3, 1929, via the Steamer Humboldt, Voyage 189 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port

transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 2668 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$656.54; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$656.54 collected defendants subsequently unlawfully rebated the sum of \$136.62 to said Los Angeles and San Pedro Forwarding Company.

3. That on or about December 3, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 2411 packages of drugs, candies and other articles of freight, weighing approximately 97,861 pounds, were transported by defendants on or about December 3, 1929, via the Steamer Humboldt, Voyage 215 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said

Los Angeles and San Pedro Forwarding Company for the transportation of 2411 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$491.76; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$491.76 collected defendants subsequently unlawfully rebated the sum of \$87.96 to said Los Angeles and San Pedro Forwarding Company.

4. That on or about December 5, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 1934 packages of drugs, candies and other articles of freight, weighing approximately 94,176 pounds, were transported by defendants on or about December 5, 1929, via the Steamer Wapema, Voyage 20 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transporta-

tion of 1934 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$473.23; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$473.23 collected defendants subsequently unlawfully rebated the sum of \$98.33 to said Los Angeles and San Pedro Forwarding Company.

5. That on or about December 7, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 2660 packages of drugs, candies and other articles of freight, weighing approximately 127,951 pounds, were transported by defendants on or about December 7, 1929, via the Steamer Humboldt, Voyage 216, from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 2660 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all arti-

cles contained in said consolidated shipment; that freight charges were collected in the amount of \$642.96; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$642.96 collected defendants subsequently unlawfully rebated the sum of \$188.18 to said Los Angeles and San Pedro Forwarding Company.

6. That on or about December 10, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 1827 packages of drugs, candies and other articles of freight, weighing approximately 80,736 pounds, were transported by defendants on or about December 10, 1929, via the Steamer Wapama, Voyage 21 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 1827 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in

the amount of \$405.70; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$405.70 collected defendants subsequently unlawfully rebated the sum of \$77.71 to said Los Angeles and San Pedro Forwarding Company.

7. That on or about December 12, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 1692 packages of drugs, candies and other articles of freight, weighing approximately 92,526 pounds, were transported by defendants on or about December 12, 1929, via the Steamer Humboldt, Voyage 217 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 1692 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$464.95; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under

said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$464.95 collected defendants subsequently unlawfully rebated the sum of \$98.03 to said Los Angeles and San Pedro Forwarding Company.

8. That on or about December 14, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 1903 packages of drugs, candies and other articles of freight, weighing approximately 39,788 pounds, were transported by defendants on or about December 14, 1929, via the Steamer Wapama, Voyage 22 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 1903 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$451.09; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents



per 100 pounds; that contained in said shipment were many such commodities; that of the \$451.09 collected defendants subsequently unlawfully rebated the sum of \$93.48 to said Los Angeles and San Pedro Forwarding Company.

9. That on or about December 17, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 1113 packages of drugs, candies and other articles of freight, weighing approximately 52,473 pounds, were transported by defendants on or about December 17, 1929, via the Steamer Humboldt, Voyage 218 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 1113 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$263.69; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$263.69 collected defendants subsequently unlawfully rebated the sum of \$57.88 to said Los Angeles and San Pedro Forwarding Company.

10. That on or about December 19, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 1098 packages of drugs, candies and other articles of freight, weighing approximately 54,183 pounds, were transported by defendants on or about December 19, 1929, via the Steamer Wapama, Voyage 23 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 1098 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$272.28; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$272.28 collected defendants subsequently/<sup>unlawfully</sup> rebated the sum of \$61.50 to said Los Angeles and San Pedro Forwarding Company.

11. That on or about December 21, 1929, defendants received at San Francisco for transportation to San Pedro, Los

Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 1941 packages of drugs, candies and other articles of freight, weighing approximately 72,656 pounds, were transported by defendants on or about December 21, 1929, via the Steamer Humboldt, Voyage 219 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 1941 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$365.10; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$365.10 collected defendants subsequently unlawfully rebated the sum of \$131.99 to said Los Angeles and San Pedro Forwarding Company.

12. That on or about December 24, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said

shipments consisting of approximately 540 packages of drugs, candies and other articles of freight, weighing approximately 33,030 pounds, were transported by defendants on or about December 24, 1929, via the Steamer Wapama, Voyage 24 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 540 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$165.98; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$165.98 collected defendants subsequently unlawfully rebated the sum of \$33.35 to said Los Angeles and San Pedro Forwarding Company.

13. That on or about December 26, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 482 packages of drugs, candies and other articles of freight, weighing approximately 20,473 pounds, were transported by defendants on or about December 26, 1929, via the Steamer Humboldt, Voyage 220, from San Francisco to San Pedro

and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 482 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$102.89; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$102.89 collected defendants subsequently unlawfully rebated the sum of \$26.04 to said Los Angeles and San Pedro Forwarding Company.

14. That on or about December 28, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 2368 packages of drugs, candies and other articles of freight, weighing approximately 120,618 pounds, were transported by defendants on or about December 28, 1929, via the Steamer Wapama, Voyage 25, from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 2368 packages

of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolidated shipment; that freight charges were collected in the amount of \$606.11; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$606.11 collected defendants subsequently unlawfully rebated the sum of \$127.97 to said Los Angeles and San Pedro Forwarding Company.

15. That on or about December 31, 1929, defendants received at San Francisco for transportation to San Pedro, Los Angeles and other points via their steamer line, numerous less than carload shipments of freight from various consignors to various consignees; that defendants, in violation of their tariff provisions, consolidated said shipments for account of the Los Angeles and San Pedro Forwarding Company; that said shipments consisting of approximately 3157 packages of drugs, candies and other articles of freight, weighing approximately 143,584 pounds, were transported by defendants on or about December 31, 1929, via the Steamer Humboldt, Voyage 221 from San Francisco to San Pedro and there delivered to the Los Angeles and San Pedro Forwarding Company; that for said port to port transportation service, defendants falsely billed said Los Angeles and San Pedro Forwarding Company for the transportation of 3157 packages of drugs and candy; that there were articles in said shipment other than drugs and candy; that a rate of 50 cents per 100 pounds was assessed on all articles contained in said consolida-

ted shipment; that freight charges were collected in the amount of \$721.51; that the said rate of 50 cents per 100 pounds was inapplicable to all commodities contained in said consolidated shipment lawfully ratable under said tariffs on file with the Commission at rates higher or lower than 50 cents per 100 pounds; that contained in said shipment were many such commodities; that of the \$721.51 collected defendants subsequently unlawfully rebated the sum of \$169.23 to said Los Angeles and San Pedro Forwarding Company.

The annual reports of Los Angeles-San Francisco Navigation Company for the years 1927 and 1928 on file with this Commission and the application of said copartnership before this Commission in Application 16329 (filed February 25, 1930), and the decision of the Commission in said matter (Decision 22247) show that E. G. Baughman was also a member of the copartnership operating under the name of Los Angeles-San Francisco Navigation Company during the period covered by the complaint herein. It appears, therefore, that said E. G. Baughman should also be joined as a party defendant in the penalty suit to be instituted.

No order will be entered herein directing the defendants to discontinue the practices above outlined, inasmuch as said illegal practices were discontinued at or about the time the complaint herein was filed.

#### ORDER

The case as above numbered and entitled having been duly heard and submitted, the Commission being now fully advised,

and basing the following order on the findings of fact and the conclusions contained in the opinion preceding this order,

IT IS HEREBY ORDERED that the Attorney for this Commission be and he is hereby directed to commence an action in the name of the People of the State of California, in the Superior Court of the State of California, in and for the City and County of San Francisco, for the recovery of penalties for the fifteen violations set forth in the opinion preceding this order.

IT IS HEREBY FURTHER ORDERED that in all other respects this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 11<sup>th</sup> day of May, 1931.

Cl. Seavey

M. P. ...

W. B. ...

Jos. G. Stewart  
Commissioners