

Decision No. 24408.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

SOUTHERN PACIFIC COMPANY, a corporation,)
 THE WESTERN PACIFIC RAILROAD COMPANY, a)
 corporation, SACRAMENTO NORTHERN RAILWAY)
 COMPANY, a corporation, THE ATCHISON,)
 TOPEKA AND SANTA FE RAILWAY COMPANY, a)
 corporation, CENTRAL CALIFORNIA TRACTION)
 COMPANY, a corporation, RAILWAY EXPRESS)
 AGENCY, INC., a corporation, SOUTHERN)
 PACIFIC GOLDEN GATE FERRIES, LTD., a)
 corporation, SACRAMENTO NAVIGATION COMPANY)
 a corporation, and R. W. ROGERS, doing)
 business as Sacramento Motor Transport,)

ORIGINAL

Complainants.

CASE NO. 3042.

vs.

C. P. STANBROUGH and JOHN DOE STANBROUGH,)
 C. L. FILBERT, FIRST DOE, SECOND DOE, THIRD)
 DOE, and DOE COMPANY, a corporation, doing)
 business under the firm name and styles)
 of San Francisco-Stockton Express Company,)
 also Stockton-San Francisco Express Company,)
 and Truck Transportation Company,)

Defendants.

H. W. Hobbs and W. S. Johnson, for Southern)
 Pacific Company, Central California Traction)
 Company, Southern Pacific Golden Gate Ferries,)
 Ltd., Complainants.)

G. E. Duffy for The Atchison, Topeka & Santa Fe)
 Railway Company, Complainant.)

G. E. Walk and L. N. Bradshaw for Western Pacific)
 Railroad Company and Sacramento Northern)
 Railway Company, Complainants.)

Edward Stern, for Railway Express Agency, Inc.,)
 Complainant.)

J. E. Anderson, for Sacramento Navigation)
 Company, Complainant.)

W. C. Stone, for Sacramento Wholesalers and)
 Manufacturers Association, as its interests)
 may appear.)

Horace M. Street, for J. J. Smith, Defendant.)

BY THE COMMISSION:

O P I N I O N

Southern Pacific Company, a corporation, The Western Pacific Railroad Company, a corporation, Sacramento Northern Railway, a corporation, The Atchison, Topeka & Santa Fe Railway Company, a corporation, Central California Traction Company, a corporation, Railway Express Agency, Inc., a corporation, Southern Pacific Golden Gate Ferries, Ltd., a corporation, The California Transportation Company, a corporation, Sacramento Navigation Company, a corporation, and R. W. Rogers, doing business as Sacramento Motor Motor Transport, have filed complaint against C. P. Stanbrough and John Doe Stanbrough, C. L. Filbert, First Doe, Second Doe, Third Doe and Doe Company, a corporation, doing business under the firm names and styles of San Francisco-Stockton Express Company, also Stockton-San Francisco Express Company, and Truck Transportation Company.

Complainants, who are all common carriers operating under the jurisdiction of this Commission allege that defendants and each of them have been for a period of several months past engaged in the business of operating motor trucks for compensation as a common carrier of property over the highways of the State of California, between fixed termini and over regular routes, to wit: between San Francisco and East Bay cities on the one hand and the City of Sacramento on the other; and between the City of San Francisco and East Bay cities on the one hand and between the City of Stockton on the other; and between the City of Stockton on the one hand and the City of Sacramento and are also serving as intermediate points the various towns enroute.

No answers were filed by defendants herein.

Public hearings were conducted by Examiner Handford at San Francisco at which time evidence was received and the matter duly submitted.

C. O. Lessley testified that he resided in San Francisco and was employed as a truck driver by the Truck Transportation Company and made trips daily between San Francisco and Stockton and Sacramento leaving San Francisco in the evening and returning on the morning of the following day. Witness does not load nor unload goods at either San Francisco, Stockton or Sacramento. About once a week witness has deliveries at Tracy or Lodi of shipments which originate at San Francisco. All deliveries are made at terminals of the San Francisco-Stockton-Express Company at Stockton or Sacramento or at agencies of such company at Tracy and Lodi. Merchandise is moved from and to the terminal at San Francisco. Witness does not do any collection of amounts due nor handle any billing of shipments except that billing which accompanies semi-trailers or trailers and such billing is enclosed in a pouch or sealed envelope and is left with the shipments at destination.

Witness has been employed by the Truck Transportation Company for about twelve (12) weeks during which time he has made regular trips between San Francisco, Stockton and Sacramento, making six round trips per week in the manner above described.

Witness receives his instructions from a Mr. Werner whom he understands to be in charge of the Truck Transportation Company's business at San Francisco.

Conrad Werner, employed as bookkeeper for the Truck Transportation Company at 654 Bryant Street, San Francisco, testified that he had been so employed since February 1, 1931.

Witness also does billing work for C. P. Stanbrough who operates under the name of Merchants Freight Forwarding and Distributing Company, also Stockton-San Francisco Express and Sacramento-San Francisco Express. Witness is in charge of the terminal of Truck Transportation Company in San Francisco and issues orders to the driver of the equipment. Witness was employed by C.D.Clarke, owner of Truck Transportation Company, and now reports to Mrs. C. D. Clarke, executrix of the Estate of C. D. Clarke, deceased.

C. P. Stanbrough testified that he resided at Stockton and was the owner of the Sacramento-San Francisco Express and the Merchants Freight Forwarding and Distributing Company. This witness and his son, R. M. Stanbrough, own and operate the Stockton-San Francisco Express. None of these enterprises are incorporated, all being operated under fictitious names. The business conducted is the pick-up and delivery of packages of San Francisco merchants and their shipment in bulk to or from Stockton and Sacramento, also pick-up and delivery of parcels and packages at these terminals. The Merchants Forwarding and Distributing Company owns and operates four trucks in San Francisco which pick up parcels and packages in San Francisco for Stockton and Sacramento and transport such packages to the terminal in San Francisco from which they are transported to destination by the Truck Transportation Company. The Merchants Forwarding and Distributing Company also delivers parcels and packages in San Francisco which are received from Stockton and Sacramento after having been transported by the Truck Transportation Company. Shipments are also delivered and received at the terminal from and to the trucks of local San Francisco shippers and receivers of freight. Sacramento-San Francisco Express operates three pieces of equipment at Sacramento, same being used to pick-up

and deliver shipments to and from its Sacramento terminal. Stockton-San Francisco Express operates six pieces of equipment at Stockton picking up and delivering shipments from the Stockton terminal. The operation has been conducted with the Truck Transportation Company as the carrier between San Francisco and Stockton and Sacramento since February 1, 1931, and the operation has been a regular one. The method of operation is the same as formerly in effect with the California Transportation Company to Sacramento, the California Navigation and Improvement Company to Stockton, The Atchison, Topeka & Santa Fe Railway to Stockton and the Western Pacific Railroad to Stockton and Sacramento, the Truck Transportation Company having been substituted as the intermediate carrier between San Francisco and Stockton and Sacramento instead of the authorized steamer lines and rail carrier. Witness has no tariffs on file with the Railroad Commission covering the present character of operation and charges rates equivalent to those of other common carriers meeting competition by reduction of scheduled rates if he considers it necessary. Witness relies upon a contract dated December 23, 1930, with C.D. Clarke, owner of Truck Transportation Company as justification for the transportation of shipments between San Francisco and Stockton, Sacramento, Tracy or Lodi. This contract, a copy of same being of record herein, states that tariffs for the service are on file with the Railroad Commission; that C. P. Stanbrough will offer for transportation all freight and merchandise which he may accept for transportation for carriage from one incorporated city or town to another and will not employ or use any other carrier for such purpose, or himself transport such freight. The contract provides that as for compensation for shipments made by the Stockton-San Francisco Express

or Sacramento-San Francisco Express there shall be paid one-third the existing tariff rate as shown by the express tariffs alleged to be filed with the Railroad Commission. Compensation for freight transported for the Merchants Forwarding and Distributing Company is to be paid for in accordance with the rate sheets attached to the contract and marked "Exhibit A". If the shipments transported do not yield a minimum amount of \$15.00 per trip under the specification in the contract as above, such amount is to be paid to the carrier by defendant, C. P. Stanbrough. The agreement or contract is to extend for a period of five years from its date.

Since the filing of this complaint, C. D. Clarke, one of the parties to the contract has died and his estate is now in the hands of Mrs. Grace B. Clarke, his widow and administratrix. The Truck Transportation Company is owned entirely by the C.D. Clarke Estate and is a fictitious name under which the former owner, C.D. Clarke, conducted his trucking business.

Mrs. Grace B. Clarke, executrix of the Estate of C. D. Clarke, testified that she was the widow of C. D. Clarke, deceased; that the trucking business was conducted by Clarke during his lifetime under the fictitious name of Truck Transportation Company and was being so conducted by his estate. Witness knew of the contract existing with C. P. Stanbrough, although knowing little of the actual operation thereby conducted. The testimony of this witness and the records of this Commission do not show that any certificate of public convenience and necessity was ever applied for or issued covering the highway truck operation heretofore performed by C.D. Clarke or the Truck Transportation Company.

The records of the Railroad Commission show tariffs filed and in effect by C. P. Stanbrough for the Stockton-Sacramento

Express, Sacramento-San Francisco Express, and Merchants Freight Forwarding and Distributing Company. These tariffs were filed to protect the common carriage service of the respective companies when operating over the routes of authorized common carriers and according to the testimony of C. P. Stanbrough are not being used at the present time or in connection with the present truck operation as heretofore described.

We have carefully considered the record and exhibits in this proceeding and conclude therefrom that the operation of C. P. Stanbrough as part owner of the Stockton-San Francisco Express and as owner of the Sacramento-San Francisco Express and Merchants Freight Forwarding and Distributing Company over the line of the Truck Transportation Company owned by the Estate of C. D. Clarke is that of a common carrier of freight and express and is unlawful in that said Truck Transportation Company, owned and operated by the Estate of C. D. Clarke, has never applied for nor received a certificate of public convenience and necessity to operate over the highways of this state between any points. We further find that the operation of R. M. Stanbrough as part owner of the Stock^{ton-}San Francisco Express over the line of the Truck Transportation Company owned by the Estate of C. D. Clarke is that of a common carrier of property and that same is unlawful in that said Truck Transportation Company, owned and operated by the Estate of C. D. Clarke has never applied for nor received a certificate of public convenience and necessity from this Commission to operate as a common carrier over the highways of this state as required by the provisions of the Auto Stage and Truck Act. (Chapter 213, laws of 1917, and effective amendments).

We further find that the operations of the Truck Transportation Company, owned and operated by the Estate of C. D. Clarke are those of a common carrier and that said operations are being unlawfully conducted in that no certificate of public convenience and necessity has ever been issued, or applied for, by or to this Commission.

this Commission to operate over the highways of this state as required by the provisions of the Auto Stage and Truck Act (Chapter 213, Laws of 1917, and effective amendments.) This Commission has frequently held that the carriage of goods or merchandise, whether termed freight or express, in the manner shown by the instant record is operation as a common carrier and as such, if transported between cities over the highways of the state requires that a certificate of public convenience and necessity be issued in accordance with the requirements of the Auto Stage and Truck Act (Chapter 213, Laws of 1917, and effective amendments).

As to other defendants herein named this complaint will be dismissed.

O R D E R

Complaint having been duly filed in the above entitled proceeding, public hearings having been held, the matter having been duly submitted and the Commission being now fully advised,

IT IS HEREBY ORDERED that C. P. Stanbrough as part owner of the Stockton-San Francisco Express and as owner of the Sacramento-San Francisco Express and the Merchants Freight Forwarding and Distributing Company, immediately cease operation as a common carrier of property over the line of the Truck Transportation Company, owned and operated by the Estate of C. D. Clarke, and particularly between San Francisco and Stockton, San Francisco and Sacramento or to or between any points intermediate to the terminals on said routes, and

IT IS HEREBY FURTHER ORDERED that R. M. Stanbrough as part owner of Stockton-San Francisco Express immediately cease operation as a common carrier of property over the line of the Truck Transportation Company, owned and operated by the Estate

of C. D. Clarke, and particularly between the fixed termini of San Francisco and Stockton or to or between any points intermediate to such termini, and

IT IS HEREBY FURTHER ORDERED that the Estate of C. D. Clarke, owning and operating the Truck Transportation Company, immediately cease and desist from the operation of trucks as a common carrier of property over the highways of this state and particularly between San Francisco and Stockton, San Francisco and Sacramento, Stockton and Sacramento, and between or to any points intermediate on any of the foregoing routes, and not resume such operation unless and until a certificate of public convenience and necessity has been issued by the Railroad Commission after proper application therefor and in accordance with the requirements of the Auto Stage and Truck Act. (Chapter 213, Laws of 1917, and effective amendments,) and

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission cause personal service of a certified copy of this Opinion and Order to be made upon said C. P. Stanbrough and R. M. Stanbrough; and upon Mrs. Grace D. Clarke, Administratrix of the Estate of C. D. Clarke, deceased; and the Secretary is directed to serve a certified copy of this Order by registered mail upon the District Attorneys of Alameda, San Joaquin, Sacramento and Contra Costa Counties, and of the City and County of San Francisco, and Department of Public Works, Division of Motor Vehicles.

IT IS HEREBY FURTHER ORDERED that this complaint insofar as it refers to defendants C. L. Filbert, First Doe and Second Doe, Third Doe and Doe Company be and the same

hereby is dismissed.

The effective date of this order is hereby fixed
as twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 18th day
of January, 1932.

W. A. Conroy
John A. Conroy
W. A. Conroy
W. B. Conroy
Fred G. Conroy
Commissioners.