

Decision No. 15369

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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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, and R. W. ROGERS, doing  
business as Sacramento Motor Transport,

Complainants,

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 Ex-  
press Company, and Truck Transportation  
Company,

Defendants.

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) Case No. 3042

McCutchen, Olney, Mannon & Greene, by Allen  
P. Matthew and J. Richard Townsend for  
The River Lines.

L. N. Bradshaw for Western Pacific Railroad  
Company and Sacramento Northern Railway

R. G. Hildebrand for Southern Pacific Company,  
Pacific Motor Transport Company and  
Central California Traction Co.

Reginald L. Vaughan and Scott Elder for  
Regulated Carriers, Inc.

C. P. Stanbrough in propria persona

C. L. Filbert in propria persona

HARRIS, Commissioner:

OPINION, FINDINGS AND JUDGMENT

Decision No. 25039, dated August 8, 1932, (Exhibit 1 in contempt proceeding) was an opinion and order on rehearing, and found as a fact that C. P. Stanbrough, R. M. Stanbrough, C. L. Filbert and Grace D. Clarke were engaged in the operation of a common carrier trucking service between San Francisco and Sacramento and Stockton and intermediate points without first having obtained a certificate of public convenience and necessity. It was ordered that the above individuals, operating under certain fictitious names, <sup>(1)</sup> cease and desist such operations until a certificate <sup>(2)</sup> should have been obtained.

The application for order to show cause and affidavit of service of G. E. Stater was filed on September 27, 1932. Attached to and a part of that application are the supporting affidavits of C. E. Mulks, W. E. Hinderliter, and Charles Aurich. The application recites the filing of the original complaint, the holding of hearings thereon, the issuance of Decision No. 24408 (which was a "cease and desist" order against certain of the defendants), the granting of a rehearing of that decision, the issuance of Decision No. 25039 upon rehearing, and service of

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(1) Merchants Freight Forwarding and Distributing Company; Stockton-San Francisco Express; Sacramento-San Francisco Express; Truck Transportation Company.

(2) Decision 25039 was personally served upon C. L. Filbert on August 12, 1932 (Exhibit 2), and upon C. P. Stanbrough on August 11, 1932 (Exhibit 3.)

the latter order. It is alleged in substance that notwithstanding the order on rehearing, with full knowledge of and subsequent to its effective date, defendants C. P. Stanbrough and C. L. Filbert have continued to operate a common carrier trucking service from Stockton to Sacramento. It is also alleged that C. P. Stanbrough and C. L. Filbert are operating a common carrier business from San Francisco to Sacramento in the following manner; that property intended for transportation from San Francisco to Sacramento is assembled in San Francisco and shipped to Stockton over the line of The Atchison, Topeka and Santa Fe Railway Company; that said property is transported from Stockton to defendants' freight terminal at Sacramento by motor trucks; that said property is distributed to consignees in Sacramento by motor trucks; that bills of lading are issued under the name "Merchants Freight Forwarding and Distributing Company" covering the entire movement from San Francisco to Sacramento; that rates charged and collected represent a single charge for the entire movement from San Francisco to Sacramento; and that receipts for payment of such freight charges have been issued by defendants under the name "Merchants Freight Forwarders."

Specific violations setting forth license numbers of trucks moving from Stockton to Sacramento and of trucks making deliveries in Sacramento, names and addresses of consignees, commodities delivered, etc., are alleged to have occurred on September 13, 15 and 24, 1932.

On October 4, 1932, the Commission issued its order to show cause directing C. P. Stanbrough and C. L. Filbert to

appear on November 15, 1932, and show cause why they, or either  
of them, should not be punished for contempt. <sup>(3)</sup> No answer was  
filed on behalf of either of the defendants in this proceeding.

Witness C. O. Werner has been employed by C. P. Stanbrough at San Francisco since February 1, 1931. Until August 15, 1932, he performed certain clerical work for "Truck Transportation Company", <sup>(4)</sup> which paid half of his salary. Since that date he has been employed as bookkeeper by C. P. Stanbrough. He testified that from August 11, 1932, to October 26, 1932, the business of "Merchants Freight Forwarding and Distributing Company" was called "Consolidated Shippers". On October 26, 1932, by direction of C. P. Stanbrough, the witness stated that he began using the name "Merchants Freight Delivery Company." Forms bearing the name "Merchants Freight Forwarders" have also been used.

Mr. Werner stated that on August 29, 1932 space was leased in the Santa Fe freight shed at San Francisco, where freight is received destined to Stockton and Sacramento and signed for on shippers' forms of receipts or bills of lading, and that freight accumulated during the day is loaded into a "pool" car and shipped by "Merchants Freight Delivery Company", San Francisco,

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(3) The "Application for Order to Show Cause and Affidavit of Service", together with the Order to Show Cause, was personally served upon C. P. Stanbrough on October 17, 1932 (Exhibit 4), and upon C. L. Filbert on October 10, 1932 (Exhibit 5.)

(4) The fictitious name under which Grace D. Clarke formerly operated.

(5)  
to "Merchants Freight Delivery Company" care R. M. Stanbrough,  
(6)  
Stockton. . A daily carload of freight is shipped to Stockton  
and the witness prepares individual bills, omitting the rate to  
be charged. Bills and shipping orders are forwarded with the  
merchandise in the freight car. On shipments destined to  
Stockton R. M. Stanbrough fills in the rate and amount and re-  
turns the bills to Werner at San Francisco, who then bills the  
consignor. C. L. Filbert fills in the rate and amount on bills  
for shipments to Sacramento.

Mr. Werner testified further that in San Francisco  
freight is brought to defendants' leased premises in the Santa Fe  
freight shed by draymen employed by shippers. One man is em-  
ployed to receive and load freight into rail cars. The witness  
stated that he does not know how freight destined to Sacramento  
is transported from Stockton to Sacramento. Shippers using the  
service prior to the "cease and desist" order have continued and  
freight offered for transportation to either Stockton or Sacramento  
is accepted.

Representatives of several business houses in San  
Francisco testified regarding their use of the service from San  
Francisco to Sacramento. Chanslor & Lyon Stores, Inc. auto sup-  
plies and equipment, has used the service of C. P. Stanbrough  
as "Merchants Freight Forwarding and Distributing Company", for  
five or six years. (Witness H. F. Barbier.) No shipments have  
been refused. . The witness produced documents showing goods

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(5) Exhibits 9, 10 and 11 are copies of bills of lading of The  
Atchison, Topeka and Santa Fe Railway Company dated September 12,  
14 and 23, respectively, showing carload shipments from "Consolida-  
ted Shippers", San Francisco, to "Consolidated Shippers c/o R. M.  
Stanbrough", Stockton.

(6) R. M. Stanbrough is a son of C. P. Stanbrough and C. L.  
Filbert is a son-in-law of C. P. Stanbrough. (Decision No. 25039;  
Exhibit 1).

ordered and received by the Sacramento store, together with freight bills or bills of lading. During August, September and October, 1932, and subsequent to August 15, twenty-two shipments were made via defendants' service.

Overland Fast Freight, freight consolidators and forwarders, has used "Merchants Freight Forwarding and Distributing Company" service to Sacramento for several years and there has been no change in business relations during the past two years. Most of the shipments made carry the minimum rate of fifty cents, and checks are made payable to "Merchants Freight Forwarding and Distributing Company". If but one shipment is to be made on a particular day it is sent direct to consignee. If more than one they are grouped as one shipment to Overland Fast Freight, care of C. L. Filbert, at Sacramento, who distributes to consignees. Eighteen shipments were made during the period August 16 to October 10, 1932.

Eastman Kodak Company (Witness L. R. Mow) has used the service of "Merchants Freight Forwarding and Distributing Company" to Sacramento for several years. From duplicate original bills of lading produced by the witness it was shown that from August 8 to November 10, 1932, inclusive, fifteen shipments were made to F. S. Gray (Gray's Pharmacy) at Sacramento. William Volker & Company, wholesale floor coverings and linoleum (Witness H. Henderson), during the period September 12 to November 3, 1932, made twelve collect shipments to its Sacramento branch via "Merchants Freight Forwarding and Distributing Company".

Crane and Company (Witness O. M. Pistole) has used "Merchants Freight Forwarding and Distributing Company" service to its Sacramento branch for four years. About August

11, 1932, the Sacramento branch advised that shipments were to be delivered to the "Merchants" terminal in San Francisco, and pick-up service ceased. The witness first learned of the "cease and desist" order in September and discontinued using "Merchants" service. Thirty-two shipments were made to Sacramento from August 8, 1932 to September 20, 1932, inclusive.

Colyear Motor Sales Company makes collect shipments to its Sacramento branch. Witness P. C. Beck produced two books of printed forms of memo bills of lading covering shipments made from August 8 to November 14, 1932, shipments being made almost daily. The printed forms bear the name "Merchants Freight Forwarding and Distributing Company" and were furnished by the truck driver who picks up shipments in San Francisco. The witness also produced numerous receipted freight bills covering the above period.

Graham-Paige Company (Witness T. E. Olsen) has been using the service for several years and shipments are picked up at its place of business. Records produced by the witness show thirty-eight shipments to Sacramento from August 12 to November 15, 1932. Shipments are also picked up at Walworth California Company (Witness E. W. Cole) and bills of lading produced by the witness show that 78 shipments were made subsequent to August 12, 1932.

Witnesses W. E. Hinderliter, C. E. Mulks, Charles W. Aurich, G. E. Stater, and H. E. Northway testified in detail regarding loading of freight from rail cars at the Santa Fe station at Stockton to particular trucks identified by license numbers; the hauling of such freight over the highways from Stockton to the terminal of "Merchants Freight Forwarding and

Distributing Company" at Sacramento; and delivery of freight by truck to numerous specific consignees in that city. The testimony of these witnesses relates to specific movements on September 13, 15, and 24, 1932.

Exhibits 12A to F, inclusive, are photostatic copies of certificates of legal ownership and certificates of registration on file in the Division of Registration, Department of Motor Vehicles. (7) Exhibit 13 is a photograph of defendants' terminal at Sacramento, taken by Witness Mulks on November 11, 1932, which shows the following sign on the front of the building:

" Merchant's Freight  
Forwarding & Distributing Co.  
operating  
Sacramento-S. F. Express Co.  
Phone Main 1493". (8)

(7) Reo truck bearing license number PCA 922, used in making Sacramento deliveries, formerly owned by C. P. Stanbrough, has been transferred to C. L. Filbert. Truck bearing license number PCA 923, former registered owner C. P. Stanbrough, transferred to C. L. Filbert, has been used in transporting freight from the rail depot in Stockton to Sacramento. Ford truck bearing license number SC 75027, also transferred to C. L. Filbert, has been used in making Sacramento deliveries. Federal truck bearing license number PCA 1064, used between Stockton and Sacramento and in Sacramento, is registered to Merchants Freight Forwarding & Distributing Co., C. L. Filbert.

(8) On November 12, 1932, Chevrolet truck bearing license number PCA 923 had the following letters covering the side of the truck:

"S A C R A M E N T O   S A N   F R A N C I S C O  
E X P R E S S

Phone Main - 1493   414-11th St.  
Merchants-Freight Forwarding & Distributing Co.  
Serving  
Lodi-Stockton-Tracy-Oakland-San Francisco."

(Exhibits 14 and 16.)



## F I N D I N G S

Upon a careful review of the record in this proceeding the Commission makes the following findings of fact:

1. On August 8, 1932, the Railroad Commission rendered its Decision No. 25039, in which it was found as a fact that C. P. Stanbrough, C. L. Filbert and certain other persons were engaged in the operation of a common carrier of property, for compensation, over the public highways between San Francisco and Sacramento and Stockton and intermediate points, without having obtained a certificate of public convenience and necessity for such operation, and in which decision C. P. Stanbrough, C. L. Filbert, and certain other persons, operating under the following fictitious names

Merchants Freight Forwarding and Distributing Company  
Stockton-San Francisco Express  
Sacramento-San Francisco Express  
Truck Transportation Company,

were ordered to cease and desist from the operation of such common carrier trucking service. Said order has never been revoked and is still in force and effect.

2. Certified copies of said Decision No. 25039 were personally served upon C. L. Filbert on August 12, 1932, and upon C. P. Stanbrough on August 11, 1932, and said C. P. Stanbrough and C. L. Filbert had personal knowledge of the making of said order and its contents.

3. On September 27, 1932, there was filed with the Railroad Commission the affidavit of G. E. Stater, together with the supporting affidavits of C. E. Mulks, W. H. Hinderliter, and Charles Aurich, in which it was alleged in substance that the said C. P. Stanbrough and C. L. Filbert, notwithstanding the order of the Railroad Commission in its Decision No. 25039, and with full knowledge of the contents and provisions thereof, have failed

and refused to comply with said order in that they are continuing to conduct and operate a common carrier trucking service from Stockton to Sacramento as a part of through movements of property from San Francisco to Sacramento.

(4) Upon said affidavits being received and filed the Railroad Commission regularly, on October 4, 1932, made and issued its order directing C. P. Stanbrough and C. L. Filbert to appear before Commissioner Harris on Tuesday, November 15, 1932, in the court room of the Commission, State Building, San Francisco, to then and there show cause, if any they had, why they, or either of them, should not be punished for contempt for their refusal, failure and/or omission to comply with the terms of the order of the Railroad Commission. Said order to show cause, together with said affidavits upon which based, was personally served upon C. P. Stanbrough on October 17, 1932, and upon C. L. Filbert on October 10, 1932. Thereafter, hearing was had on November 15 and 16, 1932.

5. Notwithstanding the order of the Railroad Commission contained in said Decision No. 25039, the said C. P. Stanbrough and C. L. Filbert have, and each of them has, failed and refused to comply with the terms thereof, and continued to conduct and operate the business of operating automobile trucks for the transportation of property as a common carrier, for compensation, over the public highways of this State, within the meaning of Statutes 1917, chapter 213, as amended, and specifically from Stockton to Sacramento as a part of a through common carrier service from San Francisco to Sacramento, on September 13, 15 and 24, 1932 and subsequent thereto.

6. The failure of the said C. P. Stanbrough and C. L. Filbert, and each of them, to comply with the said order of the Railroad Commission, and their continuance to operate a common carrier of property by auto truck is in contempt of the Railroad Commission of the State of California and its order.

## J U D G M E N T

C. P. Stanbrough and C. L. Filbert having appeared in person and having been given full opportunity to answer the Order to Show Cause of October 4, 1932, and to purge themselves of their alleged contempt,

IT IS HEREBY ORDERED AND ADJUDGED that the said C. P. Stanbrough and C. L. Filbert, and each of them, has been guilty of a contempt of the Railroad Commission of the State of California in disobeying its order made August 8, 1932, in its Decision No. 25039 by failing and refusing to desist from the operation of a common carrier of property, for compensation, by automobile truck from Stockton to Sacramento as a part of a through common carrier service from San Francisco to Sacramento, and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for his said contempt of the Railroad Commission and its order the said C. P. Stanbrough be punished by a fine of five hundred dollars (\$500.00) and five days' imprisonment, said fine to be paid to the Secretary of the Railroad Commission of the State of California within five days after the effective date of this Opinion, Findings and Judgment, and said imprisonment to be in the county jail of the City and County of San Francisco, State of California.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the aforesaid fine said C. P. Stanbrough be committed to the county jail of the City and County of San Francisco, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars of said fine that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, upon this Opinion, Findings and Judgment becoming effective, prepare appropriate order of arrest and commitment in the name of the Railroad Commission of the State of California for the imprisonment of said C. P. Stanbrough in the county jail of the City and County of San Francisco, State of California, for a period of five days, said order of arrest and commitment to be directed to the Sheriff of the City and County of San Francisco, and to which shall be attached and made a part thereof a certified copy of this Opinion, Findings and Judgment.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for his said contempt of the Railroad Commission and its order the said C. L. Filbert be punished by a fine of five hundred dollars (\$500.00) and five days' imprisonment, said fine to be paid to the Secretary of the Railroad Commission of the State of California within five days after the effective date of this Opinion, Findings and Judgment, and said imprisonment to be in the county jail of the County of Sacramento, State of California.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the aforesaid fine said C. L. Filbert be committed to the county jail of the County of Sacramento, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars of said fine that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, upon this Opinion, Findings and Judgment becoming effective, prepare appropriate order of arrest and commit-

ment in the name of the Railroad Commission of the State of California for the imprisonment of C. L. Filbert in the county jail of the County of Sacramento, State of California, for a period of five days, said order of arrest and commitment to be directed to the Sheriff of the County of Sacramento, and to which shall be attached and made a part thereof a certified copy of this Opinion, Findings and Judgment.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, if said fines, or either of them, are not paid within the time specified above, prepare appropriate order or orders of arrest and commitment in the name of the Railroad Commission of the State of California, to which shall be attached and made a part thereof a certified copy of this Opinion, Findings and Judgment.

IT IS HEREBY FURTHER ORDERED that as to C. P. Stanbrough this Opinion, Findings and Judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon said C. P. Stanbrough, and that as to C. L. Filbert this Opinion, Findings and Judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon said C. L. Filbert.

The foregoing Opinion, Findings and Judgment are hereby approved and ordered filed as the Opinion, Findings and Judgment of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of November, 1932.

C. L. Seawing  
Leon A. Whittell  
M. H. Lee  
W. B. Harris  
Fred G. Atterbury  
Commissioners