

Decision No. 27099

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
E. R. BALL and F. E. HAYES for certifi-
cate of public convenience and neces-
sity to operate a motor freight service
restricted to certain commodities en-
tirely within California between Los
Angeles and contiguous territory and
certain oil fields within the San Joa-
quin Valley and in connection therewith
an unrestricted motor freight service
between Los Angeles proper and the
towns of Bakersfield, McKittrick, Fel-
lows, Taft and Maricopa, also excluding
all places on the main traveled highway
intermediate between McKittrick, Fellows,
Taft and Maricopa, and places less than
one-half mile interior from said highway

ORIGINAL

) Application No. 16849

E. J. D. HODGE,

Complainant,

vs.

E. R. BALL and F. E. HAYES, JOHN DOE, JANE
DOE and MARY DOE, co-partners doing busi-
ness under the firm name and style of OIL
WELL EXPRESS; and OIL WELL EXPRESS, a co-
partnership,

Defendants.

) Case No. 2922

MOTOR FREIGHT TERMINAL COMPANY, a corpor-
ation, and SAN JOAQUIN VALLEY TRANSPORTA-
TION COMPANY, a corporation,

Complainants,

vs.

E. R. BALL, F. E. HAYES, E. R. BALL and
F. E. HAYES as co-partners, GENERAL TRAN-
SIT INC., a corporation, OIL FIELD EX-
PRESS, ONE DOE, TWO DOE, THREE DOE, FOUR
DOE AND FIVE DOE,

Defendants.

) Case No. 2939

Rex Boston for Affiant and for Asbury Truck Company
L. S. Bower for E. R. Ball
Robt. Brennan and Wm. F. Brooks for Atchison, Topeka
and Santa Fe Rwy. Co. and for Sunset Railway
Company.

BY THE COMMISSION:

OPINION, FINDINGS, AND JUDGMENT

Decision 23627, 36 C.R.C. 197, (April 27, 1931),⁽¹⁾
found that E. R. Ball and F. E. Hayes, as "Oil Well Express,"
were operating common carrier truck service without certificate
in violation of Statutes 1917, ch. 213, as amended.⁽²⁾ It ordered
that they cease and desist such operation, and specifically between
Los Angeles and contiguous territory and certain San Joaquin Valley
oil fields.

Decision 24692 (Exhibit 3; April 18, 1932) adjudged that
both Ball and Hayes were guilty of contempt in disobeying the de-
sist order. E. R. Ball was ordered punished by a fine of five
hundred dollars and by five days' imprisonment.⁽³⁾

On February 27, 1934 Thomas Merrill filed with the
Commission his Affidavit and Application for Order to Show Cause.
On March 6, 1934, E. R. Ball was ordered to appear on March 28,

(1) E. R. Ball was personally served on September 15, 1931. (Exhibit 2.)

(2) Decision 23627 (Exhibit 1) states further that E. R. Ball was
secretary and treasurer of General Transit, Inc.; that in July
1930, Ball, with F. E. Hayes, took over such business, established
it under the name Oil Well Express, and filed application for a
certificate on August 25, 1930 (App. 16849); that Decision 23012
in Case 2888 (Oct. 27, 1930, 35 C.R.C. 352) found that General
Transit, Inc. had been operating common carrier service between
Los Angeles and Bakersfield, Taft, Fellow, McKittrick, Kettleman
Hills, Coalinga, Pozo Creek and Avenal without a certificate;
that Decision 23012 ordered General Transit, Inc. to cease and de-
sist; that App. 16849 was filed three days prior to the hearing
of Case 2888; and that Oil Well Express continued to operate
precisely as had General Transit, Inc.

(3) On July 25, 1932, the California Supreme Court denied a petition
for writ of review. (Ball v. Railroad Commission, L. A. No. 13782,
15 Pac. (2d) 862.) On November 10, 1932 the District Court dis-
charged a writ of habeas corpus and remanded petitioner to the
custody of the sheriff. (Re E. R. Ball on Habeas Corpus, 127 Cal.
App. 433.)

1934 and show cause why he should not be punished for each alleged contempt set forth therein. ⁽⁴⁾ Public hearing was had before Commissioner Carr on March 28, 29, 30 and April 26 and 27, 1934.

The Affidavit in substance alleges the prior proceedings before the Commission; alleges that E. R. Ball is still operating as a common carrier, practicing "various tricks, devices and subterfuges for the purpose of concealing the true identity and character of his operations", and "under various fictitious names including the name Oil Well Express and/or Oil Well Express Corporation" for the sole purpose of evading the desist order (Affidavit, Par. X.); and alleges that E. R. Ball is rendering a common carrier service between fixed termini or over regular routes between Los Angeles and contiguous territory on the one hand and Bakersfield, Taft, Maricopa, Fellows, McKittrick, Devil's Den, Avenal, Coalinga and other points in the lower San Joaquin Valley oil fields on the other hand.

In addition, the Affidavit sets forth five distinct offenses or counts of separate alleged contempts, alleging specifically and in detail under each alleged offense the dates, trucks, consignors, consignees, commodities, etc. The specific alleged contempts occurred on January 10 and 11, 11 and 12, 15 and 16, 29 and 30, and February 2 and 3, 1934. ⁽⁵⁾

The evidence may be summarized as follows:

SHIPPER TESTIMONY

Hofco Pump Co., Ltd. (Witness R. G. Clay) at Long Beach, with a branch at Taft, hauls by its own trucks to Los Angeles and

(4) The affidavit and the order to show cause were personally served upon E. R. Ball on March 8, 1934. (Exhibit 4.)

(5) Specific shipments alleged in the Affidavit and testified to by shipper witnesses appear in footnotes and the dates of such shipments are underscored.

ships from there to Taft. It has used "Oilwell Express" service 2 or 3 years about 2 or 3 times per week. From January 3 to February 7, 1934 it made 16 shipments, using standard forms of bills of lading, and paid transportation charges by check payable to "Oilwell Express Corporation."⁽⁶⁾

Stoody Company (Witness W. M. Grant) at Whittier, used "Oilwell Express" service in 1933 and 1934 for collect shipments to Bakersfield, Taft and Avenal, and the witness described 10 shipments made during January and February, 1934.⁽⁷⁾

Shaffer Tool Works (Witness N. H. Leroy) at Brea, with branches at Santa Fe Springs, Ventura, and Taft, since 1930 has delivered goods to and shipped from Los Angeles via "Oilwell Express." Bills of lading are made out on "Oilwell Express" forms. Two years ago witness first received a bill for transportation from "Pacific Shippers Association." He investigated and found that "we had some sort of contract" with the latter. However, "all I ever know is Oilwell Express," and his understanding is that "Oilwell Express," "Oilwell Express Corporation," and "Pacific Shippers Association" are one and the same. The address and telephone numbers are the same.⁽⁸⁾ Service has been uninterrupted and without refusal for the past 3 years, although now more frequent. The witness identified E.R. Ball as having called about 2 years ago to ask how witness liked the service. The witness described 6 shipments made to Taft in January and February of 1934.

Security Enginecring Company (Witness J. P. Sievers) at Whittier, with a branch at Bakersfield and a store at Avenal, has⁽⁶⁾ On January 11, 1934, it shipped 2 boxes of pump parts from Los Angeles to its branch at Taft and paid \$1.00 transportation charges. (2nd count.)

⁽⁷⁾ On January 15, 1934, Stoody Company made a shipment of welding rods to Hopper Machine Works at Bakersfield. (3rd count.)

⁽⁸⁾ 4450 South Main St., Los Angeles; telephone ADams 5183.

shipped from the Los Angeles yard of "Oilwell Express" for 2 or 3 years. Two days prior to the hearing E. R. Ball called and asked if witness had been subpoenaed. A form of agreement with "Oilwell Express Corporation," produced by the witness and bearing no date, was actually signed by him a week prior to the hearing, having been called to his attention because of the subpoena. He had had the agreement for some months. It is signed on behalf of Oilwell Express Corporation by "B. L. Mikesell," whom the witness has never met and does not know. He described 49 shipments between Los Angeles and Avenal, Bakersfield, and Belridge from January 3 to February 5, 1934. ⁽⁹⁾ Transportation charges are paid to "Oilwell Express Corporation." ⁽¹⁰⁾

Golden Bear Oil Co., Ltd. (Witness B. Schonfeld) has shipped occasionally by "Oilwell Express Corporation" from Los Angeles to Oildale and Bakersfield. Exhibit 6 consists of 2 checks bearing the same endorsements as Exhibit 5. This company has not signed any form of agreement. E. R. Ball has solicited its business within the past year. The service has been "very much available."

Southern Steel & Supply Co. (Witness W. J. Hannon) made 7 collect shipments from Los Angeles via "Oilwell Express" in the past 6 months at the request of buyers in Bakersfield, Shafter, ⁽¹¹⁾ and Wasco, and has no written agreement. Exhibit 7 consists of 5 Uniform Straight Bills of Lading made out to "Oil Well Exp." and "Oil Well."

⁽⁹⁾ On January 11, 1934 Security Co. shipped a reamer to its store at Avenal. (2nd count.)

⁽¹⁰⁾ Exhibit 5 is a check for \$135.75, the endorsement of which reads as follows:

"89 Pay to the order of 89

Security-First National
Bank of Los Angeles
Oilwell Express
CORPORATION"

⁽¹¹⁾ On January 15, 1934, Southern Steel & Supply Co., shipped one carton of hardware to C. L. Stancliff at Bakersfield (3rd count.)

Hydril Company (Witness H. L. Gardner), formerly Doheny Stone & Drill Co., manufacturers of oil well equipment, with a branch at Kettleman Hills, has used "Oilwell Express" for at least 2 years, has never been refused service, has no written form of agreement, and has paid transportation bills rendered by "Oilwell Express Corporation." The witness has met E.R. Ball "once in a while," although not in the past year, has not noticed any change in service over the past 2½ years, and described 28 shipments made between Los Angeles and Kettleman Hills from January 4 to February 3, 1934.

Globe Oil Tools Company (Witness J. R. Wright) has used "Oilwell Express" since 1931 and during the last 8 months averaged one shipment daily. There has been no change or interruption in the service during the past 3 years. "Oilwell Express" has been at the same location on Main Street. The witness first met E.R. Ball three years ago. This company sends goods by its own truck to the yard of "Oilwell Express" in Los Angeles for shipment. The witness described 25 shipments made to Avenal, Pozo Creek, McKittrick, Belridge, and Taft from January 8 to 31, 1934. ⁽¹²⁾ Transportation charges were paid to "Oilwell Express Corporation." Exhibit 8 is in part a form of agreement dated May 24, 1932 which the witness signed, and which is also signed by Ralph Futhy for "Oilwell Express Corporation."

National Supply Co. of Calif. (Witness H. H. Jones, traffic manager) has shipped by "Oilwell Express" or "Oilwell Express Corporation" since 1930, has never been refused nor has there been any change in service. "Oilwell Express" started, so far as witness knows, and is still at 4450 So. Main Street (telephone Adams 5183.) The witness first came in contact with E.R. Ball and with Hayes, and has seen Ball every 3 or 4 months during the past three years. On July 15, 1932 he was advised that ⁽¹²⁾On January 11, 1934 Globe Co. made a shipment consigned to itself at Avenal. (2d count.)

"Oilwell Express" was now a corporation, and received by mail a new agreement dated May 24, 1932. He recommended to the executive officers of his company that the agreement be signed, "they have changed to a corporation" being the only reason for signing. (13)
This agreement took the place of a prior agreement with "Oilwell Express" dated in 1931. The witness "never knew who were in back of the corporation." He has known Ralph Futhey for some 2 years, first meeting him at the "Oilwell Express" yard. He has talked with Futhey about shipments, and has considered Futhey to be a truck dispatcher and solicitor, although he does not know Futhey's connection with "Oilwell Express Corporation." Since the second agreement witness has talked to E.R. Ball regarding transportation, and has reached him at the Adams telephone number. The service has been identical and always available. "Oilwell Express Corporation" service leaves from Los Angeles after 6 p.m. daily except Sunday.

The witness produced original records and an abstract thereof (Exhibit 9), which was stipulated to be a true abstract, showing the hauling performed by "Oilwell Express Corporation" for National Supply Company for the period November 15, 1933 to March 6, 1934. During January and February of 1934, 298 shipments were made. (14)

Eastern Outfitting Company has made three shipments by "Oilwell Express Corporation" at the request of purchasers and has paid the transportation charges. (15)

(13) This agreement is Exhibit 10 and is signed by Ralph W. Futhey for "Oilwell Express Corporation," as secretary and treasurer.

(14) On January 11, 1934 National Supply shipped to itself at Taft supplies weighing 279 pounds for which it paid transportation charges of \$1.23. (2nd count) On January 11, 1934 it shipped to itself at Avenal supplies weighing 241 pounds for which it paid transportation charges of \$1.57. (2nd count.) On January 29, 1934 it shipped to itself at Taft supplies weighing 1300 pounds for which it paid transportation charges of \$5.72. (4th count.) On February 2, 1934 it shipped to itself at Bakersfield supplies weighing 381 pounds for which it paid transportation charges of \$1.51. (5th count.)

(15) On January 11, 1934 Eastern Outfitting Company made a shipment from Los Angeles to Carl A. Pallaster at Avenal for which it paid transportation charges of \$.70 (2nd count.)

Emsco Derrick & Equipment Co. and D. & B. Pump and Supply Co. (Witness E. J. Willett has charge of shipping and transportation for both companies, which are affiliated) have used the service in question for approximately 3 years, daily except Sundays. The telephone number of "Oilwell Express" was obtained from another shipper. Later E.R. Ball called on the witness. The witness has called Futhy by telephone. "Oilwell Express" has always been on Main Street. There has been no change or interruption in service. There was an agreement with "Oilwell Express" when it was a partnership and represented by E.R. Ball. A second agreement, superseding the first, in the name of "Oilwell Express Corporation," and dated May 24, 1932, was received by the witness on June 30, 1932. E.R. Ball told him that there was a "change to a corporation." Ball has called twice in the past 12 months, "the same as any solicitor," and asked if the witness "received good service." The witness does not know the officers of "Oilwell Express Corporation." He described 23 shipments made by Emsco Derrick & Equipment Co. during the period January 9 to February 3, 1934, and 12 shipments made by D. & B. Pump & Supply Co. during the same period. (16)

Link Belt Co. (Witness W. E. Thompson) Los Angeles, has made collect shipments by "Oilwell Express Corporation" to Bakersfield, Avenal and Kettleman Hills, and has had customers return goods upon which it paid the freight. (17)

California Door Company (Witness G. O. Fogelman) has shipped collect to Taft Lumber Company and witness' instructions are to call "Oilwell Express at Adams 5183 and truck will call." Several bills of lading were produced showing shipments made. (18)

(16) On January 10, 1934 a prepaid shipment weighing 328 pounds was shipped from D. & B. at Los Angeles to Emsco at Bakersfield. (1st count.) On January 29, 1934 a prepaid shipment weighing 2121 pounds was shipped from D. & B. at Los Angeles to Emsco at Taft. (4th count.) On February 2, 1934 a prepaid shipment weighing 2520 pounds was shipped from D. & B. at Los Angeles to Emsco at Bakersfield. (5th count.)

(17) On January 15, 1934 a shipment was made to California-Bettis Co. at Bakersfield. (3rd count.)

(18) On January 11, 1934 a shipment of sash doors was made from Los Angeles to Taft Lumber Company at Taft. (2nd count.)

California Hardware Company (Witness G. Truefit) has shipped to lower San Joaquin Valley points at the request of purchasers. Standard forms of bills of lading are used. These are signed "Oilwell" or "OWEX," and "we know them as Oilwell Express." The witness described 17 shipments which moved between January 11 and February 4, 1934.

Patterson-Fallagh Corp. Ltd. (Witness C.L. Patterson) has shipped from Los Angeles to Avenal via "Oilwell" service, paying the transportation charges. (19)

Union Hardware & Metal Company (Witness R.S. Campbell) at Los Angeles, uses the service. The witness has met E.R. Ball twice within the last three or four months with reference to a claim made by the consignee of a shipment sent to Kettleman Hills. The claim was mailed to "Oilwell Express Company," which is the only name the witness knows for this particular service. E.R. Ball called to ask if the shipment could be sent to the factory for repairs, which was done. The claim was returned to "Oilwell Express Company" and was paid. The Union Hardware Company averages from 800 to 1000 orders per day, shipping by various carriers, including "Oilwell Express." At a later session Witness G.R. Burgess, shipping clerk of Union Hardware, testified as to certain specific shipments. (20) This witness has been with the company for 10 years, routes the shipments, makes out bills of lading, and for the past 5 years has always heard of the service in question as "Oilwell Express." ("Oilwell Express is the only one I knew anything about.") There has been no refusal to serve and no change in service. It was stipulated

(19) On January 11, 1934 two crates were shipped to California-Bettis Company at Avenal. (2nd count.)

(20) On January 15, 1934 Union Hardware shipped 2 bundles of brass pipe and 1 carton to Hopper Machine Works at Bakersfield. (3rd count.) On January 29, 1934 it shipped 81 pieces of iron and 5 bars weighing 6363 pounds to Taft Union High School at Taft, paying transportation charges of \$28.63 by check payable to "Oilwell Express Corporation." (4th count.)

that the claim referred to by Witness Campbell showed the name "Oilwell Express Corporation."

Yowell & Yarborough, Inc. and Perkins Cementing Company (Witness L. J. Whitney) have used the service; Perkins Company for about 2 years and Yowell and Yarborough for four or five months. (21) Exhibit 11 is a bill of lading covering a shipment of January 31, 1934, is the usual form used, and is signed per "James Ball." (22) Exhibit 12 is an agreement, dated August 10, 1932 with Perkins Cementing, Inc., signed on behalf of "Oilwell Express Corporation" by Ralph Futhy, together with a letter, undated, on a letterhead of "Oilwell Express Corporation," and signed by "B. L. Mikesell, President." (23) The witness has never heard of B. L. Mikesell. Yowell & Yarborough has no agreement.

Linde Air Products Company (Witness P. A. Ryan) has used the service and the witness testified from his records as to 14 ship- (21) On February 2, 1934 Yowell and Yarborough shipped a package to E.W.McGaffey Co. at Bakersfield and paid transportation charges thereon. (5th count.)

(22) The heading of this bill of lading follows:

"For Use in Connection with Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1922,
as amended August 1, 1930.

ORIGINAL
AVENAL NOT NEGOTIABLE
Phone 'Dunlap's' UNIFORM STRAIGHT BILL OF LADING
4450 S. Main St.
Phone Adams 5183 OILWELL EXPRESS CORPORATION
PRIVATE CARRIERS

Bakersfield
Phone 1107
TAFT
Phone 199 M"

(23) This letter reads as follows:

"Perkins Cementing, Inc.
714 West 10th Street,
Los Angeles, California

'NOTICE OF CHANGE IN RATE SCHEDULE'
AMENDMENT

Beginning March 21, 1934, and continuing thereafter until further notice from this office, the rate to Kettleman, Coalinga, and Avenal on 1 pound to 4000 pounds will be 60¢ per cwt. All other rates to remain unchanged.

Please attach this amendment to your contract and make it a part of same as of this date.

OILWELL EXPRESS CORPORATION
(signed) by R. L. Mikesell
President.
(seal)

BIM:NS"

ments between Los Angeles and Kettleman Hills, Bakersfield and Taft
(24)
between January 8 and February 5, 1934. From February 7 to
March 6, 1934, seventeen additional shipments were made. The
witness knows the service only as "Oilwell Express."

Axelson Manufacturing Company (Witness R. E. Imhopt),
manufacturing oilwell pumps at Los Angeles, with branches at Taft
and Bakersfield, has used the service for the past 4 years. (25)
There has been no change at any time in the service, which has
been identically the same, and with no refusal to serve. "All I
know about is Oilwell Express." Charges have been paid to "Oilwell
Express Corporation" because "bills began to come in that name."
The witness has known E.R. Ball for 4 years. The latter has called
at his office twice during the past year, once to inquire if the
service to Taft was satisfactory, and once (6 months prior to the
hearing) with regard to a claim for a lost pump part. The witness
filed the claim with "Oilwell Express Corporation," telephoned to
them, and E.R. Ball called and paid the claim.

Ducommon Corporation, wholesale hardware (Witness H. A.
Steele), has used the service for about 3 years. On the first
occasion a salesman sent an order so specifying, and the witness
"looked up Oilwell Express in the telephone book." He has known
E.R. Ball about 3 years and talked to him last about 8 months ago
at Ball's place of business at 4450 South Main Street, where
witness left a package for shipment. Ball came out and asked if
the service was satisfactory. There has been no change or inter-

(24) On January 15, 1934 it shipped 20 acetylene tanks and 30
tanks of oxygen to Petroleum Securities Company at Kettleman Hills.
(3rd count.)

(25) On January 29, 1934 it shipped to itself at Taft 6 boxes and
2 crates, weighing 2954 pounds, for which it paid transportation
charges of \$13.29. (4th count.)

ruption. The only refusal to serve has been when trucks were not available. During 1934 witness has paid no charges, but has shipped at the request of consignees. The witness described 13 shipments made between January 10 and February 2, 1934. ⁽²⁶⁾ From February 2 to March 6, 1934, 36 shipments were made.

Belridge Oil Company (Witness W. C. Wickersham), producers of oil and gas, with main offices at Los Angeles and conducting oil field operations at Belridge Field, near McKittrick, has used "Oilwell" service for 4 or 5 years. The witness has contacted no one except E. R. Ball, and has no knowledge of any change in service. His first notice of "Oilwell Express Corporation" was when he received a new form of agreement in May of 1932, which he signed, and which also bore the signature of Ralph Futey. The witness did not understand that there was any change in management, and E. R. Ball has called 3 or 4 times in the past year "to see if everything was all right" and if the service was satisfactory. There has been no refusal to serve and witness was advised that "they (Oilwell Express Corporation) go up there daily." The witness produced records and testified to 32 shipments made from January 9 to February 2, 1934 between Los Angeles and Belridge upon which his company paid transportation charges. ⁽²⁷⁾

Anchor Packing Company (Witness C. E. Briggs), manufacturers of steam tankings at Los Angeles, has used "Oilwell" service infrequently for 3 years. There has been no change in service in the last 2 years. Pick-up service has been refused because the packages shipped were small, although there has been no refusal to serve when packages were brought to the "Oilwell" yard. "The only name by which I have ever known it is Oilwell Express."

Abegg & Rhinehold Company (Witness E. F. Schlittler), manufacturers of oil well tools at Los Angeles, has used "Oilwell" service since 1930, with no change or interruption, and no refusal

⁽²⁶⁾ On February 2, 1934, a shipment was made to Molhook Machine Works at Bakersfield, consisting of 1 case of shafting, 1 package of hardware, and 1 bundle of steel tubing. (5th count.)

⁽²⁷⁾ On February 2, 1934 a shipment of parts moved from Universal Carloading Company at Los Angeles to Belridge Oil Company at Belridge, upon which the latter paid transportation charges of \$40.74. (5th count.)

to serve. The witness met E. R. Ball in 1931, and last saw him in June of 1932 when Ball called and asked witness to sign a new agreement in lieu of a prior agreement (with "Oilwell Express," signed by E.R.Ball.) Ball retained the original of the new agreement and told the witness that there was a reorganization, a "new company or something." The service was the same before and after the new agreement. "Oilwell Express" was at 4450 South Main Street and the present service is at that address. The witness testified as to certain shipments made in January of 1934.

Oil Well Manufacturing Company (Witness G. Crussel) at Los Angeles, with a warehouse at Avenal, has used "Oilwell" service since about January of 1932, and has paid transportation charges. The service was recommended and witness telephoned to "Oilwell Express." He met E. R. Ball in March of 1932, when Ball called to discuss the service and rates of "Oilwell Express." He has seen Ball since then 4 or 5 times, the last occasion being about 45 days prior to the hearing, when Ball called to discuss rates and service of "Pacific Shippers Association." In April of 1933 the witness was advised that "Oilwell Express" would be dissolved and that "Pacific Shippers Association" would be formed, and at which time E. R. Ball gave to the witness a "certificate of membership," signed by E. R. Ball and B. L. Mikesell. The witness does not know B. L. Mikesell. In dealing with "Oilwell Express," "Oilwell Express Corporation," and "Pacific Shippers Association"

(28) This "certificate," Exhibit 14, reads as follows:

" CERTIFICATE OF MEMBERSHIP
in the
PACIFIC SHIPPERS ASSOCIATION
A Non-Profit Corporation

THIS CERTIFIES THAT OIL WELL MANUFACTURING CORPORATION is the owner and holder of one (1) regular membership in PACIFIC SHIPPERS ASSOCIATION, a non-profit corporation, organized under the laws of the State of California. This membership does not entitle the owner thereof to a pro-rata ownership in the real and personal property of the Corporation. It is not subject to assessment and entitles the owner to equal rights and privileges, all in accordance with the By-Laws and the Articles of Incorporation of the Corporation.

This membership is not assignable or transferable either voluntarily or by operation of law, except as provided for in the Articles of Incorporation and the By-Laws.

This Certificate is issued pursuant to the Articles of Incorporation and the By-Laws of the Corporation, copies of which are

he has contacted E. R. Ball only. There has been no change or interruption in service, and the address has always been 4450 South Main Street, telephone Adams 5183. The witness testified in detail as to various shipments made during January, 1934.

L. A. Steel Casting Company (Witness E. S. Atkins) has had shipments picked up in Los Angeles by "Oilwell" service for delivery to Hopper Machine Works at Bakersfield at request of consignee. (29) It did not pay transportation charges.

Petroleum Securities Company (Witness W. J. Ergenzinger) has used "Oilwell Express Corporation" service since August, 1933, making shipments daily. The witness has met E. R. Ball and has seen him at the offices of his company. The witness produced records of shipments together with a verified recapitulation (Exhibit 15), which shows 124 shipments from November 15, 1933 to February 28, 1934, 69 of which were made during January and February of 1934. These shipments, upon which Petroleum Company paid transportation charges, moved between Los Angeles and Bakersfield and Kettleman Hills.

Allen-Oliver Company (Witness R. F. Springer) at Los Angeles, with a branch at Avenal, used "Oilwell" service beginning in 1930, at which time the witness met E. R. Ball. Two forms of agreements were produced, the first with "Oilwell Express," dated January 20, 1931, and signed by E. R. Ball and the witness, and the on file at the office of the Corporation, to which reference is hereby made with the same effect as if herein set forth in full, and by all of which the owner and holder, by the acceptance of this Certificate, agrees to be bound.

IN WITNESS WHEREOF, the said corporation has caused this Certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this 15th day of April, 1933.

E. R. BALL
Secretary
SEAL

(Signed) B. L. Mikesell
President

(29) On January 10, 1934 three shipments weighing 386½ pounds were made to Hopper Machine Works at Bakersfield. (1st count.)

second with "Oilwell Express Corporation," dated June 30, 1932, and signed by Ralph Futhy and the witness. The witness does not know Futhy. Subsequent to June 30, 1932, E. R. Ball called once or twice to collect money for shipments made via "Oilwell Express Corporation." Since April of 1933 freight bills have been rendered in the name of "Pacific Shippers Association." About that time E. R. Ball called and told the witness that he "would form Pacific Shippers Association and discontinue Oilwell Express Corporation." The witness found upon his desk a "membership certificate" in "Pacific Shippers Association." This certificate in the same form as Exhibit 14 (see footnote 28, supra), dated April 15, 1933 and is signed by E.R.Ball and B. L. Mikesell. The witness does not know B. L. Mikesell. He paid nothing for and there was no discussion about such "membership." There has been no change, interruption, or refusal of service, and no change in address or telephone number, during the time that the service has been available under the three names mentioned. About 3 months prior to the hearing E. R. Ball "dropped in for a social business call;" and 2 or 3 weeks prior to the hearing the witness telephoned to E. R. Ball at Adams 5134 with regard to a shipment. Allen-Oliver Company made 19 shipments from Los Angeles to Avenal in February of 1934 upon which it paid the transportation charges.

Kettleman North Dome Association (Witness V. Harrell) has used "Oilwell" service for a year or more, and the witness produced invoices covering 486 shipments made via "Oilwell Express Corporation" during the period November 15, 1933 to March 6, 1934. The witness has a form of agreement, which, however, was never signed. He described in detail 22 of the shipments made between Los Angeles and Kettleman Hills from January 8, 1934 to February 2, 1934.

Hughes Tool Company of California, Ltd. (Witness W. A. Adamson) has used "Oilwell" service at least 2 years and has an agreement signed on behalf of "Oilwell Express Corporation" by Ralph Futhy. It was stipulated that the Hughes Company used the service and paid transportation charges from January 8 to February 5, 1934. Witness R. E. Thomas, shipping Clerk of Hughes Tool Co., who arranges for transportation, testified that his company has used the service for 3 years. He has never noticed any change, interruption, or refusal to serve. He calls daily by telephone at Adams 5183, 4450 South Main Street. The witness identified E. R. Ball in the courtroom as "Mr. Smith", who had called to see him. An agreement dated in May, 1932 was received by mail and passed to the witness for signature. This agreement was already signed by Ralph Futhy, whom the witness telephones daily regarding shipments.

Baker Oil Tools, Inc. (Witness S. E. Rees), at Huntington Park, with branches at Taft and Coalinga, has used "Oilwell" service for about 3 years. Charges are paid to "Oilwell Express Corporation" and there is no form of contract or agreement. The service is excellent and always available, and there has been no change or interruption. E. R. Ball has called at the office possibly 6 times in the last 3 or 4 months. There has been no change in business methods and "in fact I never knew of any change in Ball's connection with the service."

General Petroleum Corporation of California (Witness P. E. Robertson) has used "Oilwell" service for about 1½ years, and first started after solicitation by E. R. Ball. There has been no change or interruption, the witness knows of no agreement, and "didn't pay attention" to the name of the concern rendering the service. Checks are made payable to "Oilwell Express Corporation," and sole contact has been with E. R. Ball. The witness produced records and a recapitulation thereof (Exhibit 16) of 43 shipments made during the period November 15, 1933 to March 6, 1934.

Superior Oil Company (Witness W. W. Power) has used "Oilwell Express Corporation" service for 2 or 3 years and has no contract or agreement. Exhibit 17 is a recapitulation of 73 shipments made between Los Angeles and Kettleman Hills during the period November 15, 1933 to March 6, 1934.

Byron-Jackson Company and Pacific Oil Well Cementing Company, a subsidiary (Witness E. E. Whiting), have used "Oilwell" service at least 3 years. First contact was when E. R. Ball called soliciting business. The witness produced an agreement between Byron-Jackson Company and "Oilwell Express Corporation," dated June 15, 1932 and signed by Ralph Futhy, whom the witness does not know. This form of agreement was signed after E. R. Ball told the witness that in order to continue operating it was necessary to have such an agreement. The "only discussion I have ever had was with Mr. Ball." Pacific Cementing Company has no agreement, and there has been no refusal to serve. The witness described 14 of the shipments made between Los Angeles and Avenal and Taft by Byron-Jackson during the period January 12 to February 3, 1934, and 1 shipment by Pacific Oil Well Cementing Company. (30)

Merco-Nordstrom Valve Company. (Witness A. E. Holmlund) has used "Oilwell" service for shipments from Los Angeles to Belridge and McKittrick for some 3 years, and was first solicited by E. R. Ball. There is no agreement and there has been no change or interruption in service, which is "to my knowledge, daily except Sunday."

Earle M. Jorgensen Co. (Witness E. M. Smith) has used "Oilwell" service for a year or more for collect shipments. The witness produced shipping records and described 7 of the shipments which moved from Los Angeles to Avenal, Taft and Bakersfield during January of 1934. (31)

Baash-Ross Tool Co. (Witness H. R. Murray) at Vernon, (30) On January 10, 1934 there was shipped to Pacific Cementing Company at Bakersfield 1 drum of chemicals weighing 700 pounds. (1st count.)

(31) On January 29, 1934 four pieces of steel, weighing 528 pounds, were shipped to Baash-Ross Tool Co. at Taft. (4th count.)

with a branch at Taft, produced records showing payments of transportation charges to "Oilwell Express Corporation" on various shipments, including the one set forth in footnote 31.

From the foregoing shipper testimony it is clear that during the period alleged in the Affidavit and on each of the specific dates set forth therein, a common carrier trucking service within the meaning of the regulatory statute was being rendered between Los Angeles and contiguous territory and points in the lower San Joaquin Valley. It is equally clear, from the evidence already reviewed, that respondent E. R. Ball was connected with such common carrier service. Additional evidence was introduced by affiant bearing more particularly on respondent's part in its operation. This evidence may be summarized as follows:

Witness C. F. Curtis, Chief Clerk to the Chief Special Agent of Southern California Telephone Company, having general supervision of telephone records, identified the Los Angeles telephone directory, issue of February, 1934. At the bottom of page 398 the following listing appears: "Oilwell Express 4450 S Main ADams 5183." Immediately following, and at the top of page 399 the following appears: "Oilwell Express Corp. trucking 4450 S Main ADams 5183." On page 450 of the "Buyer's Guide" section of the directory the following listings appear:

"OIL Well Express 4450 S MainADams 5183
* * * * *
Oilwell Express 4450 S MainADams 5183
OILWELL EXPRESS CORP.
4450 S MainADams 5183" (Ex. 13)

The witness produced records of the telephone company covering the service, which was first ordered on July 31, 1930 for "Oil Well Express" upon the application of E.R.Ball as partner. A second order was for "joint user" with "Oilwell Express Corporation." Under the rules and regulations of the telephone company

consent for such "joint user" is obtained from the original subscriber. Additional listings are given in the Buyer's Guide section without charge, except "bold type listing." The "bold type" listing of "Oilwell Express Corporation" (supra) was made under renewal of an advertising contract (dated August 1, 1933) for one issue, signed on behalf of "Oilwell Express Corporation" by "Mr. Ball."

Witness H. E. Frisbie drives a 1926 White 2½ ton flat truck owned by his wife and has been hauling for 2 years for "Oilwell Express Corporation" twice a week between Los Angeles and San Joaquin Valley points. He balances accounts with "Oilwell Express Corporation" monthly upon the rendering of statements to him. He put his name in for work in 1930 or 1931, and was called by telephone to "come down for a load." He saw Frank Hayes and took a load to Avenal. Later he was again called by telephone and took a second load to Avenal. This continued for 2 or 3 months, after which he "showed up steady on the lot," and has been there steady ever since, hauling twice weekly. At the start it was "Oilwell Express" operated by E.R. Ball and Hayes. He sees E. R. Ball at 4450 South Main Street "all the time" at "Oilwell Express Corporation," for which Ball "is working as solicitor." When he sees Ball, the latter is "usually walking back and forth from office to dock." There has been no change in business that the witness knows of, and he hauls in the same manner, being paid monthly by checks signed by E. R. Ball. He received his last check March 21, 1934, which was signed by E. R. Ball. The witness is not an officer of "Oilwell Express Corporation," takes his orders from Ralph Futhey, and has "heard of Pacific Shippers Association" but is not an officer thereof. He has never heard of B. L. Mikesell.

Witness C. R. Heaton first met E. R. Ball at "Oilwell Express," where witness was employed as truck driver from 1931 until February of 1933. He dealt with Hayes until the latter left in December of 1932, and thereafter dealt with Ball, who "paid what

paying was done," although Futhey (truck dispatcher since December, 1932) sometimes paid him in cash or by check signed by Ball. "I worked there a long time and Ball was manager and Futhey assistant. When you wanted the straight of something you had to go to Ball," and this was both before and after "Oilwell Express Corporation."
(32)
Witness remembered that he "signed corporation papers," and he did so when either Futhey or Ball (he did not remember which) asked "would I sign or go as one of three names to incorporate." He signed in order to "hold on" to his job and his equipment. After signing he invested no money, didn't know if he was elected a director, didn't know and never heard he was ever an officer, never heard of or attended a director's meeting, signed nothing except the articles of incorporation and, some 2 or 3 weeks later, his resignation as "incorporator," and after the incorporation continued to drive his own truck as an employee. He took no part in the management of the business.

Witness Mark Hayden is in charge of the warehouse of Petroleum Equipment Company and at present not connected with "Oilwell Express Corporation." He has known E. R. Ball about 4 years, and his company shipped supplies via "Oilwell Express." He owned a truck which was employed by "Oilwell Express." He signed the articles of incorporation after Futhey telephoned and asked if witness could be "used as a director." E. R. Ball brought the articles to the witness, stated that "they were incorporating," and as witness had his truck employed, he thought it to his advantage to sign. He invested no money at any time, attended no stockholder's or director's meetings, and took no part in the management. Later he tendered his written resignation.

(32) Exhibit 18 is a certified copy of Articles of Incorporation of "Oilwell Express Corporation" filed with the Secretary of State on May 23, 1932, and bears the signatures of C. R. Heaton, M. Hayden and Ralph Futhey.

The Commissioner of Corporations has no record of "Oilwell Express Corporation." (Witness E. Heppner.) At the 47th and Broadway Branch of Security-First National Bank of Los Angeles (Witness M. H. Remsen, Teller) "Oilwell Express" opened an account May 18, 1932, by E. R. Ball and Mary Alice Wilson. This account was closed March 15, 1933. "Oilwell Express Corporation" opened an account February 16, 1933 by a resolution signed "B. L. Mikesell, President" and "R. W. Futhy, Secretary" giving "E. R. Ball, Manager" authority to make withdrawals. Ball only may make withdrawals from this account, which authority is still in effect. "Pacific Shippers Association" opened an account May 26, 1933 by resolution signed "B. L. Mikesell, President" and "E. R. Ball, Secretary", giving Ball authority to sign checks. On April 7, 1934 this authority was changed to authorize B. L. Mikesell only to make withdrawals.

Witness E. J. Bradley, inspector of the Department of Motor Vehicles, produced registration records of certain trucks, which records correspond with the allegations of the affidavit herein.

System Arizona Express, a California corporation engaged in interstate trucking, was organized January 19, 1932. Its secretary-treasurer (Witness William Vidt) has been with that company for all but the first 30 days of its existence. He knows E. R. Ball and testified that Ball was never employed by that company, never had business transactions of any kind with it, and the books of the company contain no reference to E. R. Ball. The manager of System Arizona Express (Witness E. Everett, Jr.) who came to that company in June of 1932, testified that Ball has not been employed by and has had no business transactions with that company.

Thomas Merrill, affiant herein, employed by Asbury Truck Company, testified in detail respecting the specific movements of (33) Hearings in this proceeding were had on March 28, 29, 30, and April 26 and 27, 1934.

and deliveries made by trucks, as alleged in the affidavit; giving times of arrivals and departures, commodities delivered, etc.

Exhibit 19 is a certified copy of Certificate of Business, Fictitious Firm Name, which was on file with the county clerk of Los Angeles County on March 27, 1934. It shows that on July 7, 1930 E. R. Ball and F. E. Hayes filed certificate that they were conducting a trucking business at 4450 S. Main Street, Los Angeles, under the name "Oilwell Express Company." It also shows that on July 30, 1930 there was filed an affidavit of publication (on July 9, 16, 23, and 30, 1930.) The publication was of a certificate of business under fictitious name to the effect that Mrs. Mary Alice Wilson and Violet Azvedo are conducting a trucking business at 4450 So. Main St., Los Angeles, under the name "Oilwell Express Company." In Decision 24692 (Exhibit 3), issued April 18, 1932 the following appears: "It developed on cross-examination that Mrs. Mary Alice Wilson is the mother of defendant Ball; that Wilson was her maiden name; and that her correct name is Mrs. Mary Alice Ball. Mrs. Violet Azvedo is the wife of defendant F. E. Hayes."

EVIDENCE ON BEHALF OF RESPONDENT E. R. BALL

Respondent's verified answer to the order to show cause denies the allegations of the affidavit and alleges that he "is neither a stockholder, officer or director" of Oilwell Express Corporation, "and has nothing whatever to do with the said corporation except that said affiant is employed by said corporation."

Witness R. W. Futhy testified on direct examination that he is now the manager, secretary, and treasurer of "Oilwell Express Corporation," and one of the original incorporators, having caused the corporation to be organized. He was formerly employed by "Oilwell Express" as "dock man." E. R. Ball and F. E. Hayes "abandoned Oilwell Express" and took with them all office furniture and personal property. Ball then went to and was "working with or interested

(34)
in" System Arizona Express, in which Ball invested. After Ball "stepped out" the witness "carried on with the business." Deciding to form a corporation he asked Hayden and Heaton (see their testimony, supra) to become incorporators, telling them that "it was a good proposition and they could take it and make a good living." Futhey then took charge of the business, and about May of 1932 asked Ball "to come back and go to work" for Futhey, which Ball did, being employed as "outside solicitor" at a salary of \$150 per month.

Mr. Futhey produced certain "minutes of Oilwell Express Corporation" which were read into the record by counsel for respondent. These minutes indicate as follows: - The organizer's meeting was May 24, 1932, held pursuant to written waiver of notice of the same date signed by Heaton, Hayden, and Futhey, who were all present. (35) Hayden, as chairman, appointed Futhey secretary, filing of articles were approved; Hayden, Heaton and Futhey were appointed directors until the first annual meeting; and by-laws were adopted. The first director's meeting was on the same date (May 24, 1932.) Hayden was elected President, Heaton Vice-President, and Futhey Secretary-Treasurer. A form of stock certificate was approved and the secretary directed to procure certificates, record books, and a seal. The president and secretary were directed to apply to the Commissioner of Corporations for a permit to issue and sell to B. Mikesell 600 shares "for property and money" of the value of \$600.00. The second director's meeting was on June 10, 1932. Hayden's resignation was accepted and B. L. Mikesell was elected a director and also President of the corporation. The third director's meeting was on July 13, 1932. Heaton's resignation was accepted. The fourth director's meeting was on January 24, 1933. E. R. Ball was authorized "to execute checks and other items for and on behalf of the corporation."

(34) The secretary-treasurer and the manager of System Arizona Express both testified that E. R. Ball was never employed by and had no business transactions of any kind with that company. (See testimony of Witness Vidt and Everett, supra.)

(35) Hayden and Heaton both testified that they signed nothing except the articles of incorporation, and shortly thereafter, their resignations; and that they attended no stockholder's or director's meeting at any time.

No meetings have been held since January 24, 1933. No application was made to the Commissioner of Corporations to issue stock. The reason for the resolution to issue 600 shares to B. L. Mikesell was that "we needed some money, she had it to invest." Futhey testified that Mrs. Mikesell was then employed as bookkeeper and is still so employed by the corporation. She was made president because she so requested when Hayden resigned. Ball was authorized to execute checks because "he does all our outside business" and buying, while Futhey is busy with the trucks and "hasn't time to write checks." Prior to such authorization to Ball no one had authority to sign checks for the corporation.

On cross-examination Mr. Futhey testified that when E. R. Ball "abandoned Oilwell Express" he was away for 6 or 7 days and came back about the time that "Oilwell Express Corporation" was organized. No books or records were kept during the period that Ball was away. The corporation has but two directors, Mrs. Mikesell and Futhey. Futhey doesn't know how much money he has invested in the corporation; he paid some bills but has no record of his contributions, but has a verbal understanding that he has a half interest in profits.

According to Futhey, Mrs. Mikesell has been employed for about 2 years, first as assistant bookkeeper, and now as bookkeeper. She wanted to be president of the corporation after she invested \$600 in cash. She was not given any receipt for this money, thought that a stock issue was unnecessary, and took a "deed on the equipment," consisting of gas pump, tools, scale, etc. This was done by listing such equipment in the books of the corporation as being her property.

Mr. Futhey testified that the present monthly gross revenue of "Oilwell Express Corporation" is about \$8,000. "Just a little more" volume of business is now handled than when Ball "abandoned Oilwell Express." The gross revenue at that time, however, was substantial. Rates of "Oilwell Express" were higher than present.

rates. The witness has known E. E. Ball, father of E. R. Ball, for about five years. E. E. Ball has four trucks "working for" Oilwell Express Corporation. "We pay to the finance company on E. E. Ball's trucks" monthly, and we "guarantee the financing of driver's trucks."

As to "Pacific Shippers Association" Mr. Futhey produced its minutes, which were read into the record by counsel for respondent. These minutes indicate as follows: - The organizer's meeting was on April 4, 1933 pursuant to written waiver of notice of the same date signed by Clifford L. Swanson, A. A. Crum, and Don D. Angle. Articles were ratified, directors appointed, and by-laws adopted. The first director's meeting was on April 11, 1933. By-laws were adopted and Swanson, Crum, and Angle resigned. E. L. Mikesell, N. G. Smith, and Futhey were elected directors, and B. L. Mikesell was elected President, Futhey Vice-President, and E. R. Ball, Secretary and Treasurer. A form of membership certificate was adopted. E. R. Ball was authorized to establish a bank account and to execute checks for and on behalf of the corporation. The second director's meeting was on May 16, 1933. E. R. Ball resigned as secretary-treasurer and N. G. Smith was elected to that office. The third director's meeting was on March 28, 1934 (the return date on the present order to show cause), and B. L. Mikesell was authorized to execute checks on behalf of the corporation.

(36) Futhey testified that he has known Swanson 2 or 3 years and that the latter is with Edwards Wire Rope Company at Los Angeles. Crum is President of Crum-Brainerd Corporation at Whittier. Futhey first met him when Crum delivered freight to the Oilwell Express dock, and discussed with him the formation of an association similar to "Imperial Valley Merchant's Association." (see footnote 38, infra.) Angle is in the welding rod and equipment business at Los Nietos.

(37) N. G. Smith is Norma Smith, Mrs. Mikesell's sister. Mrs. Smith's husband, William Smith (testimony of Mrs. Mikesell), known as "Ted" Smith, drives a truck for "Oilwell Express Corporation." (Witness Futhey)

Mr. Futhey testified that "Pacific Shippers Association" (38) was patterned after "Imperial Valley Merchant's Association, and that applications for membership were obtained before the issuance of certificates of membership. (39) No consideration was paid for such certificates. The association was started because a large account, then a member of a similar association, "was skeptical about the contracts being used." The intent was "to do away with Oilwell Express Corporation," but it was later decided that the corporation was the better. Business is still done with certificate holders as "Pacific Shippers Association." According to Futhey, Ball has no financial interest in the association and has not been employed by or connected with it since his resignation as secretary on May 16, 1933. (Ball, however, was the only one authorized to execute checks until March 28, 1934, the date of the first hearing in this proceeding.) The association was non-profit because "all we wanted was our wages and a job - we didn't intend to make any profit." At first the association rates and the corporation rates were different, but are now the same, and "we are trying to make a profit out of Oilwell Ex-

(38) On November 25, 1933 the Commission found that Imperial Merchants Association, Ltd. was conducting an unauthorized common carrier operation and issued a cease and desist order. (Regulated Carriers Inc. v. Imp. Merchants Assn. Ltd., Decision 26579, Case 3582.) This association was the successor to Imperial Valley Merchants Warehouse Association, Ltd., which had been ordered to desist common carrier operation in April of 1932. (Coast Truck Line v. I. V. M. W. Assn., 37 C.R.C. 434.)

(39) Witness Futhey produced 9 such "applications." (Exhibit 20.) The typewritten form reads as follows:

"We, the undersigned, do hereby agree to associate ourselves together for the purpose of providing means and facilities by which we may transport goods, wares and merchandise and to enable us to handle our transportation problems at cost, plus the reasonable expense incident to maintaining the association, and to afford prompt and efficient handling of freight; and to that end and purpose we hereby agree to incorporate in the name of PACIFIC SHIPPERS ASSOCIATION, under the laws of the State of California, a non-stock, non-profit corporation, and we hereby appoint the following named persons, to-wit: CLIFFORD L. SWANSON, A. A. CRUM, and DON D. ANGLE to act as a committee on incorporation and organization and do hereby authorize said committee to sign said Articles of Incorporation, and to act as the Board of Directors of said corporation until their successors are elected or appointed.

Dated November 23, 1932.

Shafter Variety Store
F. J. Christensen "

Attached to certain of these forms is an additional slip which reads as follows:

"This is an application for membership in The Pacific Shippers Association. Please sign and return promptly."

press Corporation." Association freight is received at the same "dock" as corporation freight and is sometimes hauled in the same equipment.

B. L. Mikesell testified that she is President of "Oilwell Express Corporation;" that Futhey has been directing the corporation since September of 1932; and that Ball is employed as a solicitor. She first met Ball at "Oilwell Express" and has seen him daily for the past year at 4450 South Main Street. Ball "didn't do anything much." While there she has seen him "walking, sitting, talking," but doesn't remember what he talked about. Ball "goes out to see different customers and tries to get more business," he signs checks and makes purchases. Mrs. Mikesell gave Futhey \$600 in cash, doesn't remember if she took a receipt, and understood that the equipment and office furniture was her security. The only evidence of the \$600 consists of entries in the books. The witness is President and bookkeeper and believes that the gross revenue of the business averages \$4000 per month or nearly \$50,000 per year. (Futhey's estimate was \$8,000 per month.) As President of the corporation the witness acts as bookkeeper, writes letters, and takes care of bills. Her principle duty is the keeping of the books. She does not hire or discharge employees, nor does she set the rates of pay. She has invested nothing in the association and receives \$80 per month for her services to both organizations. The corporation owns no property, and the witness "owns" the equipment. Transportation rates are fixed by Futhey. Since the formation of the corporation Ball has had charge of the revenues, banking, and the drawing of checks. The witness thinks Ball is now receiving a salary of \$200 per month.

The last sheet of Exhibit 10 is a letter to National Supply Company, amending a rate schedule, and dated August 28, 1933, which the witness typed and signed. In the lower left corner the following appears - "ERB:EM." The witness does not know why those initials
(40)
appear upon the letter.

(40) Ball testified that he never saw the original of this letter and neither dictated nor prepared the letter.

The respondent, E. R. Ball, testified in his own behalf, after being advised by the Commissioner presiding that he could not be compelled to testify and need not unless he so desired. He testified that he "abandoned Oilwell Express" and went to System Arizona Express, in which he invested about \$1400, taking with him his personal property formerly at "Oilwell Express." After about two weeks he left System Arizona Express to work for Futhey at the latter's request. He was authorized to sign checks because he did all of the "outside work." He testified that he had no financial interest in "Oilwell Express Corporation," was secretary of "Pacific Shippers Association" for about two weeks, and as secretary did nothing except to sign a book of blank membership certificates at Futhey's request. He stated that since May of 1932 he has been engaged in no other business than as an employee of "Oilwell Express Corporation."

The Commission recognizes that its power to punish for contempt "should be used sparingly and only when and to the extent necessary to insure a respect for and an observance of its lawful orders." (United Parcel Service v. 20th Century Delivery Service, 38 C.R.C. 455.) In 1931 respondent was found to be operating as a common carrier in violation of law and was ordered to desist. In 1932 a contempt proceeding was instituted and respondent was adjudged guilty of contempt in continuing that operation. Both the Supreme Court (on certiorari) and the District Court of Appeals (on habeas corpus) sustained the validity of the contempt judgment. Notwithstanding this adjudication and the prior punishment for contempt, the record in this second contempt proceeding shows that respondent has continued his unauthorized common carrier operations. The subterfuges employed by a futile attempt to organize a "corporation", then an "association," behind which to mask respondent's continued management, control, and operation of the business have failed completely in their purpose. The evidence has been reviewed

at length. No mitigating or extenuating circumstances have been shown. Under these conditions the imposition of the maximum fines authorized by law in contempt proceedings appears to be the only manner in which the Commission may insure an obedience of its desist order.

FINDINGS

1. On April 27, 1931 the Railroad Commission, in its Decision 23627, found as a fact that E. R. Ball and F. E. Hayes, operating under the fictitious name of "Oil Well Express," were operating as a common carrier within the meaning of Statutes 1917, Chapter 213, as amended, without having a certificate of public convenience and necessity; and ordered a cessation of such common carrier operation between Los Angeles and contiguous territory and certain oil fields in the San Joaquin Valley. Said order has never been revoked, annulled, or stayed, and is now in full force and effect.

2. A certified copy of said Decision 23627 was personally served upon E. R. Ball on September 15, 1931, and said E. R. Ball had personal knowledge and notice of said decision and the contents thereof on and prior to the effective date thereof, and was able at all times thereafter to comply with said order.

3. On February 27, 1934 the affidavit of Thomas Merrill was filed, in which it was alleged in substance that said E. R. Ball, notwithstanding the order contained in Decision 23627, with full knowledge of its contents, and subsequent to its effective date, has failed and refused to comply with said order in that he has continued to operate, control, and manage an automobile truck line as a common carrier of property for compensation between Los Angeles and contiguous territory on the one hand and points in the lower San Joaquin Valley oil fields on the other hand. Said affidavit and application for order to show cause sets forth five separate and

distinct causes of action, the first relating to movements and deliveries on January 10 and 11, 1934, and the second on January 11 and 12, 1934, the third on January 15 and 16, 1934, the fourth on January 29 and 30, 1934, and the fifth on February 2 and 3, 1934.

4. Upon said affidavit being received and filed the Railroad Commission, on March 6, 1934, issued its order directing E. R. Ball to appear on March 28, 1934, and show cause why he should not be punished for each and every alleged contempt set forth in said affidavit. Said order to show cause, together with the affidavit upon which based, was personally served upon E. R. Ball on March 8, 1934. Upon the return date E. R. Ball appeared in person and was represented by counsel, hearings were had and the matter submitted.

5. Notwithstanding the order of the Railroad Commission contained in its Decision 23627, the said E. R. Ball failed and refused to comply with the terms thereof, and continued to and did operate, control, and manage the business of operating automobile trucks for the transportation of property as a common carrier, for compensation, over the public highways in this state, within the meaning of Statutes 1917, chapter 213, as amended, between Los Angeles and contiguous territory on the one hand and points in the lower San Joaquin Valley oil fields on the other hand, and more specifically on

- (a) January 10 and 11, 1934 (first contempt),
- (b) January 11 and 12, 1934 (second contempt),
- (c) January 15 and 16, 1934 (third contempt),
- (d) January 29 and 30, 1934 (fourth contempt),
- (e) February 2 and 3, 1934 (fifth contempt).

6. Each and every of the above failures of the said E. R. Ball to comply with said order of the Railroad Commission, as set

forth in Finding No. 5 above, were and are separate and distinct contempts of the Railroad Commission of the State of California and its order, and in violation of Statutes 1917, chapter 213, as amended.

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that E. R. Ball has been and is guilty of five separate and distinct contempts of the Railroad Commission in disobeying its order of April 27, 1931, contained in its Decision 23627, said separate contempts having taken place on

- (a) January 10 and 11, 1934 (first contempt),
 - (b) January 11 and 12, 1934 (second contempt),
 - (c) January 15 and 16, 1934 (third contempt),
 - (d) January 29 and 30, 1934 (fourth contempt),
 - (e) February 2 and 3, 1934 (fifth contempt),
- all as more specifically found in Finding No. 5 above.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for each of his said five separate and distinct contempts of the Railroad Commission and its order, said E. R. Ball be punished by a separate fine of Five Hundred Dollars (\$500.00); said fines (totaling \$2500.00) and each of them to be paid to the Secretary of the Railroad Commission within ten (10) days after the effective date of this opinion, findings, and judgment; and that in default of payment of the aforesaid fines, or any of them, said E. R. Ball be committed to the county jail of the County of Los Angeles, State of California, until such fines, and each of them, be paid or satisfied in the proportion of one day's imprisonment for each five dollars (\$5.00) thereof that shall so remain unpaid, such imprisonment to be cumulative and not concurrent.

IT IS FURTHER ORDERED that the Secretary of the Railroad Commission, if the above fines, or any of them, are not paid within the time specified above, prepare, sign, and issue 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 FURTHER ORDERED that this opinion, findings, and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon E. R. Ball. ⁱⁿ

Dated at San Francisco, California, this 28 day of May, 1934.

CL. Loney
W. H. Cunn
W. B. Loney
W. H. Loney
Commissioners