

Decision No. 3990

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on  
the Commission's own motion into the  
rates, rules, regulations, charges,  
classifications, contracts, practices,  
operation, and service, or any of them,  
etc. of L. R. KAGARISE, doing business  
under the fictitious name and style of  
KEYSTONE EXPRESS SYSTEM: of J. NELSON  
KAGARISE, doing business under the  
fictitious name and style of KEYSTONE  
EXPRESS COMPANY: of KEYSTONE EXPRESS  
SYSTEM: and of KEYSTONE EXPRESS COMPANY

ORIGINAL

Case No. 3990

DOUGLAS BROOKMAN and WARREN E. LIBBY, for respondents.

H. J. BISCHOFF, for Southern California Freight Lines,  
interested party.

WALLACE K. DOWNEY, for Motor Freight Terminal Company,  
interested party.

R. E. WEDEKIND, for Southern Pacific Company, Pacific  
Electric Railway Company, Pacific Motor Transport  
Company, and Pacific Motor Trucking Company,  
interested parties.

EDWARD STERN, for Railway Express Agency, Inc.,  
interested party.

HUGH GORDON, for Richards Trucking and Warehouse Company,  
and Richards Express Company, interested parties.

ROBERT BRENNAN, WM. F. BROOKS and H. K. LOCKWOOD, by  
H. K. Lockwood, for Santa Fe Railway Company,  
interested party.

PHIL JACOBSON, for Rex Transfer, and Dairy Delivery  
Service, interested parties.

M. D. KELLER, for Pacific Electric Railway Company,  
Pacific Motor Transport Company and Southern  
Pacific Company, interested parties.

J. W. CAWLEY, for Los Angeles-Newport Freight Line,  
interested party.

BY THE COMMISSION:

O P I N I O N

The above entitled matter constitutes an investigation by the Railroad Commission into the rates, rules, regulations, contracts, practices, operations, etc., or any of them, of L. R. Kagarise, operating under the name of Keystone Express System as a highway common carrier between certain points in Southern California; and J. Nelson Kagarise, operating under the name of Keystone Express Company, as an "express corporation" or "freight forwarder" as defined in Sections 2(k) and 2 (ka) respectively, of the Public Utilities Act, over the lines of various common carriers, including those of L. R. Kagarise, and also operating under the name of Puente Truck & Transfer Company as a highway common carrier between certain points in Southern California.

Public hearings in this matter were held at Los Angeles and the matter being under submission is now ready for decision.

For the sake of expedition and convenience, Keystone Express System and Keystone Express Company will hereinafter be referred to as System and Company, respectively.

Because of the complexity of matters produced at the hearings and the voluminous mass of documents, evidence, and details offered, it appears necessary and desirable to review in considerable detail and define the operating rights of respondents herein.

I.

OPERATING RIGHTS OF L. R. KAGARISE

1. (a) L. R. Kagarise, doing business as Keystone Express, on April 18, 1917, filed his Local Express Tariff C.R.C. No. 1, effective April 17, 1917, with the Commission which tariff shows

rates for the transportation of property, with store-door pickup and delivery, between Los Angeles and Claremont, Covina, El Monte, Lordsburg (now Laverne), Ontario, Pomona, Puente, and San Dimas. There was no intermediate application of rates shown.

(b) Decision No. 7524, dated May 3, 1920, and Decision No. 19182, dated December 23, 1927, in Application No. 5343, granted a certificate to L. R. Kagarise for the transportation of property between Covina, Azusa and Glendora and intermediate points, and consolidated such grant with the prescriptive right described in (a), supra.

The description of rights in section 1 above may in no way be construed as a finding as to such rights which were subsequently defined by Decision No. 19410, in Application No. 13087, infra, section 7 of this Opinion.

2. Decision No. 19012, dated November 4, 1927, in Application No. 13970, authorized L. R. Kagarise to acquire from H. H. Walker, but not to consolidate, two separate operating rights as follows:

(a) Between Los Angeles, Alhambra, San Gabriel, and East San Gabriel, and intermediate points, created in the following manner:

L. A. Bell, doing business as L. A. Bell Transfer, on April 24, 1919, filed with the Commission his tariff C.R.C. No. 1, effective April 15, 1919, showing rates for the transportation of property between Los Angeles, Alhambra, San Gabriel, East San Gabriel, and intermediate points. Intermediate point service was indicated by application of Rule 2 of the tariff which reads-- "Rates published herein include collection and delivery on main roads travelled and entire limits of ALHAMBRA, SAN GABRIEL, AND EAST SAN GABRIEL." No other reference is made to any definite route.

Decision No. 7044, dated January 17, 1920, in Application No. 5252, authorized L. W. Barlow to acquire an undivided one-half interest in this right with L. A. Bell.

(b) Between Los Angeles and Arcadia and intermediate points, created in the following manner:

Decision No. 7623, dated May 26, 1920, in Application No. 5573, granted a certificate to L. A. Bell and L. W. Barlow for the transportation of property between Los Angeles and Arcadia and intermediate points. This operating right was not consolidated with the right acquired by Decision No. 7044, supra.

Decision No. 8532, dated January 10, 1921, in Application No. 6456, authorized L. W. Barlow to acquire sole ownership from L. A. Bell of the operating rights acquired by the copartnership in Decision No. 7044 and describes such rights as being between Los Angeles, Alhambra, San Gabriel and Arcadia and intermediate points as the rights acquired in Decision No. 7044. Such description is incorrect with respect to "Arcadia." The right between Los Angeles and Arcadia was acquired in Decision No. 7623. The intent, however, was to transfer to L. W. Barlow all operating rights of the copartnership. Decision No. 8983, dated May 20, 1921, in Application No. 6800, authorized E. L. Barlow and J. L. Oldham to acquire from L. W. Barlow all operating rights theretofore acquired by L. W. Barlow in Decision No. 8532. Decision No. 10732, dated July 20, 1922, in Application No. 7794, authorized J. L. and C. E. Oldham to acquire the interest of E. L. Barlow. Decision No. 12100, dated May 18, 1923, in Application No. 9012, authorized the copartnership of E. E., Lewis L., and Ralph L. Walker to acquire from L. J. and C. E. Oldham the rights said Oldhams had acquired by Decision No. 10732. Decision No. 14525, dated February 2, 1925, in Application No. 10794, authorized E. E. Walker to acquire from Lewis L. and Ralph L. Walker sole ownership of the rights acquired by the copartnership in Decision No. 12100, which rights were later transferred to L. R. Kagarise by Decision No. 19012.

3. Decision No. 19013, dated November 4, 1927, in Application No. 14046, authorized L. R. Kagarise to acquire from J. H. Little an operating right between Los Angeles and Glendale over a definite route, no consolidation being authorized. This right was established in the following manner:

Claude B. and Wm. E. Robinson, doing business as Robinson Bros. Transfer and Storage Co., on August 11, 1918, filed with the Commission a tariff C.R.C. No. 1, effective August 15, 1918, showing rates for the transportation of property between Los Angeles and Glendale over the route "Brand Blvd., San Fernando Road, Ave. 20, North Broadway and Los Angeles St." Decision No. 10421, dated May 5, 1922, in Application No. 7796, authorized James H. Little to acquire said right from Claude B. and Wm. E. Robinson. Decision No. 12025, dated May 3, 1923, in Application No. 8950, authorized C. H. King to acquire an undivided one-third interest with James H. Little. Decision No. 13940, dated August 20, 1924, in Application No. 10369, authorized James H. Little to reacquire sole ownership from C. H. King, which right was later transferred to L. R. Kagarise by Decision No. 19013.

4. Decision No. 19014, dated November 4, 1927, in Application No. 14047, authorized L. R. Kagarise to acquire from W. H. Rasin, but not to consolidate, an operating right between Los Angeles and Monrovia without intermediate service. This right was created and defined as follows:

Decision No. 7572, dated May 13, 1920, in Application No. 5044, granted a certificate to Walter E. Rasin, for the transportation of property between Los Angeles and Monrovia in the following language:

"...an automobile truck service as a common carrier of freight between Los Angeles and Monrovia; provided, however, that this authorization is confined to the carriage of freight between Los Angeles and Monrovia, no intermediate business to be served in either direction or from either terminal;..."

5. Decision No. 19055, dated November 26, 1927, in Application No. 14166, authorized L. R. Kagarise to acquire from F. G. Matthiessen three separate operating rights the acquisition of which may not be construed as in any way authorizing the consolidation of the rights so acquired nor was any authority granted for the joining or consolidation of such rights with the operating rights as then owned by L. R. Kagarise. These three rights were created and defined as follows:

(a) Between Los Angeles, Burbank and San Fernando only with no intermediate service. This was a prescriptive right as evidenced by C.R.C. No. 1, Freight Tariff No. 1 of S. C. Fotsch, doing business as Fotsch Truck Company, filed with the Commission February 24, 1917, and effective March 1, 1917, showing rates for the transportation of property between Los Angeles, Burbank, and San Fernando only. There was no intermediate point application of the rates shown. Decision No. 9378, dated August 18, 1921, in Application No. 7082, authorized F. G. Matthiessen to acquire this operating right from S. C. Fotsch and S. E. Reiner; Reiner, however, was not a party to the original tariff filed by S. C. Fotsch.

(b) Between Los Angeles and Owensmouth (now Canoga Park) and intermediate points via Burbank, Lankershim (now North Hollywood), Van Nuys and Marion (now Reseda), established as follows:

I. L. Hamilton, doing business as Hamilton Truck, on April 5, 1918, filed with the Commission, his Local Freight Tariff No. 1, C.R.C. No. 1, effective April 1, 1918, showing rates for the transportation of freight, "...between Los Angeles, Burbank, Van Nuys and intermediate points." This tariff contains the notation, "Points served are Burbank, Lankershim and Van Nuys, California." Decision No. 7624, dated May 26, 1920, on Application No. 5625, granted a certificate to I. L. Hamilton authorizing him to "...extend his present service from Van Nuys to Owensmouth... for the operation of said line between Van Nuys-Owensmouth and intermediate points,..."

(c) Decision No. 9303, dated July 30, 1921, in Application No. 6848, granted a separate certificate to I. L. Hamilton for:

"...an automobile service as a common carrier of freight over the following route: From Marion, by way of Reseda Avenue and the Ventura Road to Universal City, thence in Pacoima Avenue to Lankershim, and also from Universal City to Los Angeles, by way of Cahuenga Pass; provided however, that such operation between Universal City and Los Angeles shall be restricted and limited to single trucks, carrying not more than two tons, without trailers, or empty trucks being returned to Los Angeles; and provided further that no such operation be made upon any Sunday or Legal Holiday, being the route sought in Application No. 6848, and described therein in Exhibit "B", by red lines on map submitted;..."

Decision No. 9303, Application No. 6961, in addition to granting the above right also authorized F. G. Matthiessen to acquire all of the operating rights of I. L. Hamilton.

6. Decision No. 19095, dated December 2, 1927, in Application No. 14221, authorized L. R. Kagarise to acquire from Sierra Van & Storage Company, a corporation, an operating right between Los Angeles and Pasadena. Kagarise was not authorized to consolidate this operating right with any rights which he then owned. This right was a prescriptive right established by Pasadena Transfer and Storage Co., a corporation, as determined by the Commission in Decisions Nos. 11422, dated December 29, 1922, and 12486, dated August 14, 1923, both on Application No. 8301. Decision No. 11422

held that Pasadena Transfer & Storage Co., a corporation,

"...was operating in good faith on May 1, 1917, as a common carrier of freight, express and baggage, between Los Angeles and Pasadena over a regular route via Los Angeles Street, Macey Street, Mission Road, Huntington Drive, Oneonta Park, and Fair Oaks Ave., within the meaning of Chapter 213, Statutes of 1917, and has continued to so operate since that time, and it appearing therefor that it is unnecessary for it to procure a certificate..."

Applicant Pasadena Transfer & Storage Co. was then directed to file tariffs and time schedules within ten (10) days from the date of the order. Subsequent to the issuance of Decision No. 11422, a petition for a rehearing of Application No. 8301 was granted by Decision No. 11780, dated March 13, 1923, but Decision No. 11422 was continued in full force and effect. After rehearing the Commission issued Decision No. 12486, dated August 14, 1923, modifying Decision No. 11422 to the extent of requiring applicant to file tariffs showing the rates charged as of May 1, 1917, and time schedules within ten days of the date thereof. Decision No. 11422 in all other respects remained in full force and effect. A further petition for rehearing was denied.

The Commission's Decision No. 11422 declared that Pasadena Transfer & Storage Co., was operating in good faith on May 1, 1917, as a common carrier of freight, express, and baggage between Los Angeles and Pasadena, and that it was unnecessary for it to procure a certificate of public convenience and necessity.

It should be noted that no mention was made in said declaration as to service between either terminal and points intermediate thereto, or between intermediate points. The claim of respondent, L. R. Kagarise, that he may serve South Pasadena as an intermediate point under the grant of Decision No. 11422 is erroneous. Applicant in accordance with Decision No. 12486, on August 28, 1923, filed C.R.C. No. 2 which cancelled C.R.C. No. 1.

C.R.C. No. 2 was a single page tariff reading in part: "LOCAL FREIGHT TARIFF between Pasadena, Los Angeles and intermediate points." That portion of the tariff reading, "...and intermediate points," was in excess of the declaration made in Decision No. 11422.

Application No. 8301, filed by Pasadena Transfer & Storage Co., requested permission to establish service between Los Angeles and Pasadena and intermediate points. In the body of the application, applicant alleges in justification of the granting of a certificate of public convenience and necessity that it had given such service long previous to the enactment of the law.

Exhibit A, attached to said application, is Local Freight Tariff No. 1, naming rates between Pasadena and Los Angeles and intermediate points. The record in said application contains three affidavits dated September 13, 1922, certifying that Pasadena Transfer & Storage Co., for more than fifteen years previously gave daily service between Pasadena, South Pasadena, Alhambra and Los Angeles.

We are unable at this time to make a specific declaration as to whether or not Pasadena Transfer & Storage Co. had a prescriptive right to serve points intermediate between Los Angeles and Pasadena. If it is respondent's contention that he has a right to serve the intermediate points, he should take the proper steps to have the right declared.

Decision No. 14168, dated October 10, 1924, in Application No. 10485, authorized Pasadena Transfer & Storage Co. to transfer the above right to Frank Picard who in turn was authorized by Decision No. 15887, dated January 21, 1926, in Application No. 11941, to transfer said operating right to Sierra Van & Storage Company, a corporation, from whom L. R. Kagarise acquired this right by Decision No. 19095.



7. We come now to a consideration of Decision No. 19410, dated February 25, 1928, in Application No. 13087, the construction of which has caused some differences of opinion. The findings of facts and the certificate of public convenience and necessity therein granted are, in our opinion, susceptible to but one reasonable interpretation. This decision was based upon the record made at public hearings upon Application No. 13087 taken under submission on October 14, 1927.

Decision No. 19410 consists of two parts: (a) the findings of facts as to all of the then existing operating rights of L. R. Kagarise, commonly referred to as a "validation" of such rights, and (b) the granting of a certificate of public convenience and necessity, as an extension with limitations, of his then operated truck service, over fifty (50) numbered routes extending into Los Angeles, San Bernardino, Riverside and Orange Counties.

(a) Validation of Rights:

Application No. 13087 was filed August 6, 1926, and amendments thereto on November 18, 1926, and May 14, 1927. The last or second amended application was filed at the public hearing at Pomona on May 14, 1927, and is the basis of Decision No. 19410. As to the operations conducted in good faith (prescriptive rights) as of May 1, 1917, together with those acquired by certification, the Commission in Decision No. 19410 found as follows:

"The evidence shows, and we hereby find as a fact that the operative rights now being conducted by applicant, L. R. Kagarise, are those which he has conducted in good faith ever since May 1, 1917, and continuously since that time, and those acquired by virtue of Decision No. 7524, in Application No. 5343, which are specifically defined and set forth in this Applicant's Tariff C.R.C. No. 7, to-wit; between Los Angeles, El Monte, Covina, Azusa, Pomona, Ontario, Claremont, Cucamonga and intermediate points as shown herein. The record shows on page 2 of said tariff C.R.C. No. 7 that the following places are specifically named as terminal and intermediate points, to-wit: El Monte, Baldwin Park, Covina, Azusa, Glendora, San Dimas,

Laverne, Claremont, Upland, Cucamonga, Ontario, Puente, Walnut, Spadra and Pomona.

"The evidence further shows that L. R. Kagarise served in good faith on May 1, 1917, and continuously ever since said date as intermediate between Los Angeles and El Monte, all places along the Valley Boulevard west from El Monte through Ardendale, Savannah, Rosemead, and Amarillo, to San Gabriel Boulevard Crossing, and has applied and charged rates applicable to and from El Monte, which district was also formerly known and called the El Monte District."

Applicant's Tariff C.R.C. No. 7 above referred to, was filed with the Commission October 29, 1925, under the name Keystone Express.

The logical conclusion to be reached from a careful analysis of the above findings is that as of October 14, 1927, the date of submission of Application No. 13087, L. R. Kagarise was found to have been lawfully conducting an automotive freight transportation business between Los Angeles, Ardendale, Savannah, Rosemead, Amarillo, El Monte, Baldwin Park, Covina, Azusa, Glendora, San Dimas, Laverne, Claremont, Upland, Cucamonga, Puente, Walnut, Spadra, Pomona, Ontario and intermediate points, except the territory lying between Los Angeles and San Gabriel Boulevard. No reference to any definite route was made except between Los Angeles and El Monte between which points it was found that L. R. Kagarise's operation was conducted over and along Valley Boulevard. No finding was made that any service was lawfully or otherwise given or had ever been given to points lying laterally within five (5) miles of any of the routes over which he was operating notwithstanding that L. R. Kagarise had alleged in his second amended Application No. 13087, paragraph "D" at page 2, that such service was then and had been continuously given since May 1, 1917.

An examination of the Local Freight Tariffs of Keystone Express, L. R. Kagarise owner, C.R.C. No. 1, effective April 17,

1917, hereinbefore referred to in section 1 (a) supra, and C.R.C. No. 7 referred to in the findings of Decision No. 19410, does not show any rate which may be construed as being a rate to or from any point lying laterally within five (5) miles of the routes of operation. Neither was any lateral right conferred by Decision No. 7524, of May 3, 1920, nor by Decision No. 19182, of December 23, 1927, both in Application No. 5343.

Such finding may not be construed as in any way granting a new certificate in lieu of the rights then held by L. R. Kagarise.

(b) Certificate granted. Routes 1 to 50, inclusive:

In this same second amended Application No. 13087, L. R. Kagarise, as applicant, sought:

"Permission to extend present motor freight and express service for the transportation of property for compensation as a common carrier between El Monte, Covina, Azusa, Pomona, Ontario, Claremont, Cucamonga, and places intermediate there between and from highway traveled places five miles interior therefrom as herein sought to be validated, except Los Angeles proper and territory intermediate between Los Angeles and San Gabriel Boulevard, into the following territory..."

The Commission also by Decision No. 19410 granted to L. R. Kagarise a certificate authorizing an extension of his present freight and express truck service to the points shown on routes 1 to 50, inclusive, each and every one of which was authorized subject to a restriction prohibiting the transportation of property between Los Angeles and the territory between Los Angeles and San Gabriel Boulevard, on the one hand, and the territory covered by said fifty routes, on the other hand. A careful review of the entire record in Application No. 13087, and Decision No. 19410 thereon, shows beyond question that the service contemplated was for the transportation of property between the points lying east of San Gabriel Boulevard only, including Pasadena, and the restriction of

Decision No. 19410 may not be so construed as to prohibit service to and from Pasadena in connection with service given under the authority granted by Decision No. 19410, in the territory lying east of San Gabriel Boulevard.

It should be noted that routes 1 to 50, inclusive, granted by Decision No. 19410, were extensions of the operative rights held by Kagarise on October 14, 1927. The authority given was for a unified through operation between all of the points authorized in Decision No. 19410 in conjunction with and as a part of the then owned (October 14, 1927) rights of L. R. Kagarise as defined in Decision No. 19410, subject, however, to all restrictions and limitations as set forth therein.

The extensions over the fifty new routes authorized by Decision No. 19410 may be divided into two groups. Routes 1 to 19, inclusive, authorized a scheduled service between various points (1) along such routes.

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(1) Routes 1 to 5, inclusive - Between Pasadena and Azusa along Foothill Boulevard, including two detours.

Route 6 - Between intersection of San Gabriel Boulevard and Valley Boulevard and El Monte along Valley Boulevard.

Route 7 - Between Ontario and Upland along Euclid Avenue.

Route 8 - Between Guasti and Cucamonga along Archibald Avenue.

Route 9 - Between Cucamonga and Alta Loma.

Routes 10, 12 and 13 - Between Cucamonga and Highlands through Fontana, Rialto and San Bernardino along Foothill Boulevard.

Route 11 - Between junction of Etiwanda Road and Foothill Boulevard and Etiwanda (a detour).

Route 14 - Between San Bernardino and Colton via Mt. Vernon Avenue.

Route 15 - Between Highlands and Redlands via Orange Avenue.

Routes 16 and 17 - Between Guasti, Bloomington, Colton and Redlands.

Routes 18 and 19 - Between Ontario, Wineville, Riverside, Highgrove and Colton along Valley Boulevard.

The second group comprising routes 20 to 50, inclusive, authorized a restricted service as follows:

"On-demand service, applicable when carrier has accumulated freight weighing in aggregate 5000 pounds or more for distribution along one or more route or routes, in a general direction."

L. R. Kagarise is not authorized to give any service over these routes until he has first accumulated a minimum of 5000 pounds of freight for distribution along one or more routes, in a general direction, and then only on demand. There was no requirement as to the point of accumulation of such minimum quantum. It could be accumulated at one or more points and be handled by one or more trucks. In fact a truck could begin its movement over routes 20 to 50, inclusive, with no freight aboard just as long as it was certain beforehand that there was a minimum accumulation of 5000 pounds available for it during the progress of that particular trip.

The service on routes 20 to 50, inclusive, is not only restricted to an "on demand" service but also to the transportation of accumulated freight weighing in the aggregate 5000 pounds or more for distribution along one or more routes in a general direction.

It appears that the conversion of an "on demand" service to a regularly scheduled service in this particular instance would be practically impossible, inasmuch as, respondent would not likely have the opportunity to ascertain in advance of the schedule whether or not there was an aggregate of traffic weighing 5000 pounds or more for distribution in a general direction. If this were a conversion of an "on demand" service without restriction as to the minimum quantum to a scheduled service, a different conclusion might be reached.

Considerable comment was indulged in by various parties hereto in regard to certain alleged stipulations made at the

various hearings held on Application No. 13087 in connection with service proposed thereunder, none of which appears to be at all relevant. Decision No. 19410 gave no consideration to any stipulations, if made, and it appears proper to conclude that such decision was based upon the record and showing made. Its terms and conditions appear quite clear as construed herein.

Among the conditions attached to Decision No. 19410 was one requiring an acceptance by the applicant therein of the certificate as granted which was duly complied with. No petition for a rehearing was ever filed and the decision has long since become final.

8. L. R. Kagarise, by Application No. 17383 and amendments thereto, filed in May 1931, sought authority for the unification and consolidation of all of his operative rights as created and defined by Decisions Nos. 19012, 19013, 19014, 19055, 19095 and 19410, and in addition thereto sought authority for certain extensions thereof. By its original decision in Application No. 17383 (Decision No. 25101, 37 C.R.C. 814) the Commission authorized the "consolidation and joint operation as one transportation system" as prayed for, which included all of the rights granted by Decision No. 19410, supra. (Route 1 to 50, inclusive.) A petition for a rehearing was filed by certain protestants which was granted by the Commission.

The Commission by its Decision No. 25546, dated January 16, 1933, on the rehearing revoked and annulled the order of Decision No. 25101, and stated in part as follows:

"Protestants contend that the consolidation, as permitted by Decision No. 25101, will establish a new through service between Los Angeles and points east of Cucamonga including, Colton, San Bernardino, Highland, Redlands and Riverside, and to Orange County points, including Santa Ana;"

and found that:

"An analysis of the record shows that by the consolidation heretofore granted the service between Los Angeles and Pasadena will be consolidated with the service between Pasadena and San Bernardino, Riverside, Santa Ana and intermediate points, and thus would create a new through service from and to Los Angeles competitive with the established services of protestants."

The contention of protestants and the finding by the Commission appear to be erroneous in that no consideration was given to the fact that the restriction of Decision No. 19410, supra, had never been removed nor modified in any manner whatsoever and prohibited and still prohibits any movement of property between Los Angeles and San Gabriel Boulevard and intermediate points, on the one hand, and points on routes 1 to 50, inclusive, as granted in Decision No. 19410, on the other hand.

The contention of respondent, L. R. Kagarise, that in so far as routes 1 to 50, inclusive, were concerned, the acquisition of the so-called Walker right (Decision No. 19012) between Los Angeles and East San Gabriel and intermediate points "bridged the gap" between Los Angeles and San Gabriel Boulevard, is also erroneous. Respondent is mistaken as to the nature and location of "the gap" which was not between Los Angeles and the intermediate points between Los Angeles and San Gabriel Boulevard, but between Los Angeles and intermediate points between Los Angeles and San Gabriel Boulevard, on the one hand, and all points to be served along the routes 1 to 50, inclusive, which includes all of the routes as extended by Decision No. 19410. In order to have "bridged the gap" successfully respondent must have acquired a parallel right, not only between Los Angeles and intermediate points between Los Angeles and San Gabriel Boulevard, but also between Los Angeles and San Gabriel Boulevard and intermediate points and all points on each and every route granted by Decision No. 19410.

While it is true that the acquisition of the Walker right gave respondent an unrestricted and unlimited operating right between Los Angeles and San Gabriel Boulevard along the route between Los Angeles and the town of East San Gabriel, such acquisition in no way affected the restriction of Decision No. 19410 nor may such acquisition be so construed.

Respondent L. R. Kagarise should bear in mind that the restriction of Decision No. 19410 applied to the transportation of property between Los Angeles and all points intermediate to Los Angeles and San Gabriel Boulevard, on the one hand, and all points authorized to be served by Decision No. 19410. This includes not only the points served along routes 1 to 50, inclusive, regardless of later consolidation of routes 1 to 9, inclusive, with certain other operating rights of respondent. The restriction in question is an absolute prohibition against giving any service, through or otherwise, between the points involved and the device of transferring property from one piece of equipment to another is of no avail.

It is a well-established principle (Section 50-3/4 of the Public Utilities Act) of common carrier stage and truck regulations in California that separate operative rights, although held by the same individual, may not be consolidated, joined or linked together so as to provide a through service, nor may through rates over separate rights commonly owned be published, without first obtaining from the Commission a certificate declaring that public convenience and necessity require such expansion, extension, or publication.

The Commission has held that there is no substantial difference between establishing joint rates over separately-owned but connecting highway common carrier operative rights and



publishing through rates over separate connecting operative rights  
(2)  
commonly owned.

Respondent relies upon a previous decision of the Commission in Blair vs Coast Truck Line, 21 C.R.C. 530, wherein it was held in effect, that where a certificate existed for the transportation of property between Los Angeles and Oceanside and a like certificate existed between Oceanside and San Diego, shipments between Los Angeles and San Diego could be handled provided such shipments were transferred at the common point Oceanside from one vehicle to another and the through rate must be a combination of the local rates.

Neither of the certificates involved in that case had any restriction remotely paralleling that in Decision No. 19410. The sole issue involved therein was one of unlawful linking together of separate but connecting operating rights for the purpose of giving a through service. The facts in that case are not comparable to the facts in the instant case.

Likewise in Western Motor Transport, 20 C.R.C. 1038, and re Watson 24 C.R.C. 481, 487, cited by respondents, the questions involved therein related solely to the joining of separate operating rights for the purpose of giving a through service none of which rights contained a restriction similar to that in Decision No. 19410.

In re California Transit Co. 33 C.R.C. 574, 580, the Commission held that upon the consolidation of two paralleling rights, one of which was restricted as to local service between certain points, and the other being wholly unrestricted as to service between

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(2)

Blair vs Coast Truck Line (1922), 21 C.R.C. 530;  
Re Western Motor Transit Company (1921), 20 C.R.C. 1038, 1042;  
Re A. E. Watson (1924), 24 C.R.C. 481, 487;  
Re Valley Transit Company (1925), 26 C.R.C. 406, 408, 410;  
Re Highway Transport Company (1925), 26 C.R.C. 942, 945, 949, 950;  
Re California Transit Co. (1927), 29 C.R.C. 475, 508.

the same points, the restrictions imposed on the one right were not carried over into the right existing after consolidation because to hold otherwise would be to interpret the consolidation order as not only authorizing, but requiring the operator to render a lesser service than that rendered prior to consolidation, in so far as the territory between the points involved was concerned. In that case we have two exactly paralleling rights, a situation not present in the instant case.

Decision No. 25546 (Application No. 17383) ordered and granted:

"(a) The consolidation of operative rights now owned by applicant L. R. Kagarise, and operated under the fictitious name of Keystone Express System, said operative rights having been heretofore granted by this Commission's Decisions No. 19012 on Application No. 13970; No. 19013 on Application No. 14041 (3) No. 19014 on Application No. 14047; No. 19055 on Application No. 14166; No. 19095 on Application No. 14221, and the following operative rights granted by Decision No. 19410 on Application No. 15087; 1, Pasadena, Lamanda Park, Santa Anita; 2, Sierra Madre; 3, Santa Anita Ranch; 4, Arcadia; 5, Monrovia, Duarte and Azusa; 6, San Gabriel Boulevard crossing following the Valley Boulevard to junction with El Monte, serving San Gabriel Boulevard crossing, Amarillo, Rosemead, Savannah, Ardendale, El Monte; 7, from junction at Ontario to Upland, serving Ontario, Euclid Avenue, Upland; 8, from junction at Guasti (South Cucamonga) to junction at Cucamonga, serving Guasti, Archibald Avenue, Cucamonga; 9, from junction at Cucamonga to Alta Loma, serving Cucamonga, Alta Loma; 10, Los Angeles, Alhambra, East San Gabriel and intermediate points; 11, Los Angeles, Glendale; 12, Los Angeles, Monrovia; 13, Los Angeles, Burbank, Van Nuys, Lankershim; 14, Van Nuys, Zelzah, Marian, Owensmouth; 15, Marian, Universal City, Lankershim; 16, Universal City, Los Angeles; 17, Los Angeles, San Fernando; 18, Burbank, Roscoe, Pacoima; 19, Los Angeles, South Pasadena and Pasadena;"

Decision No. 25546 also authorized certain consolidated extensions of the above rights to points south of Los Angeles including Long Beach and Long Beach and Los Angeles Harbors, subject to certain restrictions, concerning which there seems to be no confusion.

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(3) Application No. 14041 should read Application No. 14046.

This consolidation was of operative rights theretofore granted by the decisions set forth therein and certain operative rights granted by Decision No. 19410. Said consolidation order described nineteen different routes, numbered 1 to 19, inclusive. An examination of the record and Decision No. 19410 makes readily apparent that but 1 to 9, inclusive, of the routes described were granted by Decision No. 19410, and routes 10 to 19, inclusive, are not the routes 10 to 19, inclusive, as described in Decision No. 19410 but are rights which were acquired by other decisions.

Decision No. 25546 while authorizing a consolidation of a portion of the rights granted by Decision No. 19410 did not remove any of the restrictions of such decision which must be held to have been retained as hereinbefore construed.

Strictly interpreted Decision No. 25546, in Application No. 17383, does not consolidate Kagarise's prescriptive operating rights and the operative rights granted by Decisions Nos. 7524 and 19182 with other operative rights as sought by Application No. 17383. It appears from the Opinion in Decision No. 25546 that it was intended to authorize said consolidation, however, the Order neglected to provide for such authority.

9. Decision No. 25723, dated March 13, 1933, on Application No. 18724, authorized L. R. Kagarise to acquire from the copartnership of G. E. and L. A. Galbreath two separate operating rights established as follows:

(a) Decision No. 7342, dated April 3, 1920, on Application No. 5031, granted certificate to G. E. Galbreath for the operation of a through automobile truck service between Los Angeles and Chino, intermediate service being expressly prohibited. No route was fixed in the order but Exhibit "B" of the application describes the following proposed route:

"ROUTE--Going to Los Angeles, Central Ave. to Holt Ave., to City of Pomona; on Park Ave. to Second St., to First to Valley Blvd. via

Spadra- Walnut- Puente- El Monte to Mission road, to Macy St. to Los Angeles St. RETURNING SAME ROUTE."

This route was also shown in Local Tariff of Chino Express & Transfer C.R.C. No. 1 filed in compliance with the order which granted the certificate.

(b) Decision No. 10661, dated July 6, 1922, Application No. 7277, granted a certificate to G. E. Galbreath for the operation of a

"...freight auto truck line between Los Angeles and Chino and between Pomona and Chino, serving intermediate points only between Pomona and Chino, via Narod."

This was a separate grant not being consolidated with that in 9 (a) supra. The record in Application No. 7277 clearly shows that the intent was to authorize a service between Pomona and Chino and intermediate points via Narod, and in addition thereto and in connection therewith a through service between Los Angeles and Chino. This through service would then be a duplication of that granted by Decision No. 7342, supra, 9 (a). No route was defined.

Decision No. 11694, dated February 20, 1923, on Application No. 8677, authorized L. A. Galbreath to acquire an undivided one-half interest with G. E. Galbreath in the operative rights defined in (a) and (b) above. Decision No. 11694 may not be interpreted as in any way construing or defining the rights referred to therein.

Decision No. 25723 authorized the transfer of these rights to L. R. Kagarise but did not consolidate them nor did it consolidate them with any of the rights then owned by said Kagarise.

10. Decision No. 27048, dated May 14, 1934, on Application No. 19344, authorized L. R. Kagarise to acquire from Zimmerman Bros. Transfer and Storage Co., a corporation, an operating right between Los Angeles and Long Beach and intermediate points via

Vernon, Nadeau, Huntington Park, Walnut Park, Florence, Latin Station, Graham, Watts, Willowbrook, Willowville and Compton. This was a prescriptive right established by E. G. Rice who on March 18, 1918, filed with the Commission his Local Freight Tariff No. 1, C.R.C. No. 1, effective February 1, 1918, showing rates between the above named points and other points of no concern herein. Service to intermediate points was indicated by application of Rules I and VII of such tariff which also contained the following provision:

"Destination off of regular route traveled will take a minimum of 50¢ and 25¢ per mile over 2 miles."

The implication of the provision is that a lateral service charge was made to those points, hereinabove named, which were not located upon the direct route of travel. No definite route was set forth in the tariff. This right was later sold to G. R. Cleveland (Decision No. 8135, dated September 23, 1920, on Application No. 6120) who subsequently organized a corporation, Rice Transportation Company, to which corporation the right was transferred (Decision No. 9188, dated June 30, 1921, on Application No. 6759). Harry D. Cleveland, former president of the Rice Transportation Company as well as the driver of one of its trucks, testified on direct examination, "...we served intermediate points of Compton, Lynwood, Watts and all those points, and Long Beach, and we operated up and down Long Beach Boulevard...". He further stated that during the entire period of ownership of this right by Rice Transportation Company the operation was over the same route (Long Beach Boulevard). On cross-examination he testified that service to the points of Florence, Nadeau, Graham, Latin, Watts, Willowbrook and Compton was given over Compton Avenue. No other evidence or testimony was adduced in connection with the route of operations between Los Angeles and Long Beach and it appears reasonable to assume that

the route between Los Angeles and Long Beach was over Long Beach Boulevard via Vernon, Huntington Park, Lynwood and Willowville, and over Compton Avenue via Florence, Nadeau, Watts and Compton connecting with Long Beach Boulevard at Compton serving all intermediate points.

Decision No. 15366, dated September 3, 1925, on Application No. 11651, authorized Rice Transportation Company to transfer this right to the copartnership of L. E. and Albert F. Zimmerman which copartnership later, by Decision No. 24865, dated June 13, 1932, on Application No. 18152, transferred the right to the corporation Zimmerman Bros. Transfer and Storage Co. from which said right was later acquired by L. R. Kagarise in Decision No. 27048, supra.

No authority was given for the consolidation of this right with other operating rights of L. R. Kagarise.

11. Decision No. 27237, dated July 30, 1934, on Application No. 19539, authorized L. R. Kagarise to acquire from Tolson Transportation System, Inc., a corporation, six separate and unconsolidated operating rights for the transportation of property in general, between:

- (a) Los Angeles & Gardena  
(origin Decision No. 7528);
- (b) Los Angeles & McKinley Home and intermediate points  
(origin Decision No. 9689);
- (c) Los Angeles & Torrance  
(origin Decision No. 6518);
- (d) Torrance & Steamship Wharves at Wilmington and San Pedro  
(origin Decision No. 14606);
- (e) Los Angeles & Huntington Beach  
(origin Decision No. 7487);
- (f) Los Angeles & Wintersburg and intermediate points  
(origin Decision No. 8038);

as specifically created and defined as follows:

(a) Los Angeles and Gardena.

Decision No. 7528, dated May 3, 1920, on Application No. 4017, granted a certificate to Wm. F. Boehlert for the operation "of an automobile truck line as a common carrier of freight and express between Los Angeles and Gardena;" no intermediate service being authorized. While no route was established in the certificate as granted, an examination of Local Freight Tariff of Gardena-Los Angeles Daily Express, C.R.C. No. 1 filed with the Commission September 7, 1921, by applicant Boehlert in compliance with the order of Decision No. 7528 and made effective May 15, 1920, showed the following routes:

"Routes:- Going to Los Angeles: 165th St. to Main St. to Washington St., to Los Angeles St. to 675-677 South Los Angeles St.

"Going to Gardena, Los Angeles St. to Washington St. to Main St. to 165th St."

This then became the regular route of operation between Los Angeles and Gardena.

In the absence of the definite establishment of a route in a certificate, the applicant upon establishing his operation over a particularly defined route may not thereafter change such route until he has first obtained the formal authority of the Commission. The applicant upon establishing such route thereby bound himself and successors in interest to use that route.

(b) Los Angeles and McKinley Home.

Decision No. 9689, dated October 31, 1921, on Application No. 7136, granted a certificate to Wm. F. Boehlert for the operation of a

"...freight auto truck service between Los Angeles and the certain points applied for, over the following route:

"from depot at 572 South Alameda Street to 6th St., to Los Angeles St., to Washington St., to Main St., to Jefferson St., to Grand Ave., to Figueroa St., to 54th St., to Vermont, thence south on Vermont Avenue, passing out of the City of Los Angeles at Vermont and Manchester; thence south on Vermont to 102nd St. (Sunnyside), west to Normandie Ave., returning by same route to Vermont, south on Vermont to West Athens, via Olympia Avenue to Athens, back to West Athens, west on Salinas Avenue to Budlong, south on Budlong to Harmony Avenue (Panama Acres), west on Harmony Avenue to Western Avenue, south to Olive Street, west on Olive Street to Bridgedale, east on Olive to Western Avenue, south on Western to 167th (Moneta), west on 167th to Cypress Street, south on Cypress to Strawberry Avenue, west on Strawberry Avenue to Prairie, south on Prairie to Electric Avenue (Perry) east on Electric Avenue to McKinley Home; north on Normandie to 165th, east on 165th through Gardena to Vermont, north on Vermont through Strawberry Park and West Athens to Los Angeles."

It will be observed that the certificate was granted "between Los Angeles and the certain points applied for." An examination of Application No. 7136 shows that "certain points applied for" are as follows:

"...between Los Angeles, Sunnyside, Panama Acres, West Athens, Athens, Delhi, Rosecrans Ave, Strawberry Park, Bridgedale, Perry, Moneta, McKinley Home and intermediate territory."

The rights created in Decisions Nos. 7528 and 9689 were by Decision No. 16470, dated April 12, 1926, transferred to Tolson Transportation System, Inc.

(c) Los Angeles and Torrance.

Decision No. 6518, dated July 24, 1919, on Application No. 4591, granted a certificate to H. M. Tolson for the operation "of an automobile truck service as a common carrier of freight and express between Los Angeles and Torrance;..." No intermediate service was authorized. While no route was established in the certificate as granted, H. M. Tolson in his Local Freight Tariff, C.R.C. No. 1 (Torrance Transfer) filed with the Commission August 25, 1919,



subsequent to the issuance of Decision No. 6518 and made effective February 20, 1919, set forth the following route as that of his operation:

"Going to Los Angeles, El Prado St., to Main St., to Washington Street, to Los Angeles Street. Return by same route."

- (d) Torrance and Steamship Wharves at Wilmington and San Pedro.

Decision No. 14606, dated February 26, 1925, on Application No. 10286, in addition to authorizing certain transfers described next below in (e) and (f), granted a separate certificate to Tolson Transportation System, Inc. for the transportation of property and the establishment and operation,

"...of a demand service without schedule, between Torrance and the steamship wharves at Wilmington and San Pedro, in the harbor district of the City of Los Angeles, and to no other points, over and along the following route:

- "(a) Via Narbonne Avenue, through Lomita, and Wilmington-Redondo Road to the wharves at Wilmington.
- "(b) Via Lomita, Harbor City and San Pedro Boulevard to wharves at San Pedro."

The opinion of Decision No. 14606 recites in effect, and is herein so construed, that the order would provide for the establishment of a demand service with the understanding that only property originating in Torrance and destined to the wharves of the steamship companies at Wilmington and San Pedro, or vice versa, should be transported, and further, that the certificate as granted should not in any sense be construed as an extension of the then existing rights between Los Angeles and Torrance so as to provide a through service between Los Angeles and the harbor district. No intermediate service was authorized.

- (e) Los Angeles and Huntington Beach.

Decision No. 7487, dated April 26, 1920, on Application

No. 5187, granted a certificate to E. H. Sprehn (Seal Beach Auto Dispatch) for the operation "of an automobile truck as a common carrier for freight between Los Angeles, Los Alamitos, Seal Beach, Huntington Beach and Anaheim Landing." Strictly interpreted said decision authorized no service to intermediate points, other than those named, nor did it define any definite route. However, in the opinion of such decision the following language is contained:

"Applicant's proposed route will serve considerable intermediate territory not served by either of the present" (rail) "carriers."

"Applicant also expects to handle eggs, vegetables and perishable supplies for ranchers along the road proposed to be traveled."

Apparently it was the Commission's intent to authorize a service to all intermediate points "along the road proposed to be traveled." However, at page 17, line 15, of the transcript of testimony in Application No. 5819, infra, which is by reference made a part of the record herein; applicant Sprehn stated in reply to questioning by protestants:

"No, our certificate does not include Artesia. We go through there to go to Los Alamitos. Our first stop is Los Alamitos, but to get there we have to pass through Artesia."

While such statement may not in any way be held to be a lawful construction of the certificate as granted, it does add some light to the intention, which reasonably interpreted authorized a service between Los Angeles, on the one hand, and Los Alamitos and Huntington Beach and intermediate points via Seal Beach and Anaheim Landing, on the other hand.

In compliance with the order in Decision No. 7487, applicant Sprehn filed his tariffs covering the "proposed service," but did not set forth therein the "road proposed to be traveled." In one of the exhibits attached to the application, however, is the following:

"Applicant proposes to operate his trucks over the following route:

'From the terminal at the corner of Eighth and Crocker Sts., east to Central Ave.; thence north to Seventh St.; thence east to Boyle Ave.; thence north to Stephenson Ave.; thence east to Telegraph Road; thence by boulevard leading to Downey through Clearwater and Artesia to Los Alamitos; thence to Seal Beach to Anaheim Landing and to Huntington Beach via Westminster.'"

This, then, was the route proposed to be traveled and the order is quite clear in authorizing service over and along such route.

(f) Los Angeles and Wintersburg.

Decision No. 8038, dated August 27, 1920, on Application No. 5819, granted a certificate to E. E. Sprehn (Seal Beach Auto Dispatch) for the operation "of an automobile stage line as a common carrier of freight between Los Angeles, Artesia, Westminster, Smeltzer, Wintersburg, and intermediate points."

This language plainly authorized service between termini and all intermediate points. Interested parties herein contend that no authority was granted by Decision No. 8038 to serve Santa Fe Springs and Norwalk, both of which are intermediate points, by reason of a stipulation, made at the hearing on Application No. 5819 between the applicant therein and protestants thereto, that no authority was sought to serve such points. (Application No. 5819 Tr. pp 9 and 10). We cannot agree with such contention. While the record in Application No. 5819 shows that such stipulation was made, nevertheless, the order did not provide for such a restriction and the parties at interest must be bound by the language of the order. Protestants thereto failed to avail themselves of their right to petition for a rehearing and the order therein has long since become final.

No definite route was fixed in the order but the Commission declared that public convenience and necessity would be subserved by the granting of the application. Exhibit "B" attached to the application sets forth a proposed route as follows:

"From applicant's terminal at 327 N. San Pedro St., south to Seventh St., east to Boyle Ave., north to Stephenson Ave., east to Telegraph Road; thence by way of Telegraph Road to Santa Fe Springs; thence by way of Norwalk to Artesia; thence by way of Los Alamitos to Westminster, Smeltzer and Wintersburg;..."

It appears that the intent was to consolidate the two operations as signified by the language in the third paragraph at sheet two (2) of Decision No. 8038 which reads:

"The applicant is now operating an auto truck freight service between Los Angeles and Anaheim Landing by way of Los Alamitos, Seal Beach and Huntington Beach and it is proposed to operate this route in combination with his present service."

No provision, however, was made in the order for consolidation.

Decision No. 8850, dated April 12, 1921, on Application No. 6711, authorized J. F. Nutty to acquire from E. H. Sprehn the rights created by Decisions Nos. 7487 and 8038.

Decision No. 10127, dated February 27, 1922, on Application No. 7408, authorized C. E. Tolson and C. E. Fix to acquire from J. F. Nutty the rights Nutty acquired in Decision No. 8850.

Decision No. 12607, dated September 13, 1923, on Application No. 9350, authorized H. M. Tolson to acquire from C. E. Tolson the rights acquired by C. E. Tolson in Decision No. 10127. (No mention was made of C. E. Fix.)

Decision No. 14606, dated February 26, 1925, on Application No. 10286, authorized Tolson Transportation System, Inc., to acquire from H. M. Tolson the rights created in Decision No. 12607, in addition to granting a certificate as hereinbefore set forth in Sec. 11 (d).

## II.

### OPERATING RIGHTS OF J. NELSON KAGARISE

#### A. As a highway common carrier.

1. Decision No. 25184, dated September 19, 1932, on Application No. 18407, authorized J. Nelson Kagarise, one of the respondents herein, to acquire from Edmond H. De Mar a limited operating right created by Decision No. 16035, dated March 2, 1926, and modified by Supplemental Decision No. 17207, dated August 11, 1926, both on Application No. 11301, for

"...the operation of an automobile freight truck service as proposed by applicant herein, between Los Angeles Harbor points and Los Angeles on the one hand and Baldwin Park, Covina, Azusa, Glendora, San Dimas, La Verne, Pomona, Claremont and Upland, on the other hand, for the transportation, on demand, of packed citrus products from packing houses, orange oil, fruit juices, household goods, lumber, fertilizer, orchard heaters and fuel therefor, building material (including paper and wall board), packing house supplies (including paper wraps, box shooks, machinery, nails, fuel shavings and briquettes), and of no other commodities, over and along the following routes:

"By way of the Valley Boulevard to Pomona; and, also via Pico Boulevard where it diverges from Valley Boulevard, to Whittier Road, thence to Workman Road, thence to Telegraph Road, thence via Downey, Clearwater and Compton via the Harbor Boulevard to the Wilmington and San Pedro districts of Los Angeles Harbor, with the privilege of pickup or delivery within five (5) miles on either side of said routes:..."

2. Decision No. 27619, dated December 22, 1934, on Application No. 19749, authorized J. Nelson Kagarise to acquire from R. L. McMichael, but not to consolidate with other rights then owned, a right created by Decision No. 10752, dated July 21, 1922, on Application No. 7884 for the operation of an auto truck service between Puente and Los Angeles, for the transportation of freight and baggage, no intermediate service being authorized, said operation to be over the following route:

"From any point within a free pickup and delivery zone in and about Puente, which zone is: Beginning at Third Avenue on the West; thence north to Francisquito to the Hill Road, thence south on the Hill Road to

Happy Valley and North Whittier Heights, which shall form the Southern boundary; over the Valley Boulevard (also called the San Bernardino Boulevard) to Mission Road; thence to Macy Street and thence to North Broadway and thence to any point within the free pickup and delivery zone bounded by Sunset Boulevard, the Los Angeles River, Vermont Avenue and Slauson Avenue,"

subject to the following conditions:

"1. The prohibition with respect to the transportation of express matter contained in the Declaration herein shall prohibit applicant from accepting for transportation any shipment from one consignor to one consignee, weighing fifty (50) pounds or less.

"2. In accordance with stipulation, the certificate herein granted expressly prohibits the transportation of milk or dairy products to or from Puente."

In the acquisition of the two above described automotive operating rights by J. Nelson Kagarise, no authority was conveyed for their consolidation in any respect and they must be separately operated and in the manner as above set forth until authority has first been obtained from the Commission for any change in such operation.

B. As an "express corporation."

On May 16, 1933, J. Nelson Kagarise filed his Local Express Tariff, C.R.C. No. 1, effective May 18, 1933. Later he filed Supplement No. 1 thereto, effective May 25, 1933, naming rates to additional points. On June 28, 1933 said Kagarise filed his Local Express Tariff No. 1, C.R.C. No. 2, effective July 28, 1933, which cancelled C.R.C. No. 1. C.R.C. No. 2 is governed, except as otherwise provided therein, by Western Classification No. 62, C.R.C. No. 517 of F. W. Gomph, Agent, and supplements thereto and reissues thereof. C.R.C. No. 2 shows rates for the transportation of property as an "express corporation" as defined by Section 2 (k) of the Public Utilities Act, between practically all of the points located on the highway common carrier operative rights of L. R. Kagarise as well as those points located on the highway common

carrier rights acquired by J. Nelson Kagarise through Decisions Nos. 25184 and 27619, in addition to a smaller group of points located on other common carrier lines. All points so shown are located in Los Angeles, San Bernardino, Riverside and Orange Counties.

J. Nelson Kagarise, on November 18, 1933, filed Application No. 19198, requesting a certificate of public convenience and necessity to continue operation as an express corporation. The Commission thereafter issued its Decision No. 26605, dated December 4, 1933, granting the certificate prayed for but later in its Decision No. 27593, dated December 17, 1934, Decision No. 26605 was vacated and set aside and the proceeding thereunder dismissed it being held therein, in effect, that legal operations of express corporations prior to August 1, 1933, with tariffs therefor lawfully on file with the Commission did not require certification.

### III.

#### COMPLAINTS AND CEASE AND DESIST ORDERS In Re L. R. KAGARISE AND/OR J. NELSON KAGARISE

On December 12, 1932, a complaint (Cs. No. 3437) was filed with the Railroad Commission in which it was alleged that L. R. Kagarise had entered into an agreement with Louis M. Goodman, who was operating as an express corporation, to transport property between Los Angeles and numerous points in Los Angeles and Orange Counties without lawful authority therefor.

Decision No. 26303, dated August 28, 1933, as amended by Decision No. 26785, dated February 6, 1934, both in Case 3437, found that defendants therein were offering a through service between Los Angeles and points on routes 10 to 50, inclusive, in violation of the restriction laid down in Decision No. 19410, supra, and ordered said defendants to cease and desist from continuing such operations.

The first paragraph of the Order of Decision No. 26303 appearing at page 2 of the typewritten decision reads as follows:

"IT IS HEREBY FOUND AS A FACT that L. M. Goodman, operating as an express company under the name Goodman Delivery Service, is operating as an express company, and is offering through service over the common carrier lines of L. R. Kagarise, operating under the name Keystone Express System, between Los Angeles and certain points on Routes Nos. 20 to 50, as set forth in Decision No. 19410 on Application No. 13087, which said Kagarise is not authorized to transport except and when, on demand, he has first an accumulated load of 5000 pounds, or more, and without other authority or prior right so to do."

Based upon the finding above quoted, the defendants were ordered to cease and desist such operation. This finding is not in complete accord with the record and Decision No. 19410 as referred to. It is inferable from such finding that defendants may lawfully transport property between Los Angeles and points on routes 20 to 50, inclusive, "on demand" if there were "first an accumulated load of 5000 pounds, or more." Such is not the fact. Decision No. 19410 permitted no transportation whatsoever between Los Angeles and the intermediate points between Los Angeles and San Gabriel Boulevard and any point on routes 1 to 50, inclusive, as set forth in such decision. The "on demand" service and minimum weight requirement applied to movements over routes 20 to 50, inclusive, of property with point of origin and destination other than Los Angeles and the intermediate points between Los Angeles and San Gabriel Boulevard.

In compliance with a petition therefor, an order was made by the Commission granting a rehearing in this case upon the submission of which the Commission issued on February 6, 1934, its Decision No. 26785, which supplemented the finding made in the order of Decision No. 26303 in the following language:

"IT IS HEREBY FOUND AS A FACT that L. R. Kagarise is offering through service between Los Angeles and other points and Routes Nos. 10 to 19, as set forth in said



Decision No. 19410, and not consolidated with Kagarise's other operations for his own shipments from west of San Gabriel Boulevard and Los Angeles and also for those of L. M. Goodman, operating as an express company, thus linking together separate operative rights without valid authority from this Commission."

In the first paragraph immediately preceeding the next about quoted finding of fact in Decision No. 26785, we find the following statement:

"The order attached, as amended, is intended to forbid operations by Kagarise over scheduled routes Nos. 10 to 19, inclusive, for such shipments as originate west of San Gabriel Boulevard and all areas within the municipal limits of Los Angeles. This is consistent with the restrictions proposed by Kagarise in Application No. 13087, and made effective by Decision No. 19410."

In the light of the restriction set out in Decision No. 19410, the phrase "...west of San Gabriel Boulevard" as it appears in the findings and statement of Decision No. 26785, hereinabove quoted, is construed to mean "between Los Angeles and San Gabriel Boulevard and intermediate points." The finding of fact in Decision No. 26785 must be construed in consonance with the expressed intention as set out in such decision which intention was to forbid operations in violation of the restrictions of Decision No. 19410, which restrictions prohibited the transportation of property by L. R. Kagarise between Los Angeles and points on routes 10 to 50, inclusive. There could be no linking together of the operative rights because the rights involved had been joined by Decision No. 19410 and Decision No. 25546. The basis of the complaint as filed was on the concept that respondent was transporting property between Los Angeles and points on the routes hereinabove referred to.

On September 18, 1933, a complaint (Cs. No. 3686) was filed against L. R. Kagarise and J. Nelson Kagarise, in which it was alleged, among other things, that defendants therein were engaged in the automotive transportation of property between Los Angeles

and points in Los Angeles, San Bernardino, Riverside and Orange Counties on routes 10 to 50, inclusive, in violation of the restrictions of Decision No. 19410.

The Commission by its Decision No. 26786 of February 6, 1934, found that defendant L. R. Kagarise was transporting property between Los Angeles and points on routes 10 to 50, inclusive, as set forth in Decision No. 19410, without any authority therefor and ordered said defendant to cease and desist such operations. This finding and order based upon the record was proper. However, in the second paragraph at page four (4) of the typewritten Decision No. 26786, we find the statement:

"The connecting carrier (Kagarise operating under a certificate), in the instant case is disabled from receiving or transporting the shipments shown by the record, or any shipment where the volume is less than 5000 pounds, and no shipment from Los Angeles or points between Los Angeles and San Gabriel Boulevard."

To say that defendant L. R. Kagarise "is disabled from receiving or transporting...any shipment where the volume is less than 5000 pounds" over routes 10 to 50, inclusive, is not in accord with the condition imposed in Decision No. 19410. This condition comprehended the territory on routes 20 to 50, inclusive, only and ran to accumulated freight aggregating in weight 5000 pounds or more and not to shipments.

Decision No. 26893 denied petitions of respondents for a rehearing of Case No. 3686 and modified Decision No. 26786 by properly ordering J. Nelson Kagarise to cease and desist operating as an express corporation or freight forwarder over the lines of L. R. Kagarise between Los Angeles and points between Los Angeles and San Gabriel Boulevard, on the one hand, and points located on routes 10 to 50, inclusive, on the other hand, unless in accordance with the existing operative rights of L. R. Kagarise as construed therein.

Thereafter upon request of defendant, L. R. Kagarise, the Commission extended the effective dates of Decisions Nos. 26785 and 26786, in Cases Nos. 3437 and 3686, respectively, to and including May 31, 1934, to enable said defendant to seek a court review of said decisions.

Subsequently, on September 4, 1934, upon an application therefor, the Commission ordered J. Nelson Kagarise to appear and show cause why he should not be punished for contempt for failure to comply with the terms and conditions of Decision No. 26786 as amended by Decision No. 26893. After a public hearing thereon the Commission found that defendant, J. Nelson Kagarise, had failed and refused to comply with the terms of said decisions and ordered that said defendant be punished by a fine of five hundred dollars (\$500), or, in default thereof, to be committed to the County Jail, of Los Angeles County. On January 10, 1935, such fine was paid by said defendant.

#### IV.

##### PRACTICES AND INTERRELATIONSHIP OF RESPONDENTS

The record shows that respondent, J. Nelson Kagarise, for a considerable period of time had been, and during the progress of this investigation was, employed by respondent, L. R. Kagarise, as general manager of the transportation business as conducted by said L. R. Kagarise under the name and style Keystone Express System. This was shown to be the only interrelationship of said respondents prior to May 18, 1933. At about this time respondent, J. Nelson Kagarise, inaugurated the separate business of an express corporation and freight forwarder under the firm name Keystone Express Company and filed his local express tariff therefor as hereinbefore set forth in Part III. In addition thereto said respondents, J. Nelson

Kagarise and L. R. Kagarise, on May 18, 1933, entered into a contract with each other for the transportation of express matter in the custody of J. Nelson Kagarise over the lines of said L. R. Kagarise in so far as said lines of L. R. Kagarise serve the points which said J. Nelson Kagarise, doing business as an express corporation, held himself out to serve. This agreement was filed with the Commission on May 22, 1933, a copy of which is attached to the return and answer of L. R. Kagarise in this proceeding.

During February and March, 1934, in Case No. 3686, cease and desist orders were issued against respondents herein, L. R. Kagarise separately appealing therefrom to the United States Supreme Court, and J. Nelson Kagarise later being punished for contempt thereof. L. R. Kagarise testified that on or about December 17, 1934, he learned of the adverse decision in response to his appeal. He thereupon, effective January 2, 1935, discontinued all operations in contravention of the orders heretofore referred to. On this date respondents herein modified the agreement hereinabove referred to with respect to the division of gross rates for the pickup of merchandise in Los Angeles by L. R. Kagarise for the account of Keystone Express Company (J. Nelson Kagarise) destined to points on routes 10 to 50, inclusive, as set forth in Decision No. 19410, and for the pickup or delivery by said L. R. Kagarise at Puente of merchandise to be delivered or picked up at points on said routes 10 to 50, inclusive.

Intervenors introduced freight bills in evidence covering shipments destined to points for which respondents have no authority to serve. Exhibits 30 to 33, inclusive, and 41 to 51, inclusive, constitute a series of such bills. Exhibit 30 consists of sixteen freight bills on forms of Keystone Express System. Respondent, J. Nelson Kagarise, testified that all of these are

freight bills of Keystone Express System covering the movement of shipments to points that Keystone Express System has no authority to serve; that Keystone Express System tendered such shipments to Southern California Freight Lines for transportation to destination, and that Keystone Express System received no compensation for handling such shipments except one collection of fifty cents made in error. Exhibit 31 consists of two freight bills with the legend "KEYSTONE EXPRESS \_\_\_\_\_" printed across the top. The second one of these bills contains the symbol "CO" in the blank space while the first contains nothing. Respondent, J. Nelson Kagarise, further testified that the billing department of Keystone Express System was instructed to insert in such blank space either the word "System" or "Company" depending upon the appropriate routing which is determined by the point of origin or destination of the shipment involved in each case. Exhibits 32 and 33 consist of nine freight bills of Keystone Express System covering shipments destined to points which neither respondent has authority to serve with the exception of two shipments, one destined to El Segundo and the other to Lennox, both of which points are shown in the tariffs of Keystone Express Company. All shipments covered by freight bills in Exhibits 32 and 33 were turned over to Southern California Freight Lines as "wrong route" shipments for delivery to destination. Exhibit 41 is made up of three freight bills, one of Keystone Express Company, one of Keystone Express System, and the third not being indicated, all of which cover shipments destined to Inglewood, a point shown in the tariffs of Keystone Express Company, and all were handled as "wrong route" shipments via the Southern California Freight Lines, no charges being made by either respondent. Respondent, J. Nelson Kagarise, testified that these shipments were handled in this manner because it was too late to connect with Pacific Electric Railway trains which facilities were ordinarily used.

Exhibit 42 consists of three freight bills covering shipments destined to El Segundo, one was routed Keystone Express System, another was routed Keystone Express Company, and the third not indicated. All were tendered to Southern California Freight Lines as "wrong route" shipments.

Exhibits 43 to 50, inclusive, show similar situations and practices.

Exhibit 51 consists of forty-two freight bills covering shipments of cakes in cartons from Los Angeles to Santa Ana all having in common the same consignor and the same consignee. All of the bills were dated between January 7 and May 5, 1935, both inclusive. Three of the shipments were routed Keystone Express System and the remainder not routed. J. Nelson Kagarise, upon cross-examination, testified that all of such shipments were moved by Keystone Express System as "wrong route" shipments to the depot of a connecting carrier.

One feature of the above described transportation not fully explained by the record is the so-called "off-line" deliveries or shipments as to which the carrier renders some forwarding service but for which no compensation is shown. For example, on such shipments as respondents received marked to destinations beyond the authorized termini the practice, as indicated by Exhibits 30 to 33 and 41 to 51, inclusive, was to mark the freight bill "wrong route" and pass to some connecting carrier serving such final destination point, the inference being that such instances were casual or sporadic and the service one of gratuitous accomodation.

Respondent, J. Nelson Kagarise, as manager of Keystone Express System, upon cross-examination, testified that he not only passed such shipments on to certain connections in order to obtain their disposition, but that he likewise received from the accusing

connecting carriers similar shipments, final delivery of which he made to points on his route without the recording of specific or any charges therefor.

The number and regularity of such shipments, reveal sufficient frequency to prove this recurrent interchange an established practice. Furthermore, the according of a so-called free handling of the kind is so obviously inconsistent with the public business of furnishing transportation for compensation as to demand explanation beyond its reciprocal workings.

In the absence of further explanation in the record, the alleged free handling of these so-called "off-line" shipments appears to be utilized primarily in the furtherance of solicitation practices.

This presumption is further indulged by the apparent uniformity of designation as "wrong route" c/o of specified carrier, regardless of any logical affiliations of said participating carriers. It is apparent from the evidence adduced that whatever the details, the practice obtained generally throughout the territory and was not peculiar to a single carrier. This practice is not consistent with good transportation practices and does not appear to be in the public interest and should be discontinued.

The record in this matter contains an abundance of evidence regarding the loose usage of company names and other practices and interrelationship of respondents.

Subsequent to the submission of the matters involved in this proceeding the Commission by Decision No. 28850, dated May 25, 1936, on Application No. 20580, authorized L. R. Kagarise to sell and transfer all of his highway common carrier operating rights to Keystone Express System, a corporation. L. R. Kagarise is no

longer affiliated in any way with the corporation nor does the corporation any longer act as the underlying carrier for Keystone Express Company, an express corporation. As a result of such transfer it does not appear necessary to further discuss herein the various practices and interrelationships of respondents which existed prior to the transfer.

In view of this complete change in ownership and management by an operator financially able and competent by virtue of a considerable range of experience in transportation to give an effective and adequate service in consonance with the construction and interpretation of the various operating rights hereinbefore set out, it appears to be in the public interest to dismiss the instant proceeding. However, such dismissal is not to be construed as condoning any operation under such rights which fails to comply with all of the restrictions and limitations pertinent and attaching thereto. It is quite apparent that in some cases it might appear to be unreasonable and not in the best public interest to require the carrier to follow some of the prescribed routes where set out for some of the rights defined, or to maintain that fine distinction as between rights not consolidated, but, nevertheless, such operations will be required unless and until the carrier has applied for and obtained the requisite authority from the Commission to correct the many anomalous situations presented herein.

Keystone Express System, a corporation, is hereby placed upon notice that it should file its application with the Commission for an in lieu certificate which will clarify all of its operating rights in consonance with the conclusions and findings enunciated in this decision.



O R D E R

The above entitled matter having been duly heard and submitted and the Commission being fully advised,

IT IS ORDERED that the order instituting an investigation and the order to show cause in this proceeding are dismissed.

Dated at San Francisco, California, this 13<sup>th</sup> day of December, 1937.

Matthew W. Ware  
Leon Whitely  
Frank W. Wynn  
Raymond W. Wynn  
Al & Riley  
COMMISSIONERS.