

ASBURY TRUCK COMPANY, a corporation,
Complainant,

vs.

E. R. BALL, E. E. BALL, R. W. FUTHEY,
HOWARD C. WAGGENER, CHARLES KYNE,
K. E. BROWNE, EMMA C. LAUDERBACH,
CATHERINE FRISBEE, MRS. A. C. DOTTS
and PETER BOY, doing business under
the fictitious name and style of Oil
Well Express and/or Oil Well Express
Corporation; OIL WELL EXPRESS, a
co-partnership; OIL WELL EXPRESS
CORPORATION, a corporation; FIRST
DOE: SECOND DOE, THIRD DOE, FOURTH
DOE: FIFTH DOE: FIRST DOE CORPORATION:
SECOND DOE CORPORATION and THIRD DOE
CORPORATION,

Defendants.

Case No. 3799

ASBURY TRUCK COMPANY, a corporation,
Complainant,

vs.

B. L. MIKESELL, an individual, and
PACIFIC SHIPPERS ASSOCIATION, a
corporation,

Defendants.

Case No. 3881

HARRY C. ALLAN, for R. W. Futhey and Oil Well
Express Corporation;

F. W. TURCOMBE and IRLAND S. BOWER, for E. R. Ball;

E. T. LUCEY, for Atchison, Topeka & Santa Fe
Railway Company.

BY THE COMMISSION:

OPINION, FINDINGS, AND JUDGMENT

This proceeding was brought before the Commission by
the affidavit of A. S. Groocox, supported by the affidavits of
H. F. Bassett and R. A. Young, hereinafter referred to as affidavit,

and application for an order to show cause why the above named parties should not be adjudged guilty of contempt of the Commission's orders.

The affidavit and order to show cause was personally served upon E. R. Ball, R. W. Futhey, and the Oil Well Express Corporation. In so far as E. R. Ball is concerned, the affidavit charges a violation of the order of the Railroad Commission contained in its Decision No. 23627, dated April 27, 1931; in so far as the respondents R. W. Futhey and Oil Well Express Corporation are concerned, the affidavit charges a violation of the order of the Railroad Commission contained in its Decision No. 27515, dated November 5, 1934.

In Decision No. 23627 the Commission found that E. R. Ball and F. E. Hayes were engaged in operating an automobile truck service as a common carrier of property for compensation between Los Angeles and contiguous territory and certain oil fields in the San Joaquin Valley, without having secured from the Railroad Commission a certificate of public convenience and necessity authorizing such operations, as required by Statutes of 1917, Chapter 213, as amended, and ordered them to cease and desist from such operations.

In Decision No. 27515 the Commission found that R. W. Futhey, Oil Well Express Corporation, and Pacific Shippers Association were operating as a Transportation Company with common carrier

status as defined in Statutes of 1917, Chapter 213, as amended, between Los Angeles and adjacent territory, on the one hand, and Bakersfield, Taft, Maricopa, Kettleman Hills, Mc Kittrick, Coalinga, Avenal, Devil's Den, and other oil fields within the lower San Joaquin valley, on the other hand, without having secured from the Commission a certificate of public convenience and necessity authorizing such operation, and ordered them to cease and desist from such operations.

In referencé to E. R. Ball, the record discloses that a certified copy of said Decision No. 23627, containing the order, was regularly served upon him on September 15, 1931, and that a certified copy of Decision No. 27515, containing the order, was regularly served upon Oil Well Express Corporation on December 6, 1934. At said time, R. W. Futey was an officer and director of said Company, and had personal knowledge and actual notice of the making of said order and of the contents thereof.

A history of the proceedings against these respondents was completely outlined by the Commission in its Decision No. 27099, hence it will be unnecessary here to repeat it. The evidence established during the progress of this hearing shows that the general nature and character of the transportation services rendered by the Oil Well Express Corporation has not been materially changed.⁽¹⁾ In many instances the shippers who testified at this hearing were the same witnesses who testified in the former ones.

(1) Decision No. 27099, Cases Nos. 2922 and 2939, May 28, 1934.

The affidavit alleges nine distinct offenses or counts of separate alleged contempts, stating specifically and in detail under each separately stated offense the dates, the trucks, the consignors, the consignees, the commodities, the time of departure of trucks and the time of delivery of said commodities to said consignees. The specifically alleged contempts as set out in the affidavit occurred on December 8th and 9th, December 17th and 18th, December 21st and 22nd, all in 1936, and on February 17th and 18th, February 18th and 19th, February 23rd and 24th, February 25th and 26th, March 5th and 6th, and March 8th and 9th, all in 1937. The affidavit further states that on the particular dates hereinabove enumerated, the respondents jointly and severally owned, controlled, operated and managed an auto truck or auto trucks and directed or conducted the operation of an auto truck or auto trucks used in the business of transportation of property as a highway common carrier for compensation over the public highways of this State, between fixed termini and over regular routes, between Los Angeles and contiguous territory, on the one hand, and points located in the lower San Joaquin Valley, namely, Bakersfield, Taft, Maricopa, McKittrick, Devil's Den, Avenal and Coalinga, on the other hand.

A public hearing was held before Examiner Warren K. Brown, on March 8, 9, 10, 11, 15, and April 22, 1938. At said hearing respondents E. R. Ball and R. W. Futey appeared personally and were represented by counsel. Oil Well Express Corporation was also represented by counsel. The testimony of the various witnesses establishes the following undisputed facts:

That the Oil Well Express Corporation, during all of the times mentioned in the affidavit, and for several months prior thereto, was engaged in the transportation business and maintained its

principal office at 4450 South Main Street, Los Angeles, from which address pickup trucks collected property daily from various shippers in Los Angeles and vicinity, and that upon the pickup of said property, it was then taken to 4450 South Main Street, where the said property of the various consignors was consolidated and placed upon trucks for transportation from Los Angeles to various points in the lower San Joaquin Valley, including Bakersfield, Taft, Maricopa, McKittrick, Devil's Den, Avenal, and Coalinga.

That during this time, offices were maintained in Avenal, Taft, and Bakersfield. Shippers in the San Joaquin Valley contacted the Oil Well Express Corporation at these places, when shipments were to be delivered to Los Angeles and vicinity.

The great bulk of the property transported was from Los Angeles to points in the lower San Joaquin Valley. However, daily trips were made from points in the lower San Joaquin Valley to Los Angeles.

That during this time the Oil Well Express Corporation owned five pieces of equipment, used in the transportation of property. In addition to these, several pieces of equipment were under lease, and trucks were operated daily between Los Angeles and vicinity and points in the lower San Joaquin Valley. During the times mentioned in the affidavit, and for several months prior thereto, the trucks of the Oil Well Express Corporation, either owned or leased, departed every evening from 4450 South Main Street, Los Angeles laden with property, and arrived at about the same time the following morning at points in the lower San Joaquin Valley. Said trucks also left daily from points in the lower San Joaquin Valley with property of consignors for Los Angeles. The great bulk of the property delivered by the Oil Well Express Corporation for

its shippers, however, was from Los Angeles and vicinity to points in the lower San Joaquin Valley. Deliveries were ordinarily made at Maricopa, Taft, Avenal, Kettleman Hills, Weed Patch, Bakersfield, Belridge, Lost Hills, Coalinga, Fellows, McKittrick, and Devil's Den. The property transported by the Oil Well Express Corporation for its shippers, both in Los Angeles and in the lower San Joaquin Valley, and particularly on the dates set out in the affidavit, consisted chiefly of oil well supplies, hardware, and general merchandise. (2)

(2)

On December 8th and 9th, 1936, property of sixteen shippers in Los Angeles was delivered to sixteen consignees at Maricopa, Taft, Avenal, Kettleman Hills, and Kettleman City. The property delivered included drugs, hand soap, steel, wire rope, shovels, cylinder heads, babbitt, blankets, assorted packages, belting, sprockets, slip lines, shoe castings, pipe slatters, overshaft assemblies, fittings, paint, and welding rods. (Count One).

On December 17th and 18th, 1936, property of eight shippers in Los Angeles was delivered to eight consignees at Weed Patch, Bakersfield, and East Bakersfield. The property included oil drums, tanks, bundles, barrels, sucker rods, cartons, steel tubing, burlap bags, butane tanks, steel parts, and welding rods (Count Two).

On December 21st and 22nd, 1936, property of thirteen shippers in Los Angeles was delivered to eleven consignees at Maricopa, Taft, and Fellows. The property delivered included nails, hardware, empty gas bombs, wire cloth, rods, supplies, steel, coal, cartons, fittings, bales, steel pulleys, rope, shells, earthenware, batteries, liquor, miscellaneous merchandise and oranges (Count Three).

On February 17th and 18th, 1937, property of sixteen shippers in Los Angeles was delivered to ten consignees at Bakersfield, Belridge, and Lost Hills. The property delivered included oil well working barrels, miscellaneous packages, rods, parts, chains, crank pins, motors, oil well tools, brass tubing, steel, hardware, soap, rotary chains, sacks, and cartons of miscellaneous property, fittings, and lubricant, pumps, rope, and valves (Count Four).

On February 18th and 19th, 1937, property of twenty shippers in Los Angeles was delivered to thirteen consignees at Maricopa, Taft, Ford City, Fellows, and Belridge. The property delivered included drugs, pump parts, pulp board, lumber, screen wire, building hardware, creosote, small arms, maps, tinware, castings, brass, copper, spring seams, percolators, clothespins, paper, lawn rakes, rags, wrenches, pipe fittings, lubricant, gauge glass, duffice plates, vapor pressure, oxygen cylinders and valves (Count Five).

The shippers served by the "Oil Well Express Corporation were secured as a result of solicitation, in most instances by respondent E. R. Ball, who testified as a witness for the Commission. He stated that he was the representative of the Oil Well Express Corporation in the lower San Joaquin Valley; and that he solicited and secured new shippers and exercised general supervision over the transportation business in the lower San Joaquin Valley, as well as settling claims and adjusting complaints. He further testified that he had been a director and the Secretary of the Oil Well Express Corporation, and was the owner of one share of stock, but that he had resigned from these positions. He was

(2) - Cont'd.

On February 23rd and 24th, 1937, property of twelve shippers in Los Angeles was delivered to eight consignees at Maricopa, Taft, Belridge, and Avenal. The property included empty tin cans, charcoal, nozzles, oilwell supplies, drugs, whiskeys, and sundries, display material, crated ranges, grass seed, wire line, pump parts, miscellaneous cartons of property, bolts, bags, copper wire, pressure gauges, and iron bodied valves (Count Six).

On February 25th and 26th, 1937, property of sixteen shippers in Los Angeles was delivered to eleven consignees at Taft, Belridge, Avenal, Kettleman Hills, and Kettleman City. The property delivered included dry goods, nails, hose, vacuum cleaners, hand tools, iron pump parts, sheet packing, brake lining, bearings, pipe grips, miscellaneous parts, cylinder blocks, auto parts, steel parts, brass valves, paint, electric sockets, electric conduits, fittings, wrapping paper, cutter holders, floor grating, elevator, sprockets, spray guns, and rods (Count Seven).

On March 5th and 6th, 1937, property of eighteen shippers in Los Angeles was delivered to fourteen consignees at Maricopa, Taft, Belridge, Avenal, and Kettleman City. The property delivered included pipe, printed matter, ink, temperature controller, supplies, peat mold, wire rope clip, oxygen cylinders, acetylene cylinders, rope, steel castings, pipe hanger, pipe slips, metal cloth rug saws, pump parts, poney rods, arch bars, lamps in cartons, chemical glass, iron valves, valve handle, electric batteries, tape, and steel bars, bit heads, and core trays (Count Eight).

On March 8th and 9th, 1937, property of eleven shippers in Los Angeles was delivered to eleven consignees at Bakersfield, Kettleman Hills, Avenal and Coalinga. The property delivered included oil tools, supplies, tong parts, machine bolts, packing roll, gotkools, hose, rope, rakes, loose valves,

unable to specify the date of his resignation or the date on which he assumed the responsibilities of Secretary and director, but admitted that at all times during the period set out in the affidavit, and for several months prior thereto, while acting as Secretary and director of the Company and after resigning these positions, his duties were the same. His testimony was corroborated by respondent R. W. Futhy, who testified to the effect that he was Dispatcher in charge of the Los Angeles office of the Oil Well Express Corporation and as such exercised general supervision over the physical operation of the trucks, settled claims, and acted as general manager of the transportation business in Los Angeles. He also testified that he was an officer and director of the Oil Well Express Corporation, but was unable to fix the dates on which he became an officer and director, or the time at which he ceased to be an officer and director. He, like Ball, stated that at all times, both before and after his resignation from such positions, his duties were the same. He further testified that the Oil Well Express Corporation had executed contracts with one hundred fifty or one hundred sixty shippers, and that the said contracts were in effect during the dates enumerated in the affidavit. When a shipper called the Oil Well Express Corporation for transportation services and said shipper was not among the shippers with whom the Company had a contract, a representative of the Oil Well Express Corporation was immediately sent to the shipper for the purpose of securing a signed contract. The Oil Well

(2) - Cont'd.

sample cans, wooden handles, pipe, wire rope, milk cans, chemical glassware, wrenches, drums of tru-to-lite, oxygen cylinders, surveying instruments, parts and hardware.
(Count Nine)

Express Corporation had two types of freight contracts, and the shippers were requested to sign one or the other. Both types of contracts were substantially the same, and had attached to them rate schedules which are identical. (3)

(3) The following is a copy of a contract between Oil Well Express Corporation and Pacific Pump Works, Exhibit #32, which is the form of contract practically all shippers executed:

FREIGHT CONTRACT

THIS AGREEMENT, made this 12th day of November, 1936, by and between the OIL WELL EXPRESS CORPORATION, a California Corporation, whose principal place of business is 4450 South Main Street, Los Angeles, California, hereinafter called the CARRIER, and the PACIFIC PUMP WORKS, whose address is 5716 Bickett Street, Huntington Park, California, hereinafter called the SHIPPER,
WITNESSETH:

1. The Shipper agrees to ship by the Carrier 50% of the goods, wares, and merchandise which it desires to have transported from the Los Angeles Area to the Bakersfield, Taft, Belridge and Kettleman Hills Areas in the San Joaquin Valley, and the Ventura, Santa Barbara, Elwood and Santa Maria Areas along the Coast Highway; that is to say, moving in either direction.

2. The Carrier agrees that it will transport such goods, wares, and merchandise delivered to it by the Shipper to the points designated by the Shipper by automobile-truck, and will deliver the same in good order and condition, and will be responsible for all loss or damage during shipment except such as may be caused by the Acts of God, or forces beyond its control.

The Carrier further agrees that it will carry and maintain in full force and effect during the term of this contract, good and sufficient insurance against fire, theft and accident.

The Carrier further agrees that it will make every reasonable effort to complete delivery of the shipments received by it hereunder within twenty-four hours after receipt of the same by it.

From the testimony of the shipper witnesses, which was in all respects similar in character, and of respondents Ball and Putney, the record clearly establishes that the transportation service rendered by respondent Oil Well Express Corporation was an indiscriminate one, available to all those who sought to make use of it. The Oil Well Express Corporation at no time refused to accept property for transportation between the above points when requested so to do, and the rates to all shippers for the same service were identical. The property transported by the Oil Well Express Corporation for its shippers, and particularly the shippers enumerated in the affidavit, was transported pursuant to the provisions of a uniform bill of lading.

(3) Cont'd.

3. The Carrier agrees that it will at all times hold itself ready and able to perform the transportation service hereunder upon call by the Shipper, but the Shipper agrees that it will give to the Carrier reasonable notice of the need for its services.

4. For the services of the Carrier hereunder, the Shipper agrees to pay the rates of freight set forth on the schedule attached hereto and made a part hereof and marked "EXHIBIT A". It is understood that the rates herein fixed are subject to such rates as may hereafter be fixed by Decision of the California Railroad Commission, or any other body empowered to fix rates.

The Shipper further agrees to make payment to the Carrier of all amounts to become due hereunder on or before the tenth day of the month following date of invoice rendered for the services performed.

5. This agreement shall be and continue in full force and effect for the period of one year from the date hereof.

6. Neither party hereto shall assign or transfer this contract or any interest herein without the written consent of the other.

Executed in DUPLICATE by the parties hereto the day and year first above written.

OIL WELL EXPRESS CORPORATION
By B. L. MIKESSELL
President (Seal)
PACIFIC PUMP WORKS
By E. F. Abraham

In most instances the shippers furnished their own bills of lading, which were printed forms. (4)

(3) Cont'd.

<u>L.T.L.Rates</u> <u>Area</u>	<u>"EXHIBIT A"</u> <u>To and From</u>	<u>C.R.C. Permit No. 19-345</u> <u>Minimum charge</u>
Ventura	.30¢ per cwt.	.50¢
Santa Barbara	.35¢ per cwt.	.50¢
Elwood	.35¢ per cwt.	.50¢
Santa Maria	.50¢ per cwt.	.50¢
Bakersfield	.40¢ per cwt.	.75¢
Maricopa	.40¢ per cwt.	.75¢
Taft	.45¢ per cwt.	.75¢
Belridge	.50¢ per cwt.	.75¢
Avenal	.60¢ per cwt.	.75¢
Kettleman Hills	.60¢ per cwt.	.75¢

<u>Miles</u>	<u>COMMODITY DISTANCE RATES</u>			
	<u>6000#</u>	<u>12,000#</u>	<u>18,000#</u>	<u>24,000#</u>
20 or less	.15	.09	.07½	.08
20 to 40	.20	.12	.10	.08
40 to 60	.27	.15	.12	.11
60 to 80	.32	.20	.16	.14
80 to 100	.40	.25	.20	.17½
100 to 120	.42	.30	.24	.21
120 to 140	.49	.35	.28	.21
140 to 160	.56	.40	.32	.24
160 to 180	.63	.45	.36	.27
180 to 200	.70	.50	.40	.30
200 to 220	.77	.50	.40	.33
220 to 240	.84	.50	.42	.36
240 to 260	.91	.52	.45½	.39
260 to 280	.98	.56	.49	.42
280 to 300	1.05	.60	.52½	.45
300 to 320	1.12	.64	.56	.48
320 to 340	1.19	.68	.59½	.51
340 to 360	1.26	.72	.63	.54
360 to 380	1.33	.76	.66½	.57
380 to 400	1.40	.80	.70	.60
400 to 420	1.47	.84	.73½	.63

Rates listed per cwt.

<u>SPECIAL COMMODITY RATES</u>		
<u>CYLINDERS OF OXYGEN & ACETYLENE</u>	<u>Out-bound rate</u>	<u>Empties returned</u>
Elwood and Santa Barbara Areas	\$6.00 per ton	\$5.00 per ton
Bakersfield and Maricopa Areas	7.00 per ton	3.00 per ton
Santa Maria and Taft Areas	8.00 per ton	4.00 per ton
Belridge, Avenal, Kettleman Hills Areas	8.00 per ton	4.00 per ton
<u>WIRE LINES</u>		
Kettleman Hills, Avenal, Coalinga Areas,	\$10.00 per ton.	

(4) A portion of the heading of bills of lading of Exhibits #25, 26 and 27 are examples of types of bill of lading used as furnished by the shippers. The statements underlined indicate

In many instances the bills of lading were furnished the shippers by the Oil Well Express Corporation. In some instances, the bill of lading of some other transportation company was used, the name thereon being crossed out and the name "Oil Well Express Corporation" or "Oil Well Express" inserted therein. In addition, the record

(4) - Cont'd.

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922, as amended August 1, 1930.)
UNIFORM STRAIGHT BILL OF LADING-ORIGINAL-NOT NEGOTIABLE
Received, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.
At Los Angeles, Calif., 12-8, 1936, from McCOMAS DRY GOODS CO.
Oilwell Express Company, Agent's No. _____ Shipper's No. 29308
the property described below, in apparent good order, *****.
CONSIGNEE TO M. C. Burns
Destination Taft State of Calif. (Exhibit #25)

(Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922, as amended August 1, 1930.)
THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record. Shipper's No. 77547
Oil Well Express Company. Agent's No. _____
Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.
At LOS ANGELES, CALIF. 12/22/1936 FROM LOS ANGELES HEAVY HARDWARE CO. the property described below, in apparent good order *****.
CONSIGNEE TO C. W. Hartman
Destination Bakersfield State of Calif. (Exhibit #26)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1930.)
UNIFORM STRAIGHT BILL OF LADING
Original-Not Negotiable
Received subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,
FROM LINK-BELT COMPANY, Pacific Division
At Los Angeles 12-10-1936 Shipper's No. 3049
Agent's No. 1477
the property described below, in apparent good order *****.
Consigned to Calif. Bettis Co. 90 Western Oilfield Supply
Destination Bakersfield State of Calif. County of _____
Route _____
Delivering Carrier Oilwell Express

shows that both collect and prepaid shipments were handled, as well as C. O. D. shipments. Payment was made by the various shippers, usually following the submission of an invoice by the Oil Well Express Corporation. In some cases payment was made by check and in others by cash. There were instances when payment was made in the form of script books which were obtained from the General Petroleum Company by the shippers, and delivered to the Oil Well Express Corporation in exchange for transportation services rendered. Each script book could be turned in for a certain quantity of petroleum products.

It is clear from the testimony of the shippers and of other witnesses that during the period alleged in the affidavit, and on each of the specific dates set forth therein in each specific count, the Oil Well Express Corporation rendered a highway common carrier transportation service, within the meaning of the regulatory statute, between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Bakersfield, Taft, Maricopa, McKittrick, Devil's Den, Avenal, and Coalinga, on the other hand. The record also shows that the Oil Well Express Corporation, in the conduct of its transportation business, as described above, was directed, controlled, and managed by B. L. Mikesell, E. R. Ball, and R. W. Futhey.

With respect to the numerous contracts entered into with the shippers served, it is significant that the only obligation assumed by the shippers who signed such contracts was to ship by Oil Well Express Corporation 50% of the property which the shippers desired to have transported between the Los Angeles area and the lower San Joaquin Valley area. It is highly question-

able whether such a contract imposes mutual obligations on the shipper and the carrier sufficient to place the carrier in the category of a contract carrier. (See Rampone v. Leonardini, 39 C.R.C. 562.) A carrier cannot preserve a private carrier status by the mere subterfuge of contract. (See Haynes v. MacFarlane, 207 Cal. 529.) Furthermore, the respondent Oil Well Express Corporation, in transporting property for its shippers pursuant to the provisions of uniform bills of lading, many of which were furnished by the corporation to its shippers, assumed obligations inconsistent with the status of a contract or private carrier. (See George v. Railroad Commission, 217 Cal. 451.)

As stated above, the respondents entered into contracts with more than 150 shippers; they were willing to transport for any shipper who would sign a contract. Entirely apart from the indefinite and uncertain obligation assumed by the shippers in such contracts, and even assuming that the contracts were sufficient in that respect, it is impossible to consider the respondents' operations as those of a private or contract carrier. The only conclusion which can be drawn from the facts shown is that the services of the respondents were available to the public generally, or a substantial portion thereof, and were not restricted to a limited and select group of shippers.

It is apparent that the respondents' operations described herein are violative of the cease and desist orders issued by the Commission in Decisions Nos. 23627 and 27515. As to respondent Ball, similar violations were found by the Commission in Decisions Nos. 24692 and 27099, in each of which he was adjudged guilty of contempt and punished accordingly. The operations of the respondents have been conducted in violation of the orders of the Railroad Commission over a period of several years, and there is no indication of any intent on the part of respondents to cease

such operations. Likewise, there is no evidence in the record which tends to mitigate or extenuate the conduct of the respondents; on the contrary, the evidence shows an inclination to evade the Commission's orders by device or subterfuge. Under such circumstances, we must impose the maximum penalties authorized by law.

Respondents Ball and Futey were called as witnesses by the Commission, and were instructed to give testimony regarding the operations described herein. Under Section 55(d) of the Public Utilities Act the Commission is precluded from imposing any penalty or forfeiture on them for their part in such operations. Respondent Oil Well Express Corporation, however, must be punished in a manner which will ensure obedience of the Commission's orders.

F I N D I N G S

Upon consideration of the record in this proceeding, the Commission hereby makes the following findings of fact:

1. The Railroad Commission, on April 27, 1931, in its Decision No. 23627, found that E. R. Ball was engaged in operating a transportation business for compensation as a highway common carrier, within the meaning of the Statutes of 1917, Chapter 213, as amended, without a certificate of public convenience and necessity, and without any prior operating right. Said decision ordered E. R. Ball to cease and desist the conduct of such common carrier operation between Los Angeles and contiguous territory, on the one hand, and certain points located in the lower San Joaquin Valley, on the other hand. Said order has

never been revoked, annulled, or stayed, and is and was at all times mentioned herein in full force and effect. A certified copy of said Decision No. 23627, containing said cease and desist order, was personally served, on September 15, 1931, upon E. R. Ball, who had personal knowledge and notice of said decision and the contents thereof prior to the effective date of said decision and order, and was able at all times thereafter to comply with said order.

2. The Railroad Commission, in its Decision No. 27515 dated November 5, 1934, found that R. W. Futhey and Oil Well Express Corporation were engaged in the transportation business for compensation as a highway common carrier within the meaning of Statutes of 1917, Chapter 213, as amended, without having a certificate of public convenience and necessity, and without a prior right authorizing the conduct of said service, and said decision ordered the above mentioned parties to cease and desist such common carrier operation between Los Angeles and contiguous territory, on the one hand, and certain points in the lower San Joaquin Valley, on the other hand. Said order has never been revoked, annulled, or stayed, and is and was at all times mentioned herein in full force and effect. A certified copy of said Decision No. 27515, containing said cease and desist order, was regularly served upon Oil Well Express Corporation on December 6, 1934. At said time R. W. Futhey was an officer and director of said corporation, and had actual knowledge and notice of the making of said order and of the contents thereof, and both Oil Well Express Corporation and R. W. Futhey were able at all times thereafter to comply with said order.

3. On February 3, 1938, there was filed with the Railroad Commission the Affidavit and Application for Order to Show Cause of A. S. Groocox, in which it was alleged in substance that E. R. Ball, notwithstanding the order contained in its Decision No. 23627, and

with full knowledge of the contents thereof, and subsequent to its effective date, had failed and refused to comply with said order in that he had continued to operate, control, manage, and use an automobile truck or automobile trucks in the business of transportation of property, as a common carrier for compensation, between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Bakersfield, Taft, Maricopa, McKittrick, Devil's Den, Avenal, and Coalinga, on the other hand, in violation of the Commission's order contained in said decision. Said affidavit further alleged in substance that R. W. Futhey and Oil Well Express Corporation, notwithstanding the order contained in Decision No. 27515, and with full knowledge of its contents, and subsequent to its effective date, had failed and refused to comply with said order in that each, jointly and severally, had continued to operate, control, manage, and use an automobile truck or automobile trucks in the business of transportation of property for compensation, as a common carrier of property, between Los Angeles and contiguous territory, on the one hand, and points located in the lower San Joaquin Valley, including Bakersfield, Taft, Maricopa, McKittrick, Devil's Den, Avenal, and Coalinga, on the other hand, in violation of the Commission's order contained in said decision. Upon the filing of said affidavit, as hereinabove set out, the Railroad Commission, on February 14, 1938, issued its order directing E. R. Ball, R. W. Futhey, Oil Well Express Corporation, and others therein named, to appear on March 8, 1938, to show cause why they, jointly and severally, should not be punished for the alleged contempts contained and set forth in said affidavit. Said Order to Show Cause, together with the Affidavit upon which said order was based, was personally served upon E. R. Ball, R. W. Futhey, and Oil Well Express Corporation on February 24, 1938. Upon the return date of said order, E. R. Ball

and R. W. Futhey appeared in person and were represented by counsel. Oil Well Express Corporation appeared by counsel.

4. Notwithstanding the orders of the Railroad Commission contained in Decisions Nos. 23627 and 27515, and with full knowledge and notice of said orders and of the contents thereof, and subsequent to the effective dates thereof, E. R. Ball, R. W. Futhey, and Oil Well Express Corporation have failed and refused to comply with the terms thereof and have continued to operate, control, and manage an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Bakersfield, Taft, Maricopa, McKittrick, Devil's Den, Avenal, and Coalinga, on the other hand, without first having obtained from the Railroad Commission of the State of California a certificate declaring that public convenience and necessity require such operation.

5. On December 8 and 9, 1936, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation, jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Taft, Maricopa, Avenal, Kettleman Hills, and Kettleman City, on the other hand.

6. On December 17 and 18, 1936, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks

used in the business of transportation of property for compensation as a common carrier, as defined in the "Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Weed Patch, Bakersfield, and East Bakersfield, on the other hand.

7. On December 21 and 22, 1936, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Maricopa, Taft, and Follows, on the other hand.

8. On February 17 and 18, 1937, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Bakersfield, Belridge, and Lost Hills, on the other hand.

9. On February 18 and 19, 1937, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation

as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Maricopa, Taft, Ford City, Fellows, and Belridge.

10. On February 23 and 24, 1937, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Maricopa, Taft, Belridge, and Avenal, on the other hand.

11. On February 25 and 26, 1937, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Taft, Belridge, Avenal, Kettleman Hills, and Kettleman City, on the other hand.

12. On March 5 and 6, 1937, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Maricopa, Taft, Belridge, Avenal, and Kettleman

City, on the other hand.

13. On March 8 and 9, 1937, respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation jointly and severally operated, controlled, and managed an automobile truck or trucks used in the business of transportation of property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Bakersfield, Kettleman Hills, Avenal, and Coalinga, on the other hand.

14. Each and all of the acts mentioned in the foregoing paragraphs 5 to 13 inclusive are in violation of said Decisions Nos. 23627 and 27515. The failure and refusal, and failure or refusal of respondent E. R. Ball to cease and desist from performing the matters and things set forth in said paragraphs 5 to 13, inclusive, and in each of said paragraphs, were and are and was and is in violation and disobedience of said Decision No. 23627. The failure and refusal, and failure or refusal, of respondents R. W. Futhey and Oil Well Express Corporation, and of each of them, to cease and desist from performing the matters and things set forth in said paragraphs 5 to 13, inclusive, and in each of said paragraphs, were and are, and was and is, in violation and disobedience of said Decision No. 27515. All of said violations of said decisions were and each of them was committed with full knowledge and notice thereof upon the part of said respondents, and each of them. Said orders of the Railroad Commission were at all times mentioned herein, and in said paragraphs 5 to 13, inclusive, and each of said paragraphs, and now are in full force and effect. Said respondents have, and each of them has, violated said orders with full notice

and knowledge of the contents thereof and with the intent on their part, and on the part of each of them, to violate the same. At the time said Decision No. 23627 was rendered, and at the time of the effective date thereof, said respondent E. R. Ball was able to comply, and has been at all times since, and was at the time of said violations and each of them, able to comply therewith and with the terms thereof. At the time said Decision No. 27515 was rendered, and at the time of the effective date thereof, said respondents R. W. Futhey and Oil Well Express Corporation were, and each of them was, able to comply, and they have and each of them has, at all times since and at the time of said violations and each of said violations, been able to comply with said decision and with the terms thereof.

15. The refusal and failure of said respondents E. R. Ball, R. W. Futhey, and Oil Well Express Corporation, and each of them, to comply with the said decisions of the Railroad Commission, and their continuance, and the continuance of each of them, to operate, control, and manage an automobile truck or trucks used in the business of transporting property for compensation as a common carrier, as defined in the Public Utilities Act, over the public highways of this State, is in contempt of the Railroad Commission of the State of California and of its decisions and orders.

J U D G M E N T.

Oil Well Express Corporation, having appeared by counsel and having been given full opportunity to answer the Order to Show Cause of February 14, 1938, and to purge itself of its alleged contempt:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the said Oil Well Express Corporation has been guilty of contempt of the Railroad Commission in disobeying its order made on November 5, 1934, in Decision No. 27515 by failing and refusing to cease and desist from operating, managing and controlling an automobile truck or trucks used in the business of transportation of property as a common carrier, as defined in Statutes of 1917, Chapter 213, as amended, over the public highways in this State between Los Angeles and contiguous territory, on the one hand, and points in the lower San Joaquin Valley, including Bakersfield, Taft, Maricopa, Kettleman Hills, McKittrick, Coalinga, Avenal, and Devil's Den, on the other hand, without first having obtained from the Railroad Commission a certificate of public convenience and necessity authorizing such operations.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that for each of said contempts of the Railroad Commission and its order as shown in Findings 5 to 13, inclusive, herein, said Oil Well Express Corporation shall be punished by a fine of FIVE HUNDRED DOLLARS (\$500.00), in the total sum of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00), said fine of FOUR THOUSAND FIVE HUNDRED DOLLARS

(\$4,500.00) to be paid to the Secretary of the Railroad Commission of the State of California within ten (10) days after the effective date of this opinion, findings and judgment.

IT IS HEREBY FURTHER ORDERED that, as to said respondent Oil Well Express Corporation, this opinion, findings and judgment shall become effective twenty (20) days after service of a certified copy thereof upon said respondent.

The foregoing opinion, findings and judgment are hereby approved and ordered filed as the opinion, findings and judgment of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of June, 1938.

W. H. ...
Leon ...
Frank ...
Carl ...
Ray ...
COMMISSIONERS.