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EXTENT OF STATE REGULATION OF INTER-
STATE MOTOR FREIGHT CARRIERS

HELEN W. MUNsert

IN DECEMBER, 1935, a trucking company, wishing to
demonstrate the merits of motor carriage of freight,
sent a fleet of five trucks and trailers on a test run from
Chicago to Los Angeles and back to New York. Precau-
tions were taken in advance to guard against loss of time.
Out of 110 hours elapsed time to Los Angeles, 22 hours
and 22 minutes were spent in delay of which 20 hours and
24 minutes were avoidable. Lack of uniformity in state
laws regulating motor carriers was an important factor
in the loss of time.

While it has been settled that interstate commerce is
subject to regulation only by the Federal government, the
right of the state to regulate persons within its juris-
diction in the exercise of its police power is recognized,
providing such regulation does not directly conflict with
Federal legislation on the subject.

Each state builds roads and maintains them at a con-
siderable cost to the people. Interstate motor carriers
use these roads without the overhead cost of a right of
way. It is only just, therefore, that compensation to the
state be made for such use. Regulation of the vehicles
engaged in interstate commerce is not unconstitutional
where based on this use of state-owned highways, but
such regulation must conform to certain restrictions, to
be reviewed in this discussion.

1 Member of the Illinois Bar; alumna of Chicago-Kent College of Law.
3 Covington & C. Bridge Co. v. Kentucky, 154 U. S. 204, 38 L. Ed. 962
(1894); Missouri, K. & T. R. Co. v. Haber, 169 U. S. 613, 42 L. Ed. 878
(1898); Chesapeake & O. R. Co. v. Conley, 230 U. S. 513, 57 L. Ed. 1597
(1913); Continental Baking Co. v. Woodring, 286 U. S. 352, 76 L. Ed.
1155 (1932); Bradley v. Public Util. Comm., 269 U. S. 92, 77 L. Ed. 1053
(1933); Ashbury Truck Co. v. R. R. Comm. of Calif., 52 F. (2d) 263
(1931); Phillips v. Moulton, 54 F. (2d) 119 (1931); Ogden & Moffett Co.
The basic doctrine was declared in *Smith v. Alabama*\(^4\) regarding a statute forbidding any engineer to operate a train unless physically fit, where the court said:

But the provisions on the subject contained in the statute of Alabama under consideration are not regulations of interstate commerce. It is a misnomer to call them such. Considered in themselves, they are parts of that body of the local law which, as we have already seen, properly governs the relation between carriers of passengers and merchandise and the public who employ them, which are not displaced until they come in conflict with express enactments of Congress in the exercise of its power over commerce, and which, until so displaced, according to the evident intention of Congress, remain as the law governing carriers in the discharge of their obligations, whether engaged in the purely internal commerce of the state or in commerce among the states.

When such regulation by the state, by virtue of its unreasonableness, becomes a direct burden on interstate commerce, and what requirements by the states have been sustained, are pertinent enquiries. Let it be said here that the passage of the new Motor Carrier Act in 1935\(^5\) will change a great deal of this law, as it represents the express enactments of Congress on a subject heretofore unregulated. The possible effect of this act will be the subject of speculation in the closing paragraphs of this discussion.

A state may tax a motor vehicle belonging to a non-resident and moving in interstate commerce, with certain restrictions on such power; and in so far as an interstate operator wishes to move between fixed termini within the state on a regular schedule as a carrier for hire, he may be required to obtain a certificate of public convenience and necessity from the state commission, and to conform to particular requirements as to size, equipment, insurance, and so on. Whether or not such statutes are invalid

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as directly interfering with interstate commerce is a question for the courts to decide, and it is purposed to point out in this paper the extent to which a state may go in regulation of motor vehicles engaged in interstate commerce. Since the question is one of constitutional law, the principal cases cited are necessarily those decided in the United States Supreme or District Courts.

**State License Tax**

The first and most important phase of the matter is that involving the direct levying of a tax. A state can neither lay a tax on the act of engaging in interstate commerce nor on the gross receipts therefrom, but interstate carriers are not wholly immune from state taxation even though its burden is indirectly or incidentally imposed upon interstate commerce. State taxation for use of the highways is not a violation of the commerce clause. The important thing is that the statute show clearly that it is intended to protect the highways and relate thereto. The basis for exaction of the tax, and the use of the proceeds therefrom, must be predicated on the theory of contribution to the state roads.

A leading case discussing these points is *Clark v. Poor.* This was a bill to enjoin enforcement of the Ohio Motor Transportation Act. The Ohio statute provided that any

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6 Leloup v. Port of Mobile, 127 U.S. 640, 32 L.Ed. 311 (1888); Lyng v. People, 155 U.S. 161, 34 L.Ed. 150 (1890); Adams Express Co. v. Ohio State Auditor, 166 U.S. 185, 41 L.Ed. 965 (1897); East Ohio Gas Co. v. Tax Comm., 283 U.S. 465, 75 L.Ed. 1171 (1931); Johnson Transfer & Freight Lines v. Ferry, 47 F. (2d) 900 (1931); Nutt v. Ellerbe, 56 F. (2d) 1058 (1932).


8 Gundling v. Chicago, 177 U.S. 183, 44 L.Ed. 725 (1900); Hendrick v. Maryland, 235 U.S. 610, 59 L.Ed. 385 (1915); Kane v. New Jersey, 242 U.S. 160, 61 L.Ed. 222 (1916); Interstate Busses Corp v. Holyoke St. R. Co., 273 U.S. 45, 71 L.Ed. 530 (1927); Clark v. Poor, 274 U.S. 554, 71 L.Ed. 1199 (1927); Interstate Busses Corp. v. Blodgett, 276 U.S. 245, 72 L.Ed. 551 (1928); Alkazin v. Wells, 47 F. (2d) 904 (1931); Prouty v. Coyne, 55 F. (2d) 289 (1932); Roadway Express v. Murray, 60 F. (2d) 293 (1932); Aero-Mayflower Transit Co. v. Grosjean, 3 F.Supp. 527 (1932).

9 274 U.S. 554, 71 L.Ed. 1199 (1927).
motor transportation company wishing to operate in the state should first obtain a certificate from the Public Utilities Commission, and pay a tax graduated according to the number and capacity of the vehicles used. Clark and Riggs, plaintiffs, operated as common carriers a motor truck line between Indiana and Ohio, engaging only in interstate commerce. They refused to apply for a certificate or pay the tax, and brought this suit to prevent enforcement of the act against them. The commission was willing to grant such a certificate as a matter of course upon application and compliance with other phases of the law. The plaintiffs claimed that the act was unconstitutional as applied to them because interstate commerce could only be regulated by Congress. The Supreme Court affirmed dismissal of the bill, holding the state statute constitutional. The opinion said that highways were public property and owned by the State, so that users of them were subject to regulation by the State to insure safety of its people and convenience and conservation of the roads themselves. Since common carriers are using the roads more than other operators of vehicles, they may be charged extra for employing them in their business.


The latest reaffirmance of the doctrine is found in the decision handed down by the Supreme Court on May 18, 1936, in the case of Morf v. Bingaman, Supreme Court No. 772. The court upheld the constitutionality of a statute of New Mexico exacting a flat permit fee for the privilege of transporting motor vehicles, on their own wheels, over the state highways for the purpose of sale within or without the state, as applied to dealers transporting such cars in caravans over the highways. The court said: "There is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways, with enhanced wear and tear on the roads and augmented hazards to other traffic, which imposes on the state a heavier financial burden for highway maintenance and policing than do other types of motor car traffic. We cannot say that these circumstances do not afford an adequate basis for special licensing and taxing provisions, whose only effect, even when applied to interstate traffic, is to enable the state to police it, and to impose upon it a reasonable charge, to defray the burden of this expense, and for the privilege of using the state highways."
The plaintiffs complained further that the tax could not be sustained for upkeep of the highways, since not all of it was used for maintenance and repair thereof, some being used for the expense of administration and enforcement of the act and some for other purposes. The court held that this was immaterial and since the tax was assessed for a proper purpose and was not objectionable in amount, the use to which the proceeds were put did not concern plaintiffs.

**Basis of Classification for Tax**

The taxes levied on motor trucks are usually based on carrying capacity, with figures based on the gross weight including the maximum load, or net weight, while those on passenger cars are based on horse power. There may also be a mileage tax, in addition to the license fee, and a gasoline tax, all of which will be discussed later. The classifications based on the carrying capacity of trucks, and those based on horse power, used in determining the amount of the license fee, have both been upheld in the United States Supreme Court.

In *Hicklin v. Coney*\(^{11}\) the defendants, private contract carriers engaged in interstate commerce, refused to pay the license fees required by the statute of South Carolina. The Railroad Commission of the state brought this suit in the original jurisdiction of the Supreme Court of the state to enforce the statute. The defendants claimed the statute as applied to an interstate carrier was contrary to the commerce clause, because the license fees were based on the carrying capacity of the vehicles. The court upheld the statute, saying,

Carrying capacity, the size and weight of trucks, unquestionably have a direct relation to the wear and hazards of the highways. It is for this reason that the authority of the State to impose directly reasonable limitations on the weight and size of vehicles, although applicable to interstate carriers, has been sustained.

\(^{11}\) 290 U. S. 169, 78 L. Ed. 247 (1933).
[Citations.] As the State may establish such regulations directly, the State may adjust its license fees, otherwise valid as being reasonable and exacted as compensation for the use of the highways, according to carrying capacity in furtherance of the same purpose.

Graduation according to weight is a valid classification.\textsuperscript{12}

\textit{Hendrick v. Maryland},\textsuperscript{13} a case involving the classification based on horse power, was a prosecution before a justice of the peace for violation of the Maryland motor vehicle law. The defendant lived in the District of Columbia and drove into Maryland. While temporarily there, he was arrested for operating his car without a certificate of registration. The statute had a section which provided that a nonresident who had complied with the laws of his own state for registration could obtain a special tag and permission to operate for a temporary period without the Maryland license, but residents of the District of Columbia were denied such privilege. The defendant contended the statute was void on several grounds, one of which was that the tax, based on a difference in horse power, was exacted according to an arbitrary classification, and that any such attempt to regulate interstate commerce was void. The court held the statute valid as a reasonable exercise of the State's police power. As to the classification according to horse power, Mr. Justice McReynolds said in the opinion,

As the capacity of machine owned by plaintiff in error does not appear, he cannot complain of discrimination because fees are imposed according to engine power. Distinctions amongst motor machines and between them and other vehicles may be proper,—essential, indeed,—and those now challenged are not obviously arbitrary or oppressive. The statute is not a mere revenue measure, and a discussion of the classifications permissible under such an act would not be pertinent.

\textsuperscript{12} Carley & Hamilton v. Snook, 281 U. S. 66, 74 L. Ed. 704 (1930); Aero-Mayflower Transit Co. v. Watson, 5 F. Supp. 1009 (1934); Grobert v. Board, 60 F. (2d) 321 (1932); Roadway Express v. Murray, 60 F. (2d) 293 (1932).

\textsuperscript{13} 235 U. S. 610, 59 L. Ed. 385 (1915).
The Hendrick case was cited the following year, in *Kane v. New Jersey*,\(^\text{14}\) as authority for the statement that the power of the state to regulate the use of motor vehicles on its highways is properly exercised in imposing a license fee graduated according to the horse power of the engine. A good explanation of the reasoning underlying such statutes appears in *Re Schuler*,\(^\text{15}\) decided by the California Supreme Court. The court ruled that the due process clause of the Constitution was not violated by the provisions of an act imposing a license tax based on horse power, since the intent of the legislature was to fix the tax with some reference to the destruction of the highways by the vehicle, and while such method was not the most scientific basis it was not without justification.

**Dual Taxation**

In connection with the necessity for the state license tax there arises the problem of the city license tax and whether such dual taxation is valid, even when nondiscriminatory. The constitutionality of such requirement was discussed in *Carley & Hamilton v. Snook*,\(^\text{16}\) although that case involved an intrastate carrier. The suit arose by a bill to enjoin collection of the California motor vehicle registration tax. The plaintiffs declared that certain sections of the act were unconstitutional. Particularly, objection was made to the classifications based on load and to the fact that they were required to pay any state license tax at all. The proceeds of the tax, after deduction for support of the division of motor vehicles, were distributed half to the counties for upkeep of roads maintained by them and half to the maintenance of state roads. All incorporated cities in California had passed ordinances imposing registration license fees on motor vehicles, and 75 per cent of the amount so collected went


\(^{15}\) 167 Cal. 282, 139 P. 685 (1914).

\(^{16}\) 281 U. S. 66, 74 L. Ed. 704 (1930).
to the repair of the city streets. The plaintiffs operated exclusively or principally over highways within the limits of such cities, and paid the city taxes, but they claimed that the fees were in effect "tolls" for the use of the highways and that to compel them to pay for support of roads they didn't use was a violation of the Fourteenth Amendment.

The validity of the law was sustained by the court. It was held that there is nothing in the Constitution which requires a state to apply fees for the benefit of those who pay them. The objection against paying both city and state fees was overruled, the court saying:

The objection that the appellants should not be required to pay the challenged fees because they are already paying the city license tax is but the familiar one, often rejected, that a state may not, by different statutes, impose two taxes upon the same subject-matter, although, concededly, the total tax, if imposed by a single taxing statute, would not transgress the due process clause.

As to the objection that these were "tolls" prohibited by the Federal Highway Act, wherein it was provided that all highways constructed or reconstructed under the act should be free from all tolls, it was held that these registration fees were not tolls in the sense of a proprietor's charge for the privilege of passage over a road or bridge, but were taxes by the state for the use of its highways.

MILEAGE TAX

Many states levy a mileage tax. In Johnson Transfer & Freight Lines v. Perry such a tax was held valid, even though there was also exacted a gasoline tax, proceeds from which went to defray highway costs. Two carriers brought a bill for an injunction against enforcement of the Georgia motor vehicle act. One of the complainants was a private carrier resident in Alabama, and the other

17 U. S. C., Tit. 23, sec. 9.
18 47 F. (2d) 900 (1931).
was a common carrier resident in Tennessee, both operating freight trucks regularly between Birmingham, Alabama, and Chattanooga, Tennessee. The only paved road available passed for twenty-three miles through Georgia over a highway rebuilt with Federal aid. Neither carrier accepted or delivered freight in Georgia, simply passing through the state of necessity.

The complainants applied to the State Public Service Commission for a certificate and for the annual licenses required by Georgia, tendering the necessary fees. The commission refused to consider these applications unless made on its particular printed form which contained an agreement to observe all requirements of the Georgia statute and to abide by all commission regulations, nor unless the applicants would give bond as required by the act "to secure the owner against loss or damage to freight," and would deposit $75 to secure payment of the mileage tax which amounted to three-fourths of a cent per mile traveled. The applicants refused to sign such printed form, give such bond, (although they were willing to give one protecting the public from negligent injuries), or pay such deposit. Certificates were refused them, and the commission prosecuted the drivers of the trucks for not having the proper licenses.

The basis upon which the injunction against such prosecution was sought was that the statute thus applied violated the commerce clause and the equal protection clause, as well as the Federal Highway Act prohibiting tolls. The court granted an interlocutory injunction on two grounds, first, that the requirement for the bond was invalid as applied to plaintiffs, and second, that they need not sign the printed agreement which was also invalid as applied to them. The exaction of a promise to obey every requirement of the commission and of the statute was held bad as an attempt to require a private carrier to become a common carrier, and the requirement of cargo
indemnity insurance was also invalid as not being related to the use of the roads.

The demand of the tax deposit, however, was valid even though required only of those operating between fixed termini, because there was a reasonable basis for the distinction. The tax on the basis of mileage, scaled according to the size of the vehicle and the actual use of the road, is valid, being predicated on the need of the highways for repair and replacement.20 The fact that there is likewise a gasoline tax to contribute to the upkeep of the roads is no reason for excusing payment of the mileage tax. The carrier may not purchase any gasoline in the state at all, especially where, as here, the actual mileage traveled in Georgia is so slight. He cannot complain that he pays two or more taxes if each is for a justified purpose and if they exceed no constitutional limit.

Another example of a statute assessing a mileage tax was found in the Oklahoma motor vehicle act, which divided carriers into three classes: Class A—common carriers between fixed termini and with regular routes; class B—all carriers not in classes A or C; and class C—all carriers transporting their own goods but collecting for such carriage, with some specific exceptions not material to the issue. In addition to the regular automobile license taxes, a mileage tax of two-fifths of a cent per mile on each vehicle was levied, for carriers in class A, and for those in class B, one-half cent per mile on each vehicle.

In the case of Roadway Express v. Murray21 this tax was attacked as being unconstitutional and discriminatory. The court sustained its validity as being necessary to the maintenance of the state roads and held that the

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21 60 F. (2d) 293 (1932).
distinction between class A and class B carriers was reasonable because the common carriers over a regular route were much less difficult to inspect and supervise, and collection of the tax from them much easier than from a periodic carrier. The difference is not disproportionate but reasonable and justified.

Gasoline Tax

A third possible tax which may be levied by the state to support its roads, beyond the license tax and mileage tax, is the gasoline tax. The distinction between a valid and an invalid tax on gasoline was pointed out in *Central Transfer Company v. Commercial Oil Company et al.*

That case was a suit for an injunction against the Attorney General of Missouri to restrain collection of the state gasoline tax. The plaintiff was a Missouri corporation engaged solely in interstate commerce, hauling freight from St. Louis, Missouri, to East St. Louis, Illinois. It brought this suit in the Federal District Court on the ground that a Federal question was involved—the constitutionality of the Missouri Motor Fuel Law. The contentions were that the tax violated the due process clause and was discriminatory, and was a direct tax on interstate commerce since it compelled the plaintiff to pay a tax on gasoline bought in Missouri but used in interstate commerce.

The court dismissed the suit for lack of jurisdiction, holding that no real Federal question was involved since the statute was not unconstitutional. It distinguished this tax from that held void in *Helson v. Kentucky,* where the state of Kentucky attempted to tax gasoline bought in Illinois but being used in Kentucky. In that case the court specifically said:

While a state has power to tax property having a situs within its limits, whether employed in interstate commerce or not, it

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22 45 F. (2d) 400 (1930).
23 279 U. S. 245, 73 L. Ed. 683 (1929).
cannot interfere with interstate commerce through the imposition of a tax which is, in effect, a tax for the privilege of transacting such commerce.

In the former case, the state was taxing a commodity which had come to rest within its limits, as a pure excise tax, and whether it was to be used in interstate commerce or not was immaterial. To hold otherwise would result in a maze of difficulties since everyone driving outside the state or contemplating such would insist on an exemption therefor.

**Purpose of State Tax**

The purpose for which a valid tax may be levied on vehicles moving in interstate commerce is clearly limited to such amount as constitutes a fair contribution to the upkeep of the highways. The taxpayer may question such purpose, and if he shows that the tax bears no reasonable relation to that end, it will not be sustained. The leading case on that subject is *Interstate Transit v. Lindsey.*\(^{24}\)

The Tennessee act imposed a privilege tax according to carrying capacity on interstate motor bus carriers. An Ohio corporation paid the tax under protest and brought this suit to recover the amount back, claiming that the statute violated the commerce clause. The tax was based solely on seating capacity of the bus operating in interstate commerce, and the proceeds, by the exact words of the statute were to "go and belong exclusively to the general funds of the state" while the other state motor vehicle taxes were expressly allocated to a segregated highway fund.

The court declared the tax invalid, since it was clearly not predicated on use of the highways. For one thing, as levied on buses, it was based solely on earning capacity, since it was the number of passengers which could be carried, not those in fact carried, which determined the amount. Further, the proceeds of the tax not being ex-

\(^{24}\) 283 U. S. 183, 75 L. Ed. 953 (1931).
pressly for the use of the highway department, there was no other basis for sustaining the charge as relating to the wear and tear on such highways. It was plainly a privilege tax for the actual carrying on of interstate bus traffic and as such a direct interference with interstate commerce.

The burden is always on the state, where a tax of this sort is questioned, to prove that the purpose of the taxing statute is to pay the cost of administration thereof, and then to obtain a fair compensation for the construction, repair, maintenance and improvement of the state roadways.

Certificate of Public Convenience and Necessity

The requirement that a common carrier engaged solely in interstate commerce obtain a certificate of public convenience and necessity has been contended to be an unconstitutional burden by the state on interstate commerce. There is, however, a distinction made between demanding compliance with the regulatory provision of the statute as a condition precedent to such certificate, and merely requiring such certificate as a permit to use the roads, which will be granted as a matter of course to an interstate carrier. If the certificate can, by statute, be refused on the ground that public convenience and necessity do not justify its issuance, the refusal is a void interference with the free flow of commerce. But requiring such certificate before using the highways without attaching regulatory conditions thereto, is proper in view of the fact that an interstate carrier has no better right than any other carrier to use the state's highways without its consent or without paying for it. As was said in


Atlantic-Pacific Stages v. Stahl, 27

A state may require an interstate carrier to obtain a permit before using the highways of the state and may condition the issuance of that permit upon compliance by the carrier with such laws as those described—such laws, that is, as it is proper for the state to enact, not including, however, any law either prohibiting or imposing an undue burden on interstate commerce.

The certificate must issue as a matter of course to interstate carriers, providing they pay the reasonable fee therefor.

Buck v. Kuykendall28 presented the question of the validity of a requirement of such certificate. A bill was filed to enjoin enforcement of the Washington motor vehicle statute which prohibited common carriers for hire from using the highways without first having obtained from the director of public works a certificate of public convenience and necessity. The state Supreme Court had construed the statute to apply to common carriers engaged exclusively in interstate commerce. Buck, a citizen of Washington, wished to operate an auto stage line between Seattle, Washington, and Portland, Oregon, as a common carrier for interstate traffic exclusively. He obtained an Oregon license; and alleging willingness to comply with all applicable regulations concerning common carriers, he applied for a Washington certificate of public convenience and necessity. The certificate was refused on the ground that the territory in question was already adequately served by four auto stage lines holding such certificates from the state of Washington. Buck brought suit against Kuykendall, director of public works, to enjoin interference with the operation of the projected line. The injunction was denied and the bill dismissed in the lower court. The Supreme Court reversed the case, holding that the primary purpose of this statute was not regulation with a view to conservation of

27 36 F. (2d) 260 (1929).
the highways, but the prohibition of competition. And, although Oregon had issued its certificate, which was equivalent to saying that public convenience and necessity demanded the bus line, Washington denied it, which was an attempt to regulate interstate commerce. This was clearly invalid because an invasion of a field reserved for Federal regulation.

The imposition of a special permit tax to compensate the officers entrusted with enforcement of the state highway laws is not justified where there are regular license fees exacted. Since part of the proceeds of such fees go to the administration of the statute, such special permit tax is unwarranted.29

The right of the state to refuse to permit an interstate carrier to operate where he has not complied with the reasonable requirements of the statutes is absolute. However, difficulty lies in determining if the statute is reasonable and not a burden on interstate commerce, so that denial of a certificate to operate is necessary to promote the public safety. If it is so necessary, and the reason for refusal is solely on non-compliance with proper laws, conforming to the principles hitherto illustrated, then the commerce clause is not violated by such denial.30

In *Michigan Public Utilities Commission v. Duke*31 it was held that imposition upon a private carrier of a duty to operate as a common carrier under a permit was an unlawful burden on interstate commerce. The Michigan statute provided that no person should engage or continue in the business of transporting persons or property by motor vehicle for hire upon the public highways, over a fixed route or between fixed termini, unless he first obtained permission so to do from the state public utilities

29 Roadway Express v. Murray, 60 F. (2d) 293 (1932).
31 266 U. S. 570, 69 L. Ed. 445 (1925).
commission. The plaintiff, seeking to restrain enforcement of the act against him, was a private contract carrier. The court held that to enforce this act against plaintiff was in effect to compel him to become a common carrier, and said:

But it is well settled that a state has no power to fetter the right to carry on interstate commerce within its borders by the imposition of conditions or regulations which are unnecessary and pass beyond the bounds of what is reasonable and suitable for the proper exercise of its power in the field that belongs to it. To enforce the act against the plaintiff would be to take from him the use of instrumentalities "by means of which he carries on the interstate commerce in which he is engaged as a private carrier, and so directly to burden and interfere with it." So the court held that the requirements to be exacted of the plaintiff had no relation to public safety or order in the use of motor vehicles upon the highways, or to the collection of compensation for the use thereof, and were consequently in violation of the Federal Constitution.

LIMITATION OF LOAD OF VEHICLE

Our next consideration concerns the restrictions upon motor vehicles and the operators thereof which may be enforced by the state.

The question of the right of the state to limit the actual size and weight of any motor vehicle traveling upon its highways is an apt one. If the basis of any regulation of an interstate motor carrier is the injury to the highway, then it would seem logical that anything having a direct bearing on such injury could be limited. So it was held in *Morris v. Duby*.

The plaintiffs therein operated motor trucks for hire on the Columbia River highway in Oregon and had complied with all the state rules and regulations respecting the operation along such highway of motor carriers carrying a combined maximum gross

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load of not exceeding 22,000 pounds. The highway commission, under an Oregon law, reduced the maximum to 16,500 pounds by an order reciting that the road was being damaged by heavier loads. The plaintiffs filed suit to enjoin enforcement of the order on the ground it invaded their constitutional rights. The suit was dismissed in the lower court and appealed to the Supreme Court. The Oregon statute provided that the highway commission could grant special permits to vehicles carrying in excess of 22,000 pounds, and that whenever in the judgment of the commission it would be for the best interests of the state and for protection from undue damage of any highway to reduce the maximum weights and speeds for vehicles, authority was given so to do. The order complained of found that the road was being damaged because of the loads moving maximum weights at maximum speeds, and therefore reduced the maximum to 16,500 pounds and directed that changes be made in respect to tires and their width. The plaintiffs claimed that the acts of Congress and of Oregon constituted a contract giving them a right to the heavier load which could not be impaired, and that they could not make a profit with a lighter load.

The court held that the mere fact that plaintiffs could not make a profit with the lesser load did not prove the regulation discriminatory or unreasonable. In the absence of any averments of specific facts showing fraud or abuse of discretion, the judgment of the highway commission that such weight is injurious to the highway for the use of the public, and increases the cost of repair, is conclusive. The state has a right to protect its roads and nothing binds it contractually to continue its previously given permission to operate a vehicle carrying a particular weight.

LIMITATION OF SIZE OF VEHICLE

The Texas Motor Vehicle Act, fixing a seven thousand
pound net load limit on trucks, was attacked as unconstit-utional in *Sproles v. Binford*. This statute fixed stated limitations of size—outside width, height including load, and length—and prohibited to operation of any "vehicle" exceeding these limitations, unless under a special permit to be granted in exceptional cases. Plaintiffs sought to restrain enforcement of the act by claiming the restrictions were unreasonable and arbitrary, had no substantial relation to highway protection, and were repugnant to the commerce clause.

The Supreme Court went into the comprehensive findings of the District Court concerning the status of the plaintiffs as carriers in both intrastate and interstate commerce and their investments in equipment, the capacities of all registered vehicles, the miles and kinds of highways in Texas, representing public investment of more than two hundred and fifty million dollars, the increase in the number of trucks, and the dangers of excessively loaded trucks and vehicles of greater width or length than that prescribed by the statute. The court held that the findings were supported by the evidence and said:

In exercising its authority over its highways the State is not limited to the raising of revenue for maintenance and reconstruction, or to regulations as to the manner in which vehicles shall be operated, but the State may also prevent the wear and hazards due to excessive size of vehicles and weight of load. Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. ... The requirement in *Morris v. Duby*, related to the gross load limit, but we know of no constitutional distinction which would make such legislation appropriate and deny to the State the authority to exercise its discretion in fixing a net load limit.

Therefore, generally limitations of weight and length are valid. There is no discrimination against interstate

33 286 U. S. 374, 76 L. Ed. 1167 (1932).
34 Contract Cartage Co. v. Morris, 59 F. (2d) 437 (1932); City Grocery Co. v. State Road Dept., 60 F. (2d) 331 (1932).
commerce since the requirement is as to all vehicles alike, and as to any objection that it violated the contract clause, contracts made with respect to use of the highways must be made in contemplation of the regulatory authority of the state. This statute was held valid, and the plaintiffs' various contentions were thus overruled.

**SAFETY REQUIREMENTS**

Further, the state may prescribe safety regulations and requirements in the absence of Federal legislation in the matter. Of course, regulations by Congress in the nature of a general police power in connection with its control of commerce, such as safety requirements and hours of labor, would override any state police power in conflict. But requirements for the licensing of drivers are not invalid as restrictions on interstate commerce where there is no Federal regulation. And provisions allowing the state commission to insist that motor vehicles be kept in a safe and sanitary condition, to fix qualifications of operators as to age and hours of service, and to require the reporting of accidents, are manifestly related to the safety of the state's citizens, just as are traffic regulations as to speed and warning signals.

**LIABILITY INSURANCE REQUIREMENTS**

The states usually require the operators of motor carriers for hire to file a liability insurance policy. Whether or not such is a valid provision depends upon the intent behind it. Cargo insurance cannot be required, but public liability insurance can be. Where the construction of the statute shows that the policy is to protect the interests of the public by securing compensation for injuries to third persons and their property from negligent

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operations of the carriers, the statute will be upheld. Where the attempt is made to require cargo insurance to protect the shippers who, in the case of interstate shipments are usually nonresidents of the state, such is void as an attempt to regulate interstate commerce, since it has no relation to the people of the state and their safety, or to the state roads. The states cannot require an interstate motor carrier to carry insurance covering interstate passengers or insurance against loss or injury of cargo.

In Smith v. Cahoon the plaintiff, a private carrier for hire, was arrested for operating vehicles on the Florida highways without having obtained the certificate of public convenience and necessity and without paying the tax as required by the Florida statute. Claiming the statute unconstitutional, he brought this petition for a writ of habeas corpus. One section of the act provided that no certificate should be valid until a bond was filed, amount to be determined by the commission,

... for the protection, in case of passenger vehicle, of the passengers and baggage carried in said vehicle and of the public against injury caused by negligence of the person or corporation operating the said vehicle, and in the case of the vehicle transporting freight, for the protection of the said freight so carried and of the public against injuries received through negligence of the person or corporation operating said freight carrying vehicle; ... the said bonds shall be conditioned to indemnify passengers and the public receiving personal injuries by any act of negligence, and for damage to property of any person other than the assured. ...

With the approval of the commission, the applicant could file an insurance policy in lieu of a bond.

This particular statute was held void because it attempted to regulate the business of a private carrier to

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89 Ibid.
40 Johnson Transfer & Freight Lines v. Perry, 47 F. (2d) 900 (1931).
41 Clark v. Poor, 274 U. S. 554, 71 L. Ed. 1199 (1927); Sprout v. South Bend, 277 U. S. 163, 72 L. Ed. 833 (1928).
42 283 U. S. 553, 75 L. Ed. 1264 (1931).
the same extent as a common carrier, which in effect compelled petitioner to become a common carrier, amounting to a taking of property without due process of law. But the court discussed the provision requiring a bond and said:

In the present instance, the regulation as to the giving of a bond or insurance policy to protect the public generally, in order to be sustained, must be deemed to relate to the public safety. This is a matter of grave concern as the highways become increasingly crowded with motor vehicles, and we entertain no doubt of the power of the state to insist upon suitable protection for the public against injuries through the operations on its highways of carriers for hire, whether they are common carriers or private carriers.

The court went on to criticize as discriminatory the particular provisions which exempted from the giving of such bond those who carry for hire farm products, dairy products, fish or oysters, and the like. This was an unjust discrimination and the classification bore no relation to the purpose for which it was made.

In *Hicklin v. Coney*, before discussed, the state court had already construed the provision of the statute requiring bond as not imposing upon contract carriers the requirement of obtaining and carrying cargo insurance, but merely requiring execution of an indemnity bond to protect the public from any acts of negligence. The high court affirmed the decision holding this valid, saying it was bound to follow the state court’s construction, and as so construed the statute was constitutional and within the power of the state to control the safety of those using its highways.44

In the Interstate Commerce Commission Report on Co-ordination of Motor Transportation, it was stated:

The necessity for requiring interstate operators to carry

43 290 U. S. 169, 78 L. Ed. 247 (1933).
44 See also Alkazin v. Wells, 47 F. (2d) 904 (1931); Louis v. Boynton, 53 F. (2d) 471 (1931); Sage v. Baldwin, 55 F. (2d) 968 (1932); Roadway Express v. Murray, 60 F. (2d) 293 (1932); Cobb v. Dept. of Public Works, 60 F. (2d) 631 (1932); Deppman v. Murray, 5 F. Supp. 661 (1934).
45 182 I. C. C. 263, 373 (1932).
liability insurance is perhaps greater than in the case of intra-state operators because the former are operating without any showing of public convenience and necessity and without any showing of financial responsibility and some of them are of the fly-by-night types. Well-organized interstate carriers as a rule carry liability and indemnity insurance.

Particular provisions of state statutes covering the number and color of lights, flares, etc., are clearly within the power of the state to protect the safety of its citizens, as such are warning signals designating the truck on a dark highway, and preventing negligent accidents.46

Reciprocity Among States

The various states have generally provided for reciprocal rights, to honor like rights in the sister states. Such provisions have been sustained as valid, and the mere fact that a foreign vehicle is not or cannot be brought within the class to be benefited by such provision does not discriminate against it.47 The usual style of the provision is to authorize vehicles owned by nonresidents, properly registered in the city or state of the owner and carrying license plates as evidence of the fact, to use the state highways for a certain period without registration or tax. It was such a provision in the Minnesota state law which was upheld in Storaasli v. Minnesota,48 where the court said, “If the state determines to extend a privilege to nonresidents, it may with propriety limit the concession to those who have duly registered their vehicles in another state or country.”

Federal Motor Carrier Act

The passage of the Motor Carrier Act of 193549 by Congress has altered the entire picture since it repre-

47 Roadway Express v. Murray, 60 F. (2d) 293 (1932).
48 283 U. S. 57, 75 L. Ed. 839 (1931).
sents Federal regulation of a field hitherto unregulated save by the individual states. As before stated, the validity of these state laws on matters affecting interstate commerce depends upon the absence of national legislation. Now Congress has spoken on this very important subject. Some of the comments found in the reports of the committees of the House of Representatives and the Senate throw interesting light on the purpose of the bill:

Regulation of motor carriers is, in effect, in nearly all of the States, growing from relatively minor beginnings until it now embraces common carriers of passengers in 47 States and the District of Columbia, common carriers of property in 42 States and the District of Columbia, contract carriers of property in 31 States and private carriers of property in 8 States. The State regulatory commissions are strongly urging Congress to enact Federal regulation to "stop the gaps" in State regulation and to enable them more effectively to regulate intrastate transportation. The practically unrestrained use of State highways by interstate motor carriers has long been a serious handicap to the successful administration of State regulatory laws. Carriers for hire, of all types, generally concede the need for public regulation in some form. They want some restraining hand.

And in a House report the following appeared:
Conformity with existing State regulations is a very desirable feature in this bill. . . . We can only have such a system by regulation of all agencies of public transportation in such a manner that there will be the least conflict between the State regulations and interstate regulation of motor carriers.

These quotations, though lengthy, explain the object of the framers of the act itself, and clarify the declaration of policy as set out in the second section thereof:

It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and

50 See footnote 3.
efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and co-ordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and co-operate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.53

The act was passed after years of effort to produce such a measure. Because of the many mechanical improvements in motor vehicles and the increasing miles of good roads, the highways have become crowded with cars, and the growth of the use of the motor truck has been amazing. Its principal value has been in short hauls, and the advantages of pick-up and store-door delivery service. But the coast-to-coast trip described in the opening paragraph has indicated that the saving of time and money may extend as well to long distance hauls. The rise of joint rail and truck business, whereby either the railroads may own their own trucks and use them for pick-up and delivery of less than carload lots, or the trucking interests run their loaded trailers on to flatcars which then carry them to destinations where they are picked up by trucks, points the way to a new phase of freight traffic.

The motor carriers have cut into the revenue of the railroads tremendously, and the railroads have constantly complained of the freedom of such motor carriers from Federal legislation. Now such freedom is a thing of the past, and the larger trucking concerns are not ill pleased because it means that racketeering and cutthroat operation will be practically at an end. Of course, the threat that motor buses and trucks were going to be regulated solely in the interests of the railroads was a

possibility, but under the declaration of policy in the act, such should be remote. The hope is for a system of "co-ordinated transportation for the Nation which will supply the most efficient means of transport and furnish service as cheaply as is consistent with fair treatment of labor and with earnings which will support adequate credit and the ability to expand as need develops."\(^{54}\)

The provisions of the act apply to transportation of persons or property by motor carriers in interstate or foreign commerce, and to the procurement and provision of facilities for such, and regulation thereof. The act covers both common and contract carriers.

Under its terms, the Interstate Commerce Commission can fix requirements for uniform systems of accounts, records and reports, qualifications and maximum hours of service of employees, and safety of operation and equipment. No common carrier can operate on the highways in interstate commerce without a certificate of public convenience and necessity, and no contract carrier can do so without a permit. Brokerage licenses are required of those engaged in procuring contracts for such transportation. Certificates and permits may be transferred, subject to rules of the Commission, which is also to supervise consolidation, merger, and acquisition of control of motor carriers. No certificate nor permit will issue until compliance with rules of the Commission as to liability insurance. The Commission is to supervise rates and to see that they are not excessive, discriminatory, or unduly preferential or prejudicial. Tariffs of the common carriers and schedules of the contract carriers are to be filed and published. Methods of collections of rates and charges are set forth, and penalties for violating the act are named. The Commission is authorized to issue plates identifying interstate carriers, and to in-

investigate and report on the need for Federal regulation of the sizes and weights of motor vehicles and qualifications and maximum hours of service of employees of the carriers.

Therefore, it now appears that there is Federal legislation on all the points involved in the cases herein reviewed under state statutes save one, the right of the state to tax for the privilege of the use of its highways. As to that the Motor Carrier Act specifically says,

Nothing in this chapter shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.\(^5\)

The general policy is to be one of noninterference with state regulation except as such causes disadvantage or prejudice to persons or localities in interstate commerce. But Congress has gone even further than it did in connection with rail carriers, since it has forbidden the Commission to interfere with intrastate commerce of motor carriers even to protect interstate commerce. There is a proviso attached to the paragraph giving the Commission power to establish rates, which reads as follows:

*Provided however, That nothing in this chapter shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.*\(^6\)

This prevents any holding in regard to motor carrier intrastate rates such as was reached with rail rates in the famous Shreveport case,\(^7\) wherein it was decided that Congress had the power to control the intrastate rail rates maintained by a carrier under state authority

\(^5\) U. S. C. A., Tit. 49, sec. 302 (c).
\(^6\) U. S. C. A., Tit. 49, sec. 316 (e).
\(^7\) Houston, E. & W. T. R. Co. v. United States, 234 U. S. 342, 58 L. Ed. 1341 (1914).
to the extent necessary to remove unjust discrimination against interstate commerce arising from the relation between such intrastate rates and the interstate rates which were reasonable in themselves.

The results of the practical application of the Motor Carrier Act remain to be seen, since it became effective as to rates and charges only on April 1, 1936, and many provisions therein will have to be construed by the courts in subsequent litigation. But one thing is certain, and that is that the former racketeering game of trucking, will, under this supervisory regulation, become one of the nation's important industries, not necessarily as a competitor of the railroads but furnishing a different kind of service, substantially supplementary thereto.58