upon the length of vehicles. It appears from the evidence that all bridges built with the aid of Federal appropriations have been built according to the plans and specifications of the Bureau of Public Roads and are designed according to the formula W=C (L + 40) where W is the gross weight allowed, C is a constant depending on the type of bridge and L is the length of the vehicle, or combinations of vehicles from the front axle to the extreme rear axle, and 40 is a constant (R. 205).

It further appears that even with the smallest used constant of 670 in a normal 30 foot tractor-semi-trailer the gross weight permitted under this formula would be 670 x (30 + 40) or 42,000 pounds (R. 206).

It is apparent from the testimony of the Chief Highway Engineer of the State of South Carolina (R. 192) that only a very few bridges on the main arterial highways used by interstate commerce crossing the State of South Carolina were not designed according to this formula.

Thus the bridges which are now being built or those which have been built during the last several years by the State of South Carolina are designed according to this formula and are capable of carrying these gross weights (R. 190).

Even those bridges in the primary highway system which were not designed according to this formula were designed "for a 10-ton load" (R. 196) which was explained (R. 223-224) to mean that a tractor semi-trailer weighing 35,000 pounds could safely operate on such bridges because to design a "10-ton bridge" is to design it for a series of 10-ton vehicles going in both directions on the bridge one behind the other for the whole length and that (R. 224) the effect of a tractor-semi-trailer weighing 40,000 pounds would be equiva-

lent to two single trucks following each other weighing 20,000 pounds each.

The Court further found (Opinion, R. 75) that the location of the one or two bridges not designed for 10 ton loading or under construction and even the bridges designed for as low as 10 tons were so located that interstate commerce could be easily routed so as to avoid them entirely.

Of great significance is the fact that for the past seven years interstate traffic by trucks and tractor-semi-trailers ranging up to 40,000 pounds gross weight have been safely traversing all the bridges on the roads in the primary interstate system (R. 209, 192); that the weaker bridges have been constantly improved and strengthened to meet the needs of traffic (R. 185) and that four-wheel buses freighted with human beings of weights in excess of the gross limitation of the South Carolina law have for the past seven years been continuously and safely using the bridges of the highway system (R. 186) and that the State Highway Department has not felt it necessary to warn against the use of these bridge by these busses.

In view of this evidence we feel that the District Court was amply justified in finding (Opinion, R. 74-75, Finding of Fact No. 19, R. 82) that it would be beyond the reasonable necessities of the State of South Carolina to deny entirely the use of the primary interstate system because of a few questionable bridges so located that interstate commerce could be so routed as to avoid them altogether.

As to the capacity of the bridges of the entire highway system of South Carolina it is interesting to observe that by the Act enacted by the General Assembly in May 1937 and vetoed by the Governor (see Appendix 1) gross weights were to be permitted according to

the formula approved by the Bureau of Public Roads and recommended by the American Association of State Highway Officials, that is, W = 700 x L + 40, which in the case of tractor-semi-trailers would permit a gross weight of 45,000 pounds otherwise applicable under the Act.

The South Carolina Regulations exceed the reasonable necessity for their exercise in that they fail to recognize and respect the functional character of the primary interstate highway system.

Appellants contend (S. C. Br. 75-106) that "The State in order to protect 57,000 miles of highway, 96 per cent of all public roads in the State, had an absolute right to make its limitations apply to and include traffic over the remaining 4 per cent. It was authorized to include within its scope all the roads in the two segments *regardless of their capacity* as a means of insuring effective enforcement."

Because we believe that the question raised by this argument is fundamental to a proper conception and determination of this case we will quote from the appellants' brief (S. C. Br. 95) a different expression of this same argument:

> "That in enacting and administering regulations pertaining to the use of public highways a State may treat all of its roads and streets as a whole, and that in testing this reasonableness of legislative action in such cases the entire highway system, as a single entity, must be considered, *and that the fact that such limitations might be unreasonable as applied to a limited portion of the total mileage* (which we do not concede in this case) is not enough to justify the conclusion that the stat-

> ute is unreasonable and, hence, invalid, either in its application to all of the roads, or in its application to a limited portion of the same."

This theory, by which it is sought to justify the unreasonableness of the South Carolina regulations as they will apply to the primary Federal aid system, finds interesting contrast in the policy of 43 of the 48 States of the Union by which these States seek, not to drag down their primary systems to the level of their rural systems and thus defeat their normal functions, but rather to give expression to these functions by leaving their primary systems open to their normal capacities and integrating with their secondary and rural systems. This is apparent from the fact heretofore noted, that these States apply weight limitations governed by the normal physical capacities of their primary systems not only to these systems but to their secondary and rural roads as well. Again we desire to make it clear that in portraying the contrast between the policies of these 43 States and that of South Carolina expressed in the contested regulations we do not attempt to derogate from the power of the State of South Carolina to establish regulations differing from other states and based upon its own necessities. Cf. *Sproles* v. *Binford,* 286 U. S. 374, at page 390.

We do not contend that a State must establish separate weight limitations for its Federal aid system and its rural and unimproved systems; but we do assert that a State may not render ineffective the entire cooperative undertaking between the National Government and the States in the development and maintenance of an interconnected interstate system adequate for the commerce of the Nation, by dragging that portion of this National system within its borders down to

the level of its rural and unimproved highways, merely that certain conjectural administrative difficulties might be avoided.

To what end the national investment and co-operative undertaking to achieve "completion of an adequate and connected system of highways, interstate in character", if the administrative problems naturally heir thereto are to justify a complete denial of its intended functions? To what purpose the improvement of any system of highways if the administrative difficulties incident to its improvement is to justify the frustration of its intended purpose by legislative restrictions to relieve that difficulty?

As shown in Subsection B of Section I of this brief, *and as found by the District Court,* the enforcement of the South Carolina regulations will result in defeating the purposes for which the National Government and the States have completed the improved and capable primary Federal aid system. Appellants argue that this result is justified in order that the State of South Carolina might avoid possible administrative difficulties incident to the completion of that portion of this National system within its borders. By way of analogy they cite *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365, and other cases, to the effect, that (as appellants paraphrase (S. C. Br. 103):

> "In order to make a statute workable and enforceable the legislature may, in creating a classification, lay down a broad, general, easily enforceable description of a class, and if the classification is otherwise valid, the fact that some 'innocent objects' are included in the class in order to 'insure a reasonable margin for effective enforcement' the statute is nevertheless valid in its entirety."

There is no evidence in the record that there exists any administrative difficulty which makes advisable a uniform limitation for all roads, but even if such exists, we cannot believe that the reasonable necessities of the State in that regard are such as to justify treatment of the primary Federal aid system of South Carolina as an "innocent object" which may be sacrificed on the altar of administration. The entire Federal aid program would be jeopardized by such a pernicious doctrine. In *Morris* v. *Duby,* 274 U. S. 135, 145, this Court said:

> "Regulation as to the method of use . . . remains with the States . . . unless the regulation is so arbitrary and unreasonable as to defeat the useful purposes for which Congress has made its large contributions to bettering the highway systems of the Union . . ."

However, appellants' counsel go beyond the record to erect facility of administration as a justification for the defeat of Federal aid and are again open to the reminder of this Court in *Borden's Farm Products Co.* v. *Baldwin,* 293 U. S. 194, 209, that the immunity of the presumption which attaches to legislative action is not "achieved by treating any fanciful conjecture as enough to repel attack."

The 90-Inch Width Limitation is Beyond Its Reasonable Necessity.

We have seen under Subsection B, Section I of this brief that the enforcement of the 90-inch width limitation of the South Carolina Act will create a wall around the borders of that State which will absolutely bar 85 to 90 per cent of all motor vehicles now being used in interstate commerce, since these instrumentalities of commerce have been designed with a width limit of 96

inches to conform to the permissible width limits of all the remaining 47 states. Yet the physical characteristics of the Federal aid highways in South Carolina do not reasonably require such a drastic effect upon interstate commerce.

The reason for the national uniformity in the adoption of a 96-inch width limitation is found in Section 9 of the Federal Highway Act of 1921, which provided:

> "That *all highways in the primary or interstate system* constructed after the passage of this Act shall have a right of way of ample width and a wearing surface of an adequate width which *shall not be less than eighteen feet,* unless, in the opinion of the Secretary of Agriculture, it is rendered impracticable by physical conditions, excessive costs, probable traffic requirements, or legal obstacle."

The standard 96-inch width limitation has the support and recommendation of the American Association of State Highway Officials (R. 280) and is the vehicle width for which the primary Federal aid system has been designed in accordance with Section 9 of the Federal Highway Act of 1921, as indicated by the fact that the Bureau of Public Roads has long recommended it to all the States (R. 280).

The main interstate highways of South Carolina have been constructed according to the mandate of Section 9 of the Federal Highway Act of 1921. The evidence (R. 177) disclosed that most of the concrete paving of the State is eighteen feet wide, some twenty feet, and some (around 100 miles only, R. 197) sixteen feet wide.

The Chief Highway Engineer of the State testified (R. 177):

> "Q. Now will you give us the width of the road?
> A. Most of our pavements are eighteen feet in width. We have some twenty feet and some sixteen feet. There is one little stretch in Sumter

> County that is only nine feet wide. That is a concrete pavement. No in bituminous surface our roads are twenty feet and wider. The standard is twenty feet and we sometimes widen where adjacent and close to towns or through different communities. The standard is twenty feet.
> Q. How about dirt roads?
> A. We surface them about twenty feet."

Of the 6100 miles in the State Highway System 2417 was standard pavement, 1724 bituminous surface, 1141 earth type, and unimproved 666 miles (R. 159).

Of this total of 6100 miles, approximately 2317 miles (2417 miles of pavement less about 100 miles of 16 foot width) had a width of 18 to 20 feet; 1724 miles (bituminous surface) had a width of 20 or more feet; and 1141 miles (earth type) a width of about 20 feet. Thus in the State Highway System there are approximately 5182 miles of highway built to the width required by Section 9 of the Federal Highway Act, and only about 100 miles of 4141 miles of surfaced highway was less than 18 feet wide.

We submit that in the light of these facts the District Court was justified in saying (Opinion, R. 67):

> "So far as the width of the trucks is concerned, it appears that 96 inches is the standard width of the trucks now used in long distance hauling and engaged in interstate commerce, that 85 per cent of the trucks manufactured for long distance hauling are of that width, and that South Carolina is the only state in the Union which limits the width of trucks using its roads to 90 inches. As this limitation would bar from the roads many of the trucks engaged in interstate commerce, and as the standard pavement roads, with the exception of about 100 miles, are 18 to 20 feet in width and furnish ample space for the safe operation of such standard width trucks, the limitation seems clearly an unreasonable one to apply to these roads."

III.

THE APPLICABLE CONSTITUTIONAL PRINCIPLE.

In Section I of this brief we have shown that the enforcement of the South Carolina regulations will inflict a drastic burden on interstate commerce, amounting to practical prohibition. In Section II this burden was shown to be needlessly inflicted because these regulations exceed the reasonable necessity for their exercise. In Section III we will argue (A) that State police legislation inflicting a substantial burden on interstate commerce, and transcending the reasonable necessity for its exercise, is void under the Commerce Clause, (B) that this accepted constitutional principle is also applicable to State legislation limiting the size and weight of motor vehicles engaged in interstate commerce, and (C) that measured by this principle, under the evidence in this case, the South Carolina regulations are void.

A. The Constitutional Principle Involved:

> "An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adopted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens."
>
> *Morris* v. *Duby,* 274 U. S. 135, 143 (1927);
> *Sproles* v. *Binford,* 286 U. S. 374, 389 (1932);
> Opinion of Court below, Record, page 71.

This statement of the law is an agreed premise on this appeal. No contention is here made that congressional action, either by the Federal Highway Acts or Part II of the Interstate Commerce Act (Motor Carrier Act, 1935) has superseded the power of the states as defined.

The regulations of the South Carolina statute by their terms apply indiscriminately to carriers engaged in interstate and intrastate commerce.

No assault has been made upon the statute as violative of the equal protection clause of the Fourteenth Amendment in exempting passenger carriers from its terms, nor as violative of the contract clause of the Constitution in denying motor carriers the power to fulfill existing contracts of carriage.

As to these matters, adversary briefs indulge in much unnecessary debate in which there is no need for us to join.

The only question presented for the consideration of this Court is whether the regulations of the South Carolina statute are a proper exercise of admitted police power under the Due Process clause of the Fourteenth Amendment and the Commerce Clause.

Appellants assert that since the lower court found that the regulations (1) have not been superseded by federal legislation, (2) apply indiscriminately to interstate and intrastate commerce, and (3) are consistent with the Fourteenth Amendment, there is no other test to apply and the regulations are valid *regardless of the effect of their enforcement upon interstate commerce.*

Appellees deny that the regulations are valid under the Due Process Clause. The finding of the lower court to that effect was superfluous and unnecessary to its decision. In maintaining this position here we do not

attack the decree of the lower court, but sustain it, and hence under established law we need no cross-appeal.

But the test of validity applied by the lower court was correct, and is properly applicable regardless of the test under the Due Process Clause. A finding by this Court as to the Fourteenth Amendment is unnecessary in this appeal. We shall address our argument to the constitutional propriety of the test by which the lower court held the regulations unconstitutional.

The variance between appellants' and appellees' theories of the principle involved may be contrasted as follows:

A state police regulation, in the absence of federal legislation, affecting a subject which admits of diversity of treatment according to the special requirements of local conditions, and applying indiscriminately to interstate and intrastate commerce, but substantially burdening and seriously interfering with interstate commerce—

Appellees:	Appellants:
. . . is invalid if the regulation exceeds the reasonable necessity for the exercise of the police power.	. . . is valid, regardless of the effect upon interstate commerce, if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end.[1]

[1] "It is clear that it is established law that the consequent effect upon interstate commerce of the exercise of a State's police power is entirely immaterial." S. C. Br. p. 119; cf. Ky. Br. p. 24; Rd. Br. p. 45.

The distinction is not merely one of words—it has definite legal substance, and has often been applied in the decisions of this Court.

Under appellees' theory, the States may not cavalierly and unnecessarily ignore the needs of interstate commerce.

Under appellants' theory, the States may not only needlessly ignore, but may *with deliberate motive* ignore, the needs of interstate commerce.

How, under appellants' conception of the constitutional adjustment between State and National interests, can be reconciled the decision of this Court in *Seaboard Air Line Ry.* v. *Blackwell,* 244 U. S. 310 (1917), in which the issue was squarely presented, but which is conspicuously truant from the indices of adversary briefs?

This decision had its prologue in the case of *Southern Ry. Co.* v. *King,* 217 U. S. 524 (1910), in which this Court affirmed judgments of the lower federal courts sustaining a demurrer to the answer filed by the railroad in an action for personal injuries at a crossing. The negligence charged to the railroad was violation of Section 2222 of the Civil Code of Georgia, which read as follows:

> "There must be fixed on the line of said road, and at the distance of 400 yards from the center of each of such road crossings, and on each side thereof, a post, and the engineer shall be required, whenever he shall arrive at either of said posts, to blow the whistle of the locomotive until it arrives at the public road, and to simultaneously check and keep checking the speed thereof so as to stop in time should any person or thing be crossing said track on said road."

The railroad in its amended answer made the general averment, not supplemented by factual allegations, that the statute was an unreasonable burden on interstate commerce, and introduced evidence tending to show the burden of the statute.

This Court ruled that this pleading was defective and that in the absence of an averment of facts setting up a situation showing the unreasonable character of the statute as applied to the railroad under the circumstances, the amended answer set up no legal defense, and that the railroad's evidence was properly excluded.

However, in the course of its opinion, this Court, after observing that "the rights of the states to pass laws not having the effect to regulate or directly interfere with the operations of interstate commerce, passed in the exercise of the police power of the state in the interest of the public health and safety," were to be upheld, and after reviewing decisions upholding and decisions invalidating such laws, said (at page 533):

> "Applying the general rule to be deduced from these cases to such regulations as are under consideration here, *it is evident that the constitutionality of such statutes will depend upon their effect upon interstate commerce.* It is consistent with the former decisions of this court and with a proper interpretation of constitutional rights, at least in the absence of Congressional action upon the same subject-matter, for the State to regulate the manner in which interstate trains shall approach dangerous crossings, the signals which shall be given, and the control of the train which shall be required under such circumstances. Crossings may be so situated in reference to cuts or curves as to render them highly dangerous to those using the public highways. They may be in or near towns or cities, so that to approach them at a high rate of speed would be attended with great danger to life or limb.

> On the other hand, highway crossings may be so numerous and so near together that to require interstate trains to slacken speed indiscriminately at all such crossings would be practically destructive of the successful operation of such passenger trains. Statutes which require the speed of such trains to be checked at all crossings so situated might not only be a regulation, *but also a direct burden upon interstate commerce,* and therefore beyond the power of the State to enact."

Mr. Justice Holmes wrote a dissent, concurred in by Mr. Justice White, which concluded (at page 539):

> "It seems to me a miscarriage of justice to sustain liability under a statute which possibly, and I think probably, is unconstitutional, until the facts have been heard which the petitioner alleged and offered to prove. I think that the judgment should be reversed."

Seven years later, in *Seaboard Air Line Ry.* v. *Blackwell,* 244 U. S. 310, this Court was again asked to review the validity of this same statute under the Commerce Clause. Again the inferior court (this time the Supreme Court of Georgia) had sustained a demurrer to the answer of a railroad in an action for personal injury at a crossing.

But this railroad defendant's answer was not defective as a pleading. It alleged that between the city of Atlanta, Georgia, and the Savannah River, where the same is the boundary line of Georgia, a distance of 123 miles, there were 124 points where the line of the railroad crossed public roads of the different counties of the State, established pursuant to law, and that all such crossings were at grade; that if the law were complied with the running time between these points would have been more than doubled; that the crossings were the

usual and ordinary grade crossings and there were no conditions which made any one of them peculiarly dangerous other than such danger as might result from the crossing of a public road by a railroad track at grade.

This Court[1] by Mr. Justice McKenna said (at page 315)

> " . . . We need not descant upon the extent of the police power of the state and the limitations upon it when it encounters the powers conferred upon the National Government. There is pertinent exposition of these in Southern Railway Co. v. King, 217 U. S. 524. The case is clear as to the relation of the powers and that the power of the State cannot be exercised to directly burden interstate commerce . . . the facts (page 316) which it was decided would give illegal operation to the statute are alleged in the present case, and assuming them to be true—and we must so assume—compel the conclusion that the statute is a direct burden on interstate commerce, and, being such, is unlawful."

From the decision, Chief Justice White, Mr. Justice Pitney, and Mr. Justice Brandeis dissented (page 316) "on the ground that the regulation in question was within the class which the State is entitled to enact in the absence of congressional action, and until such action. There having been no action by Congress, there is therefore no ground for holding the state action void as a regulation of interstate commerce."

Thus, as emphasized by the grounds of this dissent, a majority of the court reached the deliberate conclusion that the effect upon interstate commerce of a State

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[1] Five Justices were now sitting who had ascended the Bench since the prior decision, two of whom were Mr. Justice Brandeis and Mr. Justice McReynolds of the present Court.

statute, even though applying indiscriminately to intrastate and interstate commerce, and admittedly enacted in the exercise of a proper power of police, was a relevant and pertinent factor in determining its validity under the Commerce Clause, and that where such a statute, by its choice of method or extent of application, goes beyond the reasonable necessities for its exercise, and inflicts a drastic burden on interstate commerce, it must be held void.

Conceivably, tested under the Fourteenth Amendment by one engaged solely in intrastate commerce, the statute should have been upheld, but this consideration only serves to indicate that the protection of the Commerce Clause has a quality and importance, justified by the purposes and political necessities of that clause of the Constitution, distinct from the protection afforded by the Fourteenth Amendment.

The principle of constitutional law applied in *Seaboard Air Line Ry.* v. *Blackwell, supra,* finds expression in many dicta of this Court throughout its history, and it has been decisively applied in many cases involving varying factual situations. In truth, the presence in our constitutional phraseology of the expression "burden on interstate commerce" is implicit recognition that the principle has its place in the framework of the law, given a proper case for its application. Such a phrase is utterly superfluous in a constitutional system which as appellants would contend, invalidates a State police statute, under the Commerce Clause, only when (1) it has been superseded by Congressional action, either expressly or by necessary effect; (2) it regulates or substantially affects a subject demanding national uniformity of regulation even in the absence of federal action; (3) it regulates a subject matter admit-

ting of a diversity of treatment, according to the special requirements of local conditions, but discriminates against interstate commerce; (4) it violates the Fourteenth Amendment (in which event, obviously, it is not invalid because of the Commerce Clause). The labels, "supersedure," "direct regulation of interstate commerce," "discrimination," and "lack of due process" have been applied to such cases.

To these criteria of validity under the Commerce Clause, however, must be added another, if many decisions of this Court are not to be thrown into discard, and if the concept of an "unreasonable or unnecessary burden on interstate commerce" is to be preserved in order to make effective the "practical adjustment by which the natural authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency" (*The Minnesota Rate Cases, Simpson* v. *Shepard,* 230 U. S. 352, 402).

This is that a State statute, though admittedly of a class valid as the exercise of police power, enacted in the absence of federal regulation, and applying indiscriminately to interstate and intrastate commerce, affecting commerce only by regulating a subject matter admitting of a diversity of treatment, according to the special requirements of local conditions, *may nevertheless be invalid under the Commerce Clause,* if it causes a drastic interference with interstate commerce and serious prejudice to the national interests *not required by the reasonable necessities for the exercise of the power.*

This criterion has been that by which this Court has many times tested State quarantine laws, in the absence of federal legislation—laws of a class conceded to require diverse and local treatment. A quarantine

law, by its very nature, even as a law limiting the size and weight of motor vehicles, necessarily affects interstate commerce in a substantial degree. Some have been upheld, and some invalidated. We submit that the test has been the criterion above stated—that, because of its drastic effect on interstate commerce, the state law must not go beyond the reasonable necessity for its exercise, and if it does, is to that extent void.

This principle was aptly stated by Mr. Justice Strong in *Hannibal & St. J. Railroad Co.* v. *Husen,* 95 U. S. 465, at pages 472-74:

> "While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond *what is absolutely necessary for its self-protection. . . .*"
>
> "In coming to such a conclusion, we have not overlooked the decisions of very respectable courts in Illinois, where statutes similar to the one we have before us have been sustained. *Yeazel* v. *Alexander,* 58 Ill. 254. Regarding the statutes as mere police regulations, intended to protect domestic cattle against infectious disease, those courts have refused to inquire whether the prohibition *did not extend beyond the danger to be apprehended, and whether, therefore, the statutes were not something more than exertions of police power.* That inquiry, they have said, was for the legislature and not for the courts. With this we cannot concur. The police power of a State cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and *under*

color of it objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

In *Cleveland, etc. Ry. Co.* v. *Illinois* (1900), 177 U. S. 514, we find the court making the same approach to the problem (at page 516):

"Few classes of cases have become more common of recent years than those wherein the police power of the State over the vehicles of interstate commerce has been drawn in question. That such power exists and will be enforced, notwithstanding the constitutional authority of Congress to regulate such commerce, is evident from the large number of cases in which we have sustained the validity of local laws designed to secure the safety and comfort of passengers, employes, persons crossing railway tracks, and adjacent property owners, as well as other regulations intended for the public good." (After citing cases upholding legislation of this general class) . . "In none of these cases was it thought that the regulations *were unreasonable* or operated in any just sense as a restriction upon interstate commerce.

"But for the reason that these laws (citing cases) were considered unreasonable *and to unnecessarily hamper commerce between the states,* we have felt ourselves constrained in a large number of cases to express our disapproval . . .

"Several acts *in pari materia* with the one under consideration have been before this court, and have been approved or disapproved as they have seemed *reasonable* or *unreasonable,* or bore more or less heavily upon the power of railways to regulate

> their trains in the respective and sometimes conflicting interests of local and through traffic. * * * We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths or the excellence of their tables would insure them such share, if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The public demand this; the railway and steamship companies are anxious in their own interests to furnish it, and local legislation ought not to stand in the way of it."

In *Houston & Texas Central Railroad Co.* v. *Mayes,* 201 U. S. 321, the Court considered the validity under the Commerce Clause of a Texas statute regulating railroad car service. The following language was used:

> "The exact limit of lawful legislation upon this subject cannot in the nature of things be defined. It can only be illustrated from decided cases, by applying the principles therein enunciated, determing from these whether in the particular case the rule be reasonable or otherwise. * * *
>
> "Although the statute in question may have been dictated by a due regard for the public interest of the cattle raisers of the State, and may have been intended merely to secure promptness on the part of the railroad companies, in providing facilities for the speedy transportation, we think that in its practical operation it is likely to work a great in-

> justice to the roads, and to impose heavy penalties for trivial, unintentional and accidental violations of its provisions, when no damages could actually have resulted to the shippers. * * *
>
> "Although it may be admitted that the statute is not far from the line of proper police regulation, we think that sufficient allowance is not made for the practical difficulties in the administration of the law, and that, as applied to interstate commerce, it transcends the legitimate powers of the legislature."

That the State in the exercise of its police power should not exceed the reasonable necessities for its exercise to the detriment of interstate commerce is clearly stated in *Mississippi R. R. Comm.* v. *Illinois Cent. R. R.,* 203 U. S. 335 (1906) at page 346:

> "The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair share of the transportation between States, both of passengers and freight. *A wholly unnecessary, even though a small, obstacle ought not, in fairness, to be placed in the way of an interstate road, which may thus be unable to meet the competition of its rivals.* We by no means intend to impair the strength of the previous decisions of this court on the subject, nor to assume that the interstate transportation, either of passengers or freight, is to be regarded as overshadowing the rights of the residents of the State through which the railroad passes to adequate railroad facilities. Both claims are to be considered, and after the wants of the residents within a state or locality through which the road passes have been adequately supplied, regard being had to all

> the facts bearing upon the subject, they ought not to be permitted to demand more, at the cost of the ability of the road to successfully compete with its rivals in the transportation of interstate passengers and freight."

In upholding a statute of Kentucky in *South Covington etc. Ry. Co.* v. *Kentucky,* 252 U. S. 399, at page 404, Mr. Justice McKenna said:

> "The regulation of the act affects interstate commerce incidentally *and does not subject it to unreasonable demands.*"

This Court in the *Minnesota Rate Cases,* 230 U. S. 351, at page 401, said:

> "The states cannot . . . subject the operations of carriers in the course of such (interstate) transportation to requirements that are unreasonable *or pass beyond the bounds of suitable local protection.*"

In *Lake Shore & Michigan Southern Ry. Co.* v. *Ohio,* 173 U. S. 285, at pages 300 and 301, while upholding a state law as reasonable, this Court said:

> "In what has been said we have assumed that the statute is not in itself unreasonable; that is, it has appropriate relation to the public convenience, *does not go beyond the necessities of the case,* and is not directed against interstate commerce. In *Railroad Co.* v. *Husen,* 95 U. S. 465, 473, reference was made to some decisions of state courts in relation to statutes prohibiting the introduction into a State of cattle having infectious diseases, and in which it was contended that it was for the legislature and not for the courts to determine whether such legislation went beyond the danger to be apprehended and was therefore something more than

> the exertion of the police power. This court said that it could not concur in that view; that as the police power of a State cannot obstruct either foreign or interstate commerce 'beyond the necessity for its exercise,' it was the duty of the courts to guard vigilantly against 'needless intrusion' upon the field committed by the Constitution to Congress. *As the cases above cited show, and as appears from other cases, the reasonableness or unreasonableness of a state enactment is always an element in the general inquiry by the court whether such legislation encroaches upon national authority, or is to be deemed a legitimate exertion of the power of the State to protect the public interests or promote the public convenience.*"

We are not to be understood as attempting to exalt as precedents the dicta above quoted, nor the decisions of this court in the cases above discussed, nor do we offer them as precise analogies by which the instant case should be decided under the rule of *stare decisis.* We do submit, however, that they demonstrate conclusively that under our constitutional system there is a test of the validity of State police power substantially effecting interstate commerce, not limited to the test of the Fourteenth Amendment.

The decisions of this Court in *N. Y. N. H. & H. R. Co.* v. *New York,* 165 U. S. 628, and in *Erie Railroad Co.* v. *Board of Public Commrs.,* 254 U. S. 394, are cited by appellants in support of their theory that in the absence of Federal legislation a State police regulation, not discriminatory against interstate commerce and consistent with the Fourteenth Amendment, is valid *whatever its effect* upon interstate commerce, and may exceed the reasonable necessity for its exercise even to the extent of prohibiting that commerce. (S. C. Br. pp. 115-119.)

(*Bayside Fish Flour Co.* v. *Gentry,* 297 U. S. 422 and *Sitz* v. *Hesterberg,* 211 U. S. 31, involving state police power invoked to *preserve State property* and *Morris* v. *Duby,* 274 U. S. 135 and *Sproles* v. *Binford,* 286 U. S. 374, involving State police power to limit the size and weight of motor vehicles, are also cited by appellants to support this principle. These cases are distinguished under subsection (C) of this Section.)

The decision of this Court in *N. Y. N. H. & H. R. Co.* v. *New York, supra,* upholding a statute of the State of New York requiring trains to be heated in a certain way is not precedent to the effect that a State may transcend its reasonable necessities to inflict a drastic burden on interstate commerce. Obviously, in the absence of Federal legislation some control of heating arrangements was necessary for the protection of the public. *There was no allegation, contention, proof or finding that these regulations transcended the reasonable necessities of the State of New York.* Under the principle which we contend is applicable the absence of this finding makes it unnecessary to consider the resultant effect upon interstate commerce. However, in the New York case *there was no proof or finding as to the effect of the enforcement of the law upon interstate commerce.* The only consideration in that respect called to the attention of the Court was the *suggestion* of counsel (on page 632) that a burden might result. The dictum of the Court quoted by appellants was with regard to "these possible inconveniences (page 632)". The case of *Seaboard Air Line Ry.* v. *Blackwell,* 244 U. S. 310, involved a police statute of a similar type. Again some regulation was necessary for the protection of the public, but in this case the measures adopted by the State exceeded their necessity and

created a serious burden on interstate commerce. This Court held it void under the Commerce Clause.

Similar considerations distinguish the second case, *Erie RR. Co.* v. *Public Utility Commrs.,* 254 U. S. 394, upholding a commission order directing a railroad to pay the expense of eliminating a crossing. In the first place, it is to be noted that Mr. Chief Justice White, Mr. Justice Van Devanter and Mr. Justice McReynolds dissented from that decision. The majority of the Court found, in effect, that the order of the Commission and the statute upon which it was based did not exceed the reasonable necessities of the State, and there was no finding of a burden on interstate commerce, other than a financial burden imposed upon a single company arising out of its own financial condition.

This Court later made it clear that it did not intend to hold by that decision that a State might exceed the reasonable necessities for the exercise of the police power when to do so would result in the destruction of a private business or a burden on interstate commerce. In *Lehigh Valley R. R.* v. *Commissioners,* 278 U. S. 24, 34 (1928) this Court said:

> "This Court has said that where railroad companies occupy lands in the State for use in commerce, the State has a constitutional right to insist that a highway crossing shall not be dangerous to the public, and that where reasonable safety of the public requires abolition of grade crossings, the railroad can not prevent the exercise of the police power to this end by the excuse that such change would interfere with interstate commerce or lead to the bankruptcy of the railroad. *Erie R. R.* v. *Board,* 254 U. S. 394. This is not to be construed as meaning that danger to the public will justify great expenditures unreasonably burdening the railroad, when less expenditure can rea-

> sonably accomplish the object of the improvements and avoid the danger. If the danger is clear, reasonable care must be taken to eliminate it and the police power may be exerted to that end. But it becomes the duty of the Court, where the cost is questioned, to determine whether it is within reasonable limits."

And by the time of the decision of this Court in *Nashville, C. & St. L. Ry.* v. *Walters* (1935), 294 U. S. 405, it had become apparent that this particular exercise of the police power must be conditioned among other things by the functional character of the highway involved.

B. This Constitutional Principle Applicable to State Police Power Generally is Also Applicable to State Legislation Limiting the Size and Weight of Motor Vehicles as it Affects Interstate Transportation Over the National System of Interstate Highways.

Appellants contend that because the highways remain the public property of the States they do not fall within the protection of the Commerce Clause against restrictions on interstate commerce which exceed the reasonable necessities of the State. They cite *Geer* v. *Connecticut,* 161 U. S. 519, *Sitz.* v. *Hesterberg,* 211 U. S. 31, and *Bayside Fish Flour Co.* v. *Gentry,* 297 U. S. 422, as holding that in the preservation of its own property State legislation is in no wise affected by the limitations of the Commerce Clause but the decisions of this Court in *Oklahoma* v. *Kansas Natural Gas Co.,* 221 U. S. 229, *Pennsylvania* v. *West Virginia,* 262 U. S. 553, and *Foster-Fountain Packing Co.* v. *Haydel,* 278 U. S. 1, make it clear that this Court has repudiated the argument

that a State in regulating the use of its own property is not regulating interstate commerce where its regulation affects persons engaged therein.

In the two cases in which this Court has considered the validity under the Commerce Clause of State statutes regulating size and weight of motor vehicles, *Morris* v. *Duby,* 274 U. S. 135 (1927), and *Sproles* v. *Binford,* 286 U. S. 394, (1932) there is no support for appellants' contention that in the exercise of this police power the States may ignore the consequent effects upon interstate commerce. In the former case (at page 143) discussing the validity under the Commerce Clause of a commission-made order this Court spoke of "reasonable regulations." In the latter case (at page 390) in the brief consideration the Court gave to the charge of invalidity under the Commerce Clause, the phrase "reasonable regulations" was quoted from *Morris* v. *Duby.* Of course, as will later appear, the dominant consideration in *Sproles* v. *Binford* was the validity of the law under the Fourteenth Amendment as there was no showing of a substantial burden on interstate commerce. The decision of this Court in these two cases is consistent with the principle that state police power must not unnecessarily burden interstate commerce. In these two cases the Court made no finding either that interstate commerce was substantially burdened or that the regulations exceeded a reasonable necessity for the exercise of the police power.

And with particular bearing on the instant case, it is significant that in the cases in which this Court has considered the validity under the Commerce Clause of State regulations governing the use of their highways, it has been careful to guard its language in prophetic anticipation of this day.

In *Hendrick* v. *Maryland,* 235 U. S. 610 (1915) Mr. Justice McReynolds said (at page 622):

> "The reasonableness of the state's action is always subject to inquiry in so far as it affects interstate commerce . . ."

And in *Buck* v. *Kuykendall,* 267 U. S. 307, Mr. Justice Brandeis (at page 315) said:

> "Appropriate state regulations, adopted primarily to promote safety upon the highways and conservation in their use, are not obnoxious to the commerce clause, *when the indirect burden imposed upon interstate commerce is not unreasonable.*"

It cannot be doubted that highways are "public property," but to speak of the "absolute proprietary rights" of the State in its highways as justifying unrestricted regulation by the State—however unreasonable or however burdensome upon interstate commerce—is to ignore the fundamental character of that ownership and the deeper realities attendant upon it.

The emphasis should be put not upon the ownership of the highways by the State and its power over them, but rather upon its duties in regard to them growing out of its trusteeship for the public. One of the essential functions of government is to provide and keep open the avenues of travel and traffic.

The trusteeship of the state over its public highways is for the benefit not only of its own citizens but for the citizens of the United States also. This would be true, we believe, in the absence of Federal Aid, because such trusteeship would be implied from the Commerce Clause of the Federal Constitution. However, since over a period of twenty years the national government has co-operated with the state governments in develop-

ing a national system of interstate highways, there is added reason for this trusteeship. As the Supreme Court of the United States said, in *Bush* v. *Maloy,* 267 U. S. 317 (1925):

> "The federal aid legislation is of significance, not because of the aid given by the United States for the construction of particular highways, but because those acts make clear the purpose of Congress that state highways shall be open to interstate commerce."

That the regulation of the public highways by the States is still within the compass of the Commerce Clause is reflected in the language of the Supreme Court in *Monongahela Navigation Co.* v. *U. S.,* 148 U. S. 312, where Justice Brewer said:

> "We are so much accustomed to see artificial highways, such as common roads, turnpike roads and railroads, constructed under the authority of the States, and the improvement of natural highways carried on by the general government, that at first it might seem that there was some inherent difference in the power of the national government over them. But the grant of power is the same. There are not two clauses of the Constitution, each severally applicable to a different kind of highway. The fee of the soil in neither case is in the general government, but in the State or private individuals. The differences between the two are in their origin —nature provides the one, man establishes the other."

And as was said by Chief Justice Waite, in *Pensacola Tel. Co.* v. *West, etc. Tel. Co.,* 96 U. S. 1, at page 9:

> "Since the case of *Gibbons* v. *Ogden* (9 Wheat. 1), it has never been doubted that commercial intercourse is an element of commerce which comes

within the regulating power of Congress. Post-offices and post-roads are established to facilitate the transmission of intelligence. Both commerce and the postal service are placed within the power of Congress, because, being national in their operation, they should be under the protecting care of the national government.

"The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing-vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances. As they were intrusted to the general government for the good of the nation, it is not only the right, but the duty of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation."

And Mr. Justice Brewer observed *In re Debs,* 158 U. S. 564, 590:

" 'Up to a recent date, commerce, both interstate and international, was chiefly by water, and it is not strange that both the legislation of Congress and the cases in the courts have been principally concerned therewith. The fact that in recent years interstate commerce has come to be carried on mainly by railroads and over artificial highways has in no manner narrowed the scope of the constitutional provision, or abridged the power of Congress over

such commerce. On the contrary, the same fullness of control exists in the one case as in the other, and the same power to remove obstructions from the one as from the other.

" 'Constitutional provisions do not change, but their operation extends to new matters, as the modes of business and the habits of life of the people vary with each succeeding generation. The law of the common carrier is the same today as when transportation on land was by coach and wagon, and on water by canal boat and sailing vessel, yet in its actual operation it touches and regulates transportation by modes then unknown—the railroad train and the steamship. Just so is it with the grant to the national government of power over interstate commerce. The constitution has not changed. The power is the same. But it operates today upon modes of interstate commerce unknown to the fathers, and it will operate with equal force upon any new modes of such commerce which the future may develop.' "

To remove the highways of the Nation from the protection of the principle that States may not needlessly obstruct interstate commerce will not only defeat the purposes of Federal-aid but will make impossible that "practical adjustment" of national and state interests which is the life of the Federal system. Remove this protection; and the future of national highway transport is doomed, for even though the Federal government be forced to build its own highways for this commerce, it will be a practical impossibility to correlate these highways with the great system of secondary and rural highways throughout the Union.

(C) Measured by this Principle and the Evidence in this Case the South Carolina Regulations Are Void.

The Significance of the Federal Highway Acts and the Conventions between the States and the Federal Government.

Appellees repeat what was unequivocally stated at the opening of Section III of this brief, that is, that no contention is here made that the Federal Highway Acts or the Conventions pursuant thereto between the forty-eight States and the Federal Government have superseded State power to limit the size and weight of motor vehicles, and therefore it is unnecessary for appellees to answer much of the debate in appellants' briefs as to this matter.

It is apparent that appellants have completely failed to comprehend the rationale of the District Court's consideration of the significance of the enactment and historical administration of the Federal Highway Acts.

We have reasoned in Subsection A above that State police power generally is subject to the constitutional limitation that it shall not unnecessarily burden and interfere with interstate commerce, and in Subsection B above, that the exercise by a State of its police power in regulating the use of its roads is also subject to this constitutional limitation. However, this is not to say that the application of this constitutional supervision of State police power can be applied as though by mathematical formula. The exercise of judicial jurisdiction in this regard must obviously be conditioned by a proper regard for the "practical adjustment" which is our Federal system of government. It is a constitutional limitation which the Judiciary is and should be reluctant to enforce except in those cases where the burden

imposed upon interstate commerce is so great and so plainly unnecessary as to demand its enforcement.

Thus, the degree to which interstate commerce is affected, as well as the degree to which the State laws exceeds its reasonable necessity, is a factor which conditions the application of the constitutional principle. It is in this respect that the Federal Highway Act and its historical administration have their significance. Under the Federal-aid acts the Federal Government and all of the forty-eight States have, for more than 20 years, co-operated in building a national, inter-connected interstate system of highways adequate to carry the commerce of the Nation, which has been described in Section I of this brief. When a State law, exceeding the reasonable necessity for its exercise, defeats the purpose of this undertaking by denying the use of its portion of that system to the normal interstate traffic, it becomes imperative for the courts to apply the constitutional protection of the Commerce Clause in order to protect the national interest. That the national interest in the Federal Highway Acts and in the national system of highways constructed thereunder might furnish the occasion for the application of the constitutional protection of the Commerce Clause is evident in the dictum of this Court in *Morris* v. *Duby,* 274 U. S. 135, where it was said:

> "Regulation as to the method of use * * * remains with the States . . . unless the regulation is so *arbitrary and unreasonable as to defeat the useful purposes* for which Congress has made its large contributions to bettering the highways systems of the union, . . ."

and in *Buck* v. *Kuykendall,* 267 U. S. 307, which held invalid a State statute denying the use of State high-

ways to an interstate carrier upon a finding that that use was not consistent with the public convenience and necessity, not only on the ground that it was a regulation of interstate commerce, but (at page 316) because "it also defeats the purpose of Congress expressed in the legislation giving Federal-aid for the construction of highways."

We are not attempting to exalt these dicta into principles of law by which this case can be determined under the doctrine of *stare decisis.* We do, however, believe that these dicta are a recognition by this Court that in a proper case the application of the constitutional principle upon which we rely may be conditioned by the effect of a State law upon the purposes and functions of the national highways system which it has been the purpose of the Federal Government and the forty-eight States to build up.

Appellants, unwilling to concede this, find it very difficult to read any other meaning into these dicta. Thus (S. C. Br. 131) they summarize their "affirmative position as to what the Court did mean" by the "unless clause" in *Morris* v. *Duby, supra*:

> "The meaning of the 'unless clause', shown by the propositions announced by the court in the preceding portion of that opinion, by the language used in that clause itself and by the application of that opinion in subsequent cases, notably the Sproles case and the Bradley case, is that, if a State statute enacted to preserve the highways or protect the traveling public is not so unreasonable and arbitrary as to violate the 14th Amendment, it does not violate the commerce clause nor conflict with the purposes of the Federal Highway Act in the absence of discrimination against interstate commerce. In other words, the purposes of Congress in the enactment of the Federal

> Highway Act are not, in any degree, an additional measure of the reasonableness of the State statute."

We are unable to understand how this exposition clarifies in any way the significance of the Court's dictum. Appellants (Ky. Br. 47) explain the dictum in *Buck* v. *Kuykendall, supra,* in this fashion:

> "In other words, it in effect held that the Federal Highway Act merely made explicit the implied prohibition against discrimination contained in the Commerce Clause"

but we cannot believe that the significance of the dictum can be reduced to such an absurdity. The implied prohibition against discrimination contained in the Commerce Clause does not need to be made explicit by any reference to the Federal Highway Act.

But, these dicta aside, we submit that the application of the protection of the Commerce Clause is fully justified under our constitutional system when a State law, *exceeding its reasonable necessity,* defeats the national undertaking represented by the interstate system of highways. The admission that the Federal Highway Acts did not supersede the power of the States to regulate the size and weight of motor vehicles engaged in interstate commerce over the interstate system, is recognition of the validity of State statutes which are found to be reasonably necessary for the safety and conservation of the highways, even though they may result in defeating the purposes of the Federal Highway Acts. Such effects are as unavoidable as the physical presence of mountain ranges or rivers across the paths of this commerce, but this is not to say that a State faced with a choice of method, *i. e.,* one form of regulation which will satisfy the necessities of

its highways but would nevertheless admit the relatively free passage of interstate commerce, and another method (as in the instant case) which will practically prohibit that commerce, may disregard the needs of interstate commerce and adopt the latter method. We do not believe that it is consistent, either with the prior decisions of this Court, or with that practical adjustment between the needs of the national Government and the States, that a State may arbitrarily ignore the needs of interstate commerce in this manner. The evidence in this record indicates, and the District Court has so found, that the State of South Carolina could achieve the conservation and safety of its highways as well, if not better, by the adoption of measures which have been approved by experience and expert judgment and thus avoid the disastrous effect upon interstate commerce which the threatened law will needlessly cause. Certainly the protection of the Commerce Clause should be extended to the protection of the great national investment represented in the national system of interstate highways.

The Significance of the Motor Carrier Act.

The discussion above of the significance of the Federal Highway Acts and their administration to the application of the constitutional principle in this case are likewise applicable to Part II of the Interstate Commerce Act (Motor Carrier Act, 1935), when it is considered that, as the District Court found, the enforcement of the South Carolina regulations will defeat the purposes and policies of the Congress of the United States as expressed in this Act. Again we make it clear that the District Court did not contend nor do appellees contend here that this Federal legislation supersedes State power to regulate the size and weight of motor

vehicles in interstate commerce, and it is apparent from the opinion of the District Court (R. 74) that it gave no such significance to this legislation. The District Court said:

> "There is another angle from which the reasonableness of police regulations burdening interstate commerce in this way must be judged. Not only has Congress aided in the construction of the roads so that they may become highways of such commerce, but in the enactment of the motor carriers' act, it has recognized truck traffic as a legitimate part of that commerce essential to the welfare of the public and subject to regulation for that reason. As said of Federal aid legislation in Bush & Sons Co. v. Maloy, 257 U. S. 317, 324, 45 S. Ct. 326, 327, 69 L. Ed. 627, this legislation regulating motor carriers is of significance because it makes clear the purpose of Congress that state highways shall be open to commerce of that character. Congress has not attempted to regulate size and weight and there are great practical difficulties in the way of such regulation by Congress. It is of great importance, therefore, that regulation of this matter by the states be held within reasonable bounds, and that they be not permitted, under guise of exercising the police power, to exclude from their highways by unreasonable regulations the interstate commerce which Congress is regulating in the public interest, and for the carrying of which it has aided in the construction of roads that form parts of a great national system of highways."

The importance of the Motor Carrier Act and its administration as a factor in determining the reasonableness of a state regulation affecting interstate motor carriers is shown in bold relief by recent decisions of the Interstate Commerce Commission interpreting and applying the Act.

In *Edwin A. Bowles Common Carrier Application,* 1 M. C. C. 589, p. 591 (decided March 13, 1937) the Commission said:

> "Interveners point out that the growth of motor-carrier transportation, and consequent diversion of traffic from the rails to the highways, has contributed to large traffic losses by rail carriers, a diminution of their revenues, and an impairment of the value of their securities. They contend that the public convenience and necessity do not require the proposed services and that the grant of a certificate to applicant would be inconsistent with the policy of Congress declared in section 202(a) of the act. One of the bases for this contention is that all of the origins and all of the destination, except Elkhorn, now have adequate service by rail. We are advised by statute that it is the policy of Congress to foster and preserve in full vigor both rail and water transportation, but we are also directed in section 202(a) to regulate transportation by motor carriers in such manner as to recognize and preserve its inherent advantages. There are certain inherent advantages in the transportation of petroleum products by motor vehicle. Among these are the reduction in amount of gasoline and other petroleum products which jobbers must keep on hand in storage tanks, and the elimination of the expense of trucking rail shipments of such products at destinations from tank cars to those jobbers who do not have storage facilities adjacent to the rail carriers' tracks. That a particular point has adequate rail service is not a sufficient reason for denial of a certificate; shippers and consignees of petroleum products are entitled to adequate service by motor vehicle as well as by rail."

And in *Pennsylvania Truck Lines, Inc., Acquisition of Control,* 1 M. C. C. 101, at p. 111 (decided October 8, 1935), the Commission said:

"While we have no doubt that the railroad could, with the resources at its command, expand and improve the partnership service and that, so far as numbers are concerned, there is now an ample supply of independent operators in the territory for the furnishing of competitive service, we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations. The language of section 213, above quoted, is evidence that Congress was not convinced that this should be done. Truck service would not, in our judgment, have developed to the extraordinary extent to which it has developed if it had been under railroad control. Improvement in the particular service now furnished by the partnership might flow from control by the railroad, but the question involved is broader than that and concerns the future of truck service generally. The financial and soliciting resources of the railroads could easily be so used in this field that the development of independent service would be greatly hampered and restricted, and with ultimate disadvantage to the public."

In the light of the declared purposes of Congress (Section 202(a)) "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," and "to promote adequate, economic and efficient service by motor carriers," and "to 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 in view of the foregoing interpretations of the

Motor Carrier Act by the Interstate Commerce Commission we think it obvious that this legislation gives occasion for the application of the protection of the Commerce Clause against State legislation which needless subverts and defeats the administration of the Federal Act and defeats the declared purposes and policies of Congress.

By Part II of the Interstate Commerce Act common carriers by water vehicle are charged with the duty of providing safe and adequate service, equipment and facilities for the transportation of property in interstate or foreign commerce, to establish, observe and enforce just and reasonable rates, charges and classifications, and to establish reasonable through routes and joint rates, yet the evidence is eloquent to the effect that the enforcement of the South Carolina regulations will effectively prohibit the exercise of these duties. The District Court specifically found (Finding of Fact No. 8, R. 78) that:

> "That weight and size of motor trucks are important factors in the fixing of interstate rates and that enforcement of the South Carolina law under consideration would necessitate increase of rates for transportation of commodities into, out of, and across South Carolina, would prevent the interchange of motor truck equipment and the establishment of through routes and joint rates on shipments moving into, out of, and across South Carolina."

We repeat again that it is implicit in the constitutional principle which we advance that if the needs of the State are such as to demand the regulations which it seeks to enforce, then the consequent effect of their enforcement upon the administration of the Federal legislation and their defeat of the purposes and policies

of Congress is unavoidable under our constitutional system, but it is equally obvious, as in the case of the Federal Highway Acts, that where the regulations are not demanded by the reasonable necessities of the State, and other methods or a different degree of limitation would satisfy the reasonable necessities of the State, the State may not arbitrarily ignore the demands of interstate commerce and arbitrarily defeat the purposes and policies of Congress.

Morris v. *Duby, 274 U. S. 135 and Sproles* v. *Binford, 286 U. S. 374, distinguished.*

There have been two decisions of the Supreme Court of the United States involving State regulation of size and weight of motor vehicles, *Morris* v. *Duby,* 274 U. S. 135 (decided April 18, 1927) and *Sproles* v. *Binford,* 286 U. S. 374 (decided May 23, 1932). In both cases the Court upheld the state regulations as reasonable.

Before discussing the facts and issues raised in these two cases, we will point out two pertinent principles affecting the application of the rule of Stare Decisis to constitutional issues.

First: The doctrine of Stare Decisis is not followed as rigidly in cases involving constitutional questions as in other cases, particularly where questions as to due process and burden on interstate commerce are raised.

The doctrine is applied more generally in cases interpreting the Constitution, rather than in cases involving the application of the Constitution to a particular state of facts.

It is the traditional policy of the Supreme Court of the United States not to formulate rules or to decide

questions beyond the necessities of the immediate issue. This policy applies with particular force to questions of due process and questions involving the commerce clause.

In *Euclid* v. *Ambler Co.,* 272 U. S. 365, Mr. Justice Sutherland, for the Court, said:

> "This is in accordance with the traditional policy of this Court. In the realm of constitutional law, especially, this Court has perceived the embarrassment which is likely to result from an attempt to formulate rules or decide questions beyond the necessities of the immediate issue. It has preferred to follow the method of a gradual approach to the general by a systematically guarded application and extension of constitutional principles to particular cases as they arise, rather than by out of hand attempts to establish general rules to which future cases must be fitted. This process applies with peculiar force to the solution of questions arising under the due process clause of the constitution as applied to the exercise of flexible powers of police, with which we are here concerned".

The constitutionality of an act is dependent always upon the facts and circumstances of the particular case at the time of the decision, which facts and circumstances may and do change from the time of the decision relied upon and a subsequent case under consideration.

The usual phrasing of the doctrine of Stare Decisis includes the important qualification that precedent is to be followed *unless conditions have so changed as to make the rule unwise or inapplicable.*

This principle was cogently stated by Mr. Justice Brandeis in his dissenting opinion in the case of *Burnett* v. *Coronado Oil and Gas Co.,* 285 U. S. 393:

"Stare Decisis is not, like the rule of res judicata, a universal, inexorable command. The rule of stare decisis, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the Court, which is again called upon to consider a question once decided. . . . In the cases which now come before us, there is seldom any dispute as to the interpretation of any provision; the controversy is usually over the application to existing conditions of some well-recognized constitutional limitation. This is particularly true of cases under the due process clause when the question is whether a statute is unreasonable, arbitrary, or capricious; of cases under the equal protection clause, when the question is whether there is any reasonable basis for the classification made by statute, and of cases under the commerce clause, when the question is whether an admitted burden laid by a statute upon interstate commerce is so substantial as to be deemed direct. These issues resemble, fundamentally, that of reasonable care in negligence cases, the determination of which is ordinarily left to the verdict of a jury. In every such case, the decision, in the first instance, is dependent upon the determination of what in legal parlance is called a fact, as distinguished from the declaration of a rule of law. When the underlying fact has been found, the legal result follows inevitably. The circumstance that decision of that fact is made by a court, instead of a jury, should not be allowed to obscure its real character."

Second: A statute valid when enacted may become invalid by change in the conditions to which it is applied.

The application of this principle is vividly illustrated by the case of *Abie State Bank* v. *Bryan,* 282 U. S. 765. There a law of the State of Nebraska assessing banks to build a fund to be used in guaranteeing bank deposits was attacked as a violation of due process, soon after its passage, in the Supreme Court of the United States and was held constitutional. Thereafter, the identical law was again attacked, and the doctrine of Stare Decisis was relied upon as a defense.

The Supreme Court, in holding the law to be unconstitutional, said:

> "A police regulation, although valid when made, may become by reason of later events, arbitrary and confiscatory in operation * * *. In the Shallenberger case, the suit was brought immediately upon the enactment of the law, and that decision sustaining the law cannot be regarded as precluding a subsequent suit for the purpose of testing the validity of the assessment in the light of *later actual experience.*"

A striking example of the rule that a decision may become inapplicable when conditions change is found in the case of *Vigeant* v. *Postal Telegraph Co.,* 260 Mass. 335, 157 N. E. 651 (1927). In that case a Massachusetts statute regulating the liability of telegraph companies for injuries caused by poles and wires, which had been held constitutional some years before, was held unconstitutional by the Supreme Court of Massachusetts. The court said:

> "When enacted its constitutionality was beyond question. . . . The statute as drawn was specifically

> directed to the conditions existing at that time. It was rigid, not flexible, in terms. It was not framed to broaden in scope with changing conditions. It has become too narrow. . . ."

It does not strain the imagination of the Court to conceive of circumstances under which any law, fixing the maximum weight and width of motor vehicles, may become unreasonable and arbitrary under changed conditions. The law itself contains no method of compensating for such change. We submit, therefore, that the Court should be vigilant, in a proper case, in reviewing the application of such a law to the facts existing at the present time.

The decisions of this Court in *Morris* v. *Duby, supra,* and *Sproles* v. *Binford, supra,* reveal that in neither of these cases was there, *first,* a finding that the State regulations had exceeded the reasonable necessities of the State, and, *second,* that the burden imposed upon interstate commerce was substantial and amounted to a practical prohibition.

We have seen above that the District Court in this case found and was justified in finding that both of these conditions exist here and we have also seen that under established constitutional principles the concurrence of these two conditions, under the facts of this case, invalidates the South Carolina regulations under the Commerce Clause.

The case of *Morris* v. *Duby, supra,* was decided nine years ago before there was any real conception of the growth and importance of the motor industry and prior to the present development of interstate highways. It involved only an isolated stretch of highway twenty-two miles long. No evidence was taken, and the affidavits filed with the bill of complaint showed no substantial

burden on interstate commerce, and were particularly designed to show the extra cost which would be inflicted upon plaintiffs in that case. The instant case, on the other hand, involves all of the great arterial highways crossing the State of South Carolina and connecting with other interstate highways in surrounding States, forming an integral part of the national system of integrated highways. The evidence shows a drastic burden upon interstate commerce will be imposed by the enforcement of the South Carolina regulations, not merely to burden the plaintiffs with extra costs and obstruct their operations, but to practically prohibit motor commerce altogether to the prejudice of carrier and shipper alike. The evidence shows that indispensable functions of interstate commerce will be prohibited. When this case was decided the Motor Carrier Act of 1935 had not yet been passed, and consequently the policies and purposes of Congress expressed therein could not be considered as a factor affecting the reasonableness of the law or the extent to which it burdened interstate commerce, and in that case this Court was careful to point out that "while regulation as to the use of the highways remains with the States," that regulation must not be "so arbitrary and unreasonable as to defeat the useful purposes for which Congress has made its large contribution to bettering the highway systems of the Union." In the instant case the District Court has found that these purposes will be defeated by the enforcement of the South Carolina regulations.

The case of *Sproles* v. *Binford, supra,* was decided more than five years ago, likewise before the development of transportation by motor truck had reached its present importance, and before the Congress of the United States had undertaken comprehensive regulation and promotion of the industry.

There was no proof that the enforcement of the Texas regulations would defeat the purposes of Federal-aid nor was there any substantial proof of a burden on interstate commerce. Neither of the two conditions which concur to invalidate the South Carolina regulations in this case were found by the District Court in *Sproles* v. *Binford.* Not only was there no showing of a burden on interstate commerce in any way comparable with the drastic burden which it has been found will be inflicted by the enforcement of the South Carolina regulations, but the District Court in that case made specific findings that the Texas law did not exceed the reasonable necessities of the State.

An examination of the findings of fact in the District Court, which were recited in the decision of this Court as a basis for confirming the judgment of the District Court, reveals that the conditions existing in Texas at the time this law came under attack were totally different from the conditions now existing in South Carolina.

The District Court found that in Texas at the time of the trial "there are highways of concrete and other rigid and semi-rigid types of construction and also bridges capable of carrying a greater load than 7,000 pounds, *but these do not form a regularly connected system and are scattered throughout the State.*"

In contrast, the District Court in this case, found that there exists in South Carolina today a splendid, interconnected system of standard highways, which is a portion of the primary Federal-aid system and an integral part of the national interstate system of highways, connecting with arterial highways which carry the interstate traffic of the Atlantic seaboard, and in fact traffic originating in and destined to all parts of the Nation. It further found that this system of highways was by

its design, and as proved by the experience of more than seven years, adequate to carry the present traffic both interstate and intrastate.

Appellants (S. C. Br. 92 to 94) attempt to attack this finding by a Table which lists the seven arterial highways specifically named in the District Court's decree, but their figures but illustrate the correctness of the District Court's finding. Thus, of the total of 1,134 miles on these 7 highways across the State of South Carolina, only 3.1 per cent or 35 miles, is shown as not surfaced either with concrete, bituminous macadam, or bituminous concrete, which the evidence disclosed was of the best type and to be ably supporting the present traffic without damage.

IV.

LIMITATION OF INJUNCTIVE RELIEF BY DISTRICT COURT.

In Section I of this brief was described the substantial burden which will be imposed on interstate commerce by the enforcement of the South Carolina regulations. In Section II it has been shown that this burden will be needlessly and arbitrarily imposed by regulations which exceed the reasonable necessity for their exercize, and in Section III we have shown that under the evidence in this case the concurrence of these two conditions invalidates the regulations under the Commerce Clause and entitles the plaintiffs to injunctive relief. In Section IV we will contend that the limitation of injunctive relief by the District Court was not a usurpation of the legislative prerogative, as contended by appellants, but a proper and valid exercise of its broad equitable discretion and necessary for the protection of the public interests of the State of South Carolina.

The brief of appellants, original defendants, devotes its Point IV to the contention that the exercise by the District Court of its equitable discretion to limit and condition the extent of the relief granted was an usurpation of the legislative prerogative. They say (at page 140): "Obviously there are only two ways in which the effect of a statute may be changed as the Court has changed the statute in the instant case: (1) either by purely legislative act, or (2) by judicial pronouncement of severability."

Counsel for appellants have misinterpreted the intention of the District Court and the effect of its decree. The Court was neither attempting to assert the severability of the statute, nor attempting to prescribe the lawful limitations of weight or size. The Court had found the regulations unconstitutional as they affected

the plaintiffs when operating in interstate commerce over the main and capable interstate highways across South Carolina. The Court had found (Finding of Fact No. 7, R. 78) "that enforcement of the South Carolina law would result in the obstruction of the flow of interstate commerce into, out of, and across the state of South Carolina . . . and would render it practically impossible for a large part of interstate commerce now conducted by truck to use the roads of that State" and (Finding of Fact No. 18, R. 81) "that Federal highways numbered 1, 15-A, 17, 21, 25, 29 and 52 comprise the great arteries of interstate commerce through the State of South Carolina, are of standard concrete paving as above described, with the exception of a few short stretches, a few miles in length, which are not of sufficient importance to justify the denial of the use of these arteries of commerce for the purpose for which they were constructed," and (Finding of Fact No. 19, R. 82) "that there are a few old bridges on the main arterial highways above mentioned and also on the other roads paved with standard concrete paving which were not designed for carrying trucks of greater weight than 20,000 pounds and a few which are too narrow to permit the use of trucks 96 inches in width, and as to these the provisions of the law cannot be deemed unreasonable; but that, as these bridges are few in number" and that (Opinion, R. 75) "interstate commerce, or at least a large part of it, could be so routed as to avoid them entirely. We think, however, that where it is the intention of the defendant to enforce the provisions of the act with respect to any bridge on the roads constituting the arteries of interstate commerce to which we have referred, or on other roads paved with standard concrete paving, notices to that effect should be posted on both sides of the bridge, of sufficient size and character

to give ample warning that the use of the bridge is forbidden to trucks with a gross weight in excess of ten tons or of a width exceeding 90 inches. As the bridges in question are probably capable of carrying the traffic as they have been carrying it for the past five years, we feel justified in enjoining the enforcement of the act as to them unless notice is posted as herein indicated," and (Finding of Fact No. 24, R. 83) "that the width limitation of 90 inches is unreasonable when applied to the standard concrete highways of the state and the arteries of interstate commerce heretofore mentiond. In view of the fact that all other states in the Union permit a width of 96 inches, this is the standard width of trucks engaged in interstate commerce, and the enforcement of the 90 inch limitation would exclude from the highways a large portion of the equipment now used in interstate commerce without material advantage to the safety or preservation of the highways."

Having concluded that the practical prohibition of interstate commerce created by the regulation was unconstitutional, the Court faced the problem of the nature of the relief it should grant. Obviously it faced an intricate and difficult problem, conditioned by two purposes: first, to enjoin the enforcement of the unconstitutional regulations to the extent that interstate commerce might continue to move and not be completely destroyed but yet to limit and condition the injunction so as to protect the safety and conservation of the public highways of South Carolina. Appellants argue (S. C. Br. 142, 143) that a court of equity has no power to cope with such a problem and that its attempt to do so in this case nullifies its decree and proves the validity of the law. This argument but begs the question. In determining the validity of the limitations and conditions applied by the lower court to the relief granted,

the correctness of the Court's general conclusion of law that the regulations were unconstitutional is to be assumed. The grant of injunctive relief by courts of equity is often fraught with practical difficulties which must admit of reasonable discretion.

We submit that the lower court exercised an eminently proper discretion by the limitations which conditioned the relief it granted. It confined the protection of the injunction to main arterial highways, which were known from the evidence to be safely carrying the present commerce; it denied the protection of the injunction to vehicles over 96 inches in width, because it knew from the evidence (R. 155) that from 85 per cent to 90 per cent of all vehicles now using the highways were 96 inches in width; it denied the protection of the injunction to such bridges as might be posted by the State Highway Department as too weak or narrow for the present traffic, and finally, "in order that the use of the bridges may not be unreasonably denied to plaintiffs, and that no hardship may result from the enforcement of our injunctive order with respect to contingencies which may arise and which we are not able now to foresee" jurisdiction of the cause was retained to the end that the injunctive order may be modified as occasion for such modification may arise (R. 75).

It must be borne in mind that the Court by its decree was not opening up the roads of South Carolina to a use they had not hitherto experienced. *The regulations which it conditionally enjoined had never been enforced* (R. 209, 210). In the exercise of its discretion, a court of equity need not shut its eyes to realities.

The conditions imposed by the Court upon the relief granted were restrictive of the appellees; were for the benefit and protection of the State. It cannot complain of that which is done to its benefit.

In the light of the real purpose and effect of the lower Court's decree, we can now examine the soundness of appellants' argument, summarized as follows (S. C. Br. 140):

> "Our argument at this point is devoted to the following proposition: (a) The Court lacked the power to classify the roads and bridges or to rewrite the width limit as those are solely legislative functions, and (b) since the Court lacked such power it was required, under the record evidence and the applicable rules of law, to hold the entire Act valid as to all roads and bridges."

It is conceded that the court below lacked "the power to classify the roads and bridges or to rewrite the width limit," but it did have the power, within a reasonable discretion, to extend the protection of its injunction to a certain class of highways only[1] and only to vehicles of such a width as had theretofore been using the highways and would not increase the hazards

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[1] The Court in its decree (R. 85) limited the protection of its injunction to the specified highways and "other Federal aid highways as may be of standard concrete or concrete and asphalt construction". The evidence in the case demonstrated that the greater portion of interstate traffic involved in the case used this class of highways. The Court did not confine its decree to highways upon which *Federal aid money had been spent.* This was in recognition of the principle asserted by this Court in *Bush* v. *Maloy,* 267 U. S. 317, where it was said (at page 324):

> "The Federal Aid legislation is of significance, not because of the aid given by the United States for the construction of particular highways, but because those Acts make clear the purpose of Congress that State highways shall be open to Interstate Commerce."

It has been persuasively estimated that about 90% of all interstate motor carrier traffic moving over primary or trunk highways is carried over highways in the Federal-aid system. *Michigan Law Review,* Vol. 33, No. 2, Dec. 1934—Regulation of Motor Carriers, at page 247. (Cited by appellees in their trial brief.)

thereon. Such an exercise of equitable discretion is a proper judicial function and not the usurpation of legislative functions.

Appellees sought by the prayer of their bill broader relief than that granted by the lower court. Yet they have not cross-appealed from that portion of the decree imposing equitable conditions upon the relief granted, recognizing that their claim to injunctive relief "yields to the impact of converging equities."[1]

Nor does it detract from the validity of the Court's decree that it modified the relief prayed for. In *Walden et al.* v. *Bodley, et al* 14 Peters, 156, 164, this Court said:

> "A Court of Equity cannot act upon a case which is not fairly made by the bill and answer. But it is not necessary that these should point out, in detail, the means which the Court shall adopt in giving relief. Under the general prayer for relief, the Court will often extend relief beyond the specific prayer, and not exactly in accordance with it. Where a case for relief is made in the bill, it may be given by imposing conditions on the complaint consistently with the rules of equity, in the discretion of the Court."

Appellants' contention that the conditioning of the grant of equitable relief is an usurpation of legislative power finds its answer in the language used in *Public Service Ry. Co.* v. *Board of Public Utility Commissioners* (1921) 276 F. 979. The Court had granted a preliminary injunction restraining a confiscatory rate, but named a maximum rate as a condition of the injunction. It was said (at page 990):

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[1] *Atlantic Coast Line R. Co.* v. *Florida,* 295 U. S. 301, 313.

> " . . counsel for the Board have quite pertinently called the court's attention to the fact that it is not a rate-making body and have made the point that if the court name a rate as a condition for granting an injunction, it would, in effect, fix a new rate and would thereby exceed its function. That it would exceed its function as a rate-making body is very true, because, not being such a body, it has no such function. But that in so doing it would exceed its power as a court of equity is not true. Injunction is one of the equitable remedies over which the court has jurisdiction. The remedy of injunction may be granted in the terms of the prayer or it may be granted only upon condition that the party seeking equity shall do equity, as in this instance, that the Company shall consent to charge a fare no greater than what the court deems necessary to avoid confiscation. If the naming of a condition is in effect the fixing of a rate, the sanction for the court's act is in the injunction and in the circumstances that make injunction imperative. This rule is ancient and of wide application. *Walden* v. *Bodley,* 14 Pet. 156, 164. (citing other cases)"[1]

In *Newton* v. *Consolidated Gas Co.* (1921) 258 U. S. 158, this Court sustained the action of a District Court restraining a confiscatory rate but fixing a maximum rate as a condition to relief, saying (at page 177): "It was within the court's discretion to grant the injunction upon terms and we cannot now say that the limitation upon charges amounted to abuse." The opinion concluded (at page 178):

> "It seems proper to add that we do not intend by anything said herein to intimate what would have been a reasonable rate for the sale of gas

[1] Appeal "dismissed per stipulation". Memo. decision 266 U. S. 636.

> under the circumstances disclosed. The eighty-cent rate was confiscatory; the one dollar and twenty-cent maximum imposed by the court during a specified period as a condition to the injunction was a limitation in favor of the consumers."

The District Court which entered the decree in this case might well have paraphrased this language when it conditioned its decree:

> 'It seems proper to add that we do not intend by anything said to intimate what *weight or width limit is within the reasonable necessity of the State* under the circumstances disclosed. *The present limitations impose an unconstitutional burden on interstate commerce; the conditions and limitations hereby imposed* as a condition to the injunction is a limitation in favor of the State of South Carolina.'

The power of a court of equity to protect the public interest by granting extraordinary relief only upon equitable conditions has recently been reiterated by this Court in *Central Kentucky Co.* v. *Commission,* 290 U. S. 264, 271 (1933):

> "The power of a court of equity, in the exercise of a sound discretion, to grant, upon equitable conditions, the extraordinary relief to which a plaintiff would otherwise be entitled, without condition, is undoubted. It may refuse its aid to him who seeks relief from an illegal tax or assessment unless he will do equity by paying that which is conceded to be due. *State Railroad Tax Cases,* 92 U. S. 575; *Cummings* v. *National Bank,* 101 U. S. 153; *Peoples National Bank* v. *Marye,* 191 U. S. 272, 287; see *Norwood* v. *Baker,* 172 U. S. 269, 294. It may withhold from a plaintiff the complete relief to which he would otherwise be entitled if the defendant is willing to give in its stead such sub-

stituted relief as, under the special circumstances of the case, satisfies the requirements of equity and good conscience. *Harrisonville* v. *Dickey Clay Co.,* 289 U. S. 334, 338. It may prescribe the performance of conditions designed to protect the rights of the parties pending appeal, *Hovey* v. *McDonald,* 109 U. S. 150, 157, or to protect temporarily the public interest while its decree is being carried into effect. See *Consolidated Gas Co.* v. *Newton,* 267 Fed. 231, 273; *Newton* v. *Consolidated Gas Co.,* 258 U. S. 165."

CONCLUSION.

It is respectfully submitted that upon the reasoning and authorities above set forth the decree of the District Court should be affirmed.

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December 8, 1937.

APPENDIX I.

Section 6 and 7 of "An Act To Regulate And Limit The Use Of Highways" enacted by the General Assembly of South Carolina, May 12, 1937, but vetoed by the Governor of that State on May 19, 1937, this veto being sustained by the House.

(A copy of the complete Act, certified by the Secretary of State of South Carolina, is on file in the Clerk's Office of this Court, and appellants' counsel have been advised of the possibility of reference by appellees' counsel to this document in brief or oral argument.)

SECTION 6. Wheel and Axle Loads.

(a) The gross weight upon any wheel of a vehicle shall not exceed the following:

1. When the wheel is equipped with a high pressure, pneumatic, solid rubber of cushion tire, 8,000 pounds.

2. When the wheel is equipped with a low pressure pneumatic tire, 9,000 pounds.

(b) The gross weight upon any one axle of a vehicle shall not exceed the following:

1. When the wheels attached to the axle are equipped with high pressure pneumatic solid rubber or cushion tires, 16,000 pounds.

2. When the wheels attached to the axle are equipped with low pressure pneumtic tires, 18,000 pounds.

(c) For the purpose of this Section an axle load shall be defined as the total load on all wheels whose centers are included within two parallel transverse vertical planes not more than 40 inches apart.

(d) For the purpose of this Section every pneumatic tire designed for use and used when inflated with air to less than 100 pounds pressure shall be deemed a low-pressure pneumatic tire and every pneumatic tire inflated to 100 pounds pressure or more shall be deemed a high-pressure pneumatic tire.

SECTION 7. Gross weight of vehicles and loads:

(a) No vehicle or combination of vehicles shall be moved or operated on any highway when the gross weight thereof exceeds the following:

1. The gross weight upon any one axle of a vehicle shall not exceed the limits prescribed in Section 6 of this Article.

2. Subject to the limitations prescribed in Section 6 of this Article the gross weight of any vehicle shall not exceed 30,000 pounds.

3. Subject to the limitations prescribed in Section 6 of this Article the gross weight of any combinations of vehicles shall not exceed 45,000 pounds.

4. The provisions of this or any other Act to the contrary notwithstanding, it is hereby authorized and directed that in no case shall the gross weight in pounds of any vehicle or combination of vehicles exceed the product of the distance, in feet, between the front axle and the rear axle plus 40 feet, and a coefficient of 700.

* * *