In thus treating the fact of Federal highway aid as apparently a material and controlling factor, the Court misconstrued the purpose and meaning of the Federal Highway Act and its conclusion is contrary to the decisions of this Court in the cases of *Morris* v. *Duby* and *Sproles* v. *Binford, supra.*

When construed by the applicable rules of this Court, it is clear that it was not the purpose of the Federal Highway Act to supersede, limit or affect the theretofore existing powers of the States to enact reasonable police regulations for the preservation and protection of their highways, though aided by Federal grants under this Act. The general rule of statutory construction applicable to these cases is well stated in *Reid* v. *Colorado,* 187 U. S. 137, at page 148, where it is said:

> "It should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case where the state law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' " Sinnott *v.* Davenport, 22 How. 227, 243, 16 L. Ed. 243, 247.

See to the same general effect *Savage* v. *Jones,* 225 U. S. 501, 532; *Missouri Pacific R. Co.* v. *Larabee Flour Mills Co.,* 211 U. S. 612, 623; *Vandalia R. Co.* v. *Public Service Commission,* 242 U. S. 255, 258; *Atlantic Coast Line R. Co.* v. *Georgia,* 234 U. S. 280, 292.

The Act of Congress known as the "Federal Aid Act" (Act July 11, 1916, c. 241) was entitled "An Act to provide that the United States shall aid the states in the construction

of rural post roads, and for other purposes". This original Federal-aid act was amended by the Federal Highway Act of November 9, 1921, c. 119 and is U. S. Code Title 23, Secs. 1 to 25, inclusive. Nowhere in the original Federal Aid Act or in the amending Federal Highway Act, as it now stands, is there any suggestion that the Congress had any intention of affecting or superseding the well recognized existing powers of the several states to enact police regulations as to weights or widths of vehicles, or otherwise, for the preservation and protection of their highways.

Section 19 of this Act (U. S. Code Title 23, Sec. 19) is significant as to the intention of Congress. It reads:

> "The Secretary of Agriculture shall prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this chapter, including such recommendations *to the Congress* and *the State highway departments* as he may deem necessary for *preserving and protecting the highways and insuring the safety of traffic thereon.*" (Italics supplied.)

It cannot be denied that the South Carolina statute here assailed, regulating the weights and widths of motor vehicles, was enacted for the purpose of "preserving and protecting the highways and insuring the safety of traffic thereon".

Section 19 of the Act, above quoted, specifically requires the Secretary of Agriculture to make his recommendations for this very purpose to "the Congress and the State highway departments". This is, obviously, for the reason that the Congress, in enacting this statute, intended and understood that it was a function of the States and their Highway Departments to make such regulations for preserving and protecting the highways and insuring the safety of traffic thereon, unless Congress, in its regulation of interstate transportation on the highways should later undertake to do so. The Court below held that Congress had not

legislated on the weights and widths of vehicles in the Motor Carrier Act, 1935. Further, Sections 48 and 15 of the Federal Highway Act expressly make it the duty of the States or their subdivisions to maintain such highways "according to the laws of the several states", and permit the Secretary of Agriculture to have proper maintenance work done if the States should fail to do so.

It could not reasonably be thought that Congress would have had the purpose of withdrawing from the States their long existing powers of highway regulation in enacting this legislation, in view of the fact that the financial interest of the Federal Government by reason of such appropriations in the highways of South Carolina, as well as most of the other States, is comparatively slight, compared with the interest of the State. Under the provisions of the Federal Highway Act (U. S. Code Title 23, Sec. 6) the mileage of State highways designated to receive Federal aid shall not exceed 7 per centum of the total highway mileage, and the primary or interstate highways of a State receiving Federal highway aid shall not exceed more than three-sevenths of the State mileage eligible, or 3 per centum of the total highway mileage of the State. The total mileage in South Carolina is approximately 60,000 miles (R. 159), so that in South Carolina 4,200 miles would be eligible to receive Federal aid and a maximum of 1,800 miles would be eligible to receive such aid as primary or interstate roads, such as those embraced in the decree. Since the evidence shows (R. 253) that only about 1,000 miles of standard hard-surfaced highway in South Carolina has received Federal aid and only 1,800 miles would be eligible to receive aid as primary interstate highways, it is evident that the actual interest of the Federal Government, compared with that of the State is slight. Both under the statute and as a fact (R. 158), not more than 50% of the cost of any Federal aid highway may come

from Federal funds. The total cost of the South Carolina State Highway System is about $111,000,000 (R. 173) and Federal funds in the amount of $29,000,000 have been contributed. The main highway arteries in the State generally are not built with Federal funds according to the testimony (R. 191), but the main highways across the State have generally been so built.

In view of these facts and the provisions of the Federal Highway Act, above referred to, the reasoning in the case of *Carley & Hamilton* v. *Snook,* 281 U. S. 66, 74, seems applicable. In this case the statute of California, which required the payment of motor vehicle license fees for both resident and nonresident vehicles, was assailed on the ground that such fees were forbidden by Section 9 of the Federal Highway Act which required such highways to be "free from tolls of all kinds." In holding that the license fees were not "tolls" within the Act, this Court said:

> "Such fees were a common form of state license tax before the Federal Highway Act was adopted in 1921. That Act contemplated the continued maintenance by the states of state highways, constructed with Federal aid, the expense of which must necessarily be defrayed from revenues derived from state taxation. *It cannot be supposed that Congress intended to procure the abandonment by the states of this well-recognized type of taxation without more explicit language than that prohibiting tolls found in Section 9.*" (Italics ours.)

For even stronger reasons, it seems clear that Congress by enacting the Federal Highway Act did not intend that anything therein should invalidate or affect the well-recognized police power of the States to enact regulations as to the weights and widths of motor vehicles on the highways.

If the Act itself discloses that Congress did not intend to change the States' long recognized power and duty to

preserve and protect the highways, then it cannot properly be contended that the fact of Federal appropriations made under the Act may be considered to show any change in the State's relationship to its highways, affecting its power of preservation, or to show that regulations admittedly lawful before such Federal appropriations, would directly burden interstate commerce thereafter. Such a holding would involve utterly illogical legal inferences from the fact of Federal highway appropriations.

Furthermore, the decisions of this Court in the *Duby* case *supra,* and in the case of *Sproles* v. *Binford, supra,* following it, both considered such a contention and reached a contrary conclusion. In the *Duby* case, at pages 144-145, it is said:

> "Conserving limitation is something that must rest with the road supervising authorities of the state *not only on the general constitutional distinction between national and state powers,* but also for the additional reason having regard to the argument based on a contract that under the convention between the United States and the state in respect to these jointly aided roads, the maintenance after construction is primarily imposed on the state. Regulation as to the method of use therefore necessarily remains with the state and cannot be interfered with unless the regulation is 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 and to facilitating the carrying of the mails over them. There is no averment of the bill or any showing by affidavit making out such a case." (Italics ours.)

The same holding was made in the *Sproles* case, *supra,* There the court quoted from the *Duby* case and on page 389-390 of 286 U. S. said:

> "The objection to the prescribed limitation as repugnant to the commerce clause is also without merit.

> The Court, in Morris *v.* Duby, supra, (274 U. S. 143, 71 L. Ed. 971, 47 S. Ct. 548), answered a similar objection to the limitation of weight by the following statement, which is applicable here: '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 adapted 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.' In the instant case, there is no discrimination against interstate commerce and the regulations adopted by the State, assuming them to be otherwise valid, fall within the established principle that in matters admitting of diversity of treatment, according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act."

Thus both of these cases are absolutely against the holding of the Court below in this respect. The court below says (R. 273) that at first it was inclined to think that these decisions were conclusive of the case, but upon mature consideration, it does not think so, and adds that in neither of these cases was there any such showing of the unreasonableness of the limitation and "of the *direct* burden upon interstate commerce when applied to a system of standard concrete roads as is contained in the record before us." This quotation from the court's opinion gives some indication of the reasons which lead it to distinguish these cases from the instant case. It appears that the court thought that the burden on interstate commerce in this case was "direct", instead of merely incidental or indirect. In

this it was clearly in error. If, as the court also held in its opinion, the South Carolina statute was reasonable under the Fourteenth Amendment and as a general police regulation for the preservation of the State's highways, then under all of the decisions of this Court, the burden would be indirect and incidental. Furthermore, in the *Sproles* case, which held that there was no direct burden on interstate commerce, the evidence as to the actual burden on interstate commerce was as extensive as here, if it did not show a greater burden. The trial court there found that interstate trucks which had theretofore done business profitably could no longer do so under the 7,000 pound net limitation and it specifically found that many of such interstate trucks would have to unload their cargo at the State line and load same into smaller trucks, in order to do business at all in the State. Certainly, there is nothing in the present record which goes farther than this or shows a greater burden. We insist, therefore, that both the *Sproles* and *Duby* cases are directly applicable and demonstrate the error in the Court's findings and decree.

As heretofore pointed out, the court in its opinion (R. 98) seemed to attempt to base its position largely on the language in the *Duby* case, which held that the State regulation was valid "unless the regulation is so arbitrary and unreasonable as to defeat the useful purposes for which Congress has made its contribution to bettering the highways systems of the Union and to facilitate the carrying of the mails over them". If this is the basis of the court's opinion, we submit that there is no evidence that the regulation is arbitrary and unreasonable in this case and have so shown in our discussion of the evidence under Proposition II. We have also shown under Proposition I that the evidence in the question of reasonableness is sharply conflicting and that the court below therefore invaded the province of the Legislature when it undertook to

determine the question of reasonableness, whether in the light of the Federal Highway Act or generally. For both of these reasons, as well as for the reason that the facts in the *Sproles* case were almost identical with those here involved, it is clear that this case does not fall within the above *dicta* in the *Duby* case, which was decided before the *Sproles* case.

This language in the *Duby* case was, of course, *dicta* because there was no averment in the bill or showing by affidavit making out such a case of arbitrary regulation defeating the purposes for which Federal aid appropriations were made. We further think that this language of the court there was properly intended to include only cases where the burden on interstate commerce was direct, and not merely incidental to an otherwise valid police regulation.

The court below also cited and quoted at considerable length from the decision of this Court in the case of *Nashville, etc., Ry. Co.* v. *Walters,* 294 U. S. 405, 417, where reference is made to contributions by the Federal Government in aid of State highways. We are somewhat at a loss to understand the exact purpose of the Court in referring to the *Walters* decision. It may be possible that in so doing, the Court had in mind what it had said in the earlier part of its opinion (R. 65), concerning the great development of interstate commerce by trucks within the past decade and the corresponding change and development of industry in the southeastern part of the country, and also had in mind a supposed analogy between these changed conditions in connection with Federal highway appropriations, and the changed conditions considered at length by the Court in the *Walters* case, in reaching the conclusion that the Tennessee grade crossing elimination statute was invalid under the Fourteenth Amendment (and not the Commerce Clause), because of changed conditions which had occurred

since a part of the cost was placed upon the railroad company by the statute when enacted. If this was the thought of the court below, there is no analogy and the *Walters* case is not at all applicable. As stated, that case was decided under the due process clause of the Fourteenth Amendment and not under the Commerce Clause. The Tennessee statute imposed on railroad companies one-half of the cost of the separation of grade crossings. The statute was enacted in 1921 and the suit was brought in 1931, and the railroad company assailed the constitutionality of the statute on the ground that it was unreasonable and arbitrary as applied to the particular crossing and under the particular circumstances, and relied largely on the recognized rule that a statute enacted under the police power may be valid when enacted, but may become invalid by subsequent change in the conditions to which it is applied. The part of the opinion of this Court in the *Walters* case, quoted by the court below (R. 68), purports to be the facts specifically found or of which the court could take judicial notice, and the part quoted shows the large contributions made by the Federal Government to the cost of the Federal-aid Highway System in Tennessee. A reading of the part of the opinion subsequent to the quotation made by the court below will clearly show that the purpose of this Court in referring to Federal-aid and, in fact, in its entire statement of the facts, including the footnotes to the opinion, was to indicate that since the enactment of the statute the interests of the railroads and the public with respect to grade crossing elimination had undergone a change, as had the principal purposes of grade crossing eliminations. In its conclusion from the facts summarized, this Court, (p. 421) said:

> "Federal-aid highways are designed so that motor vehicles may move thereon at a speed commonly much

> greater than that of railroad trains. The main purpose of grade separation therefore is now the furtherance of uninterrupted, rapid movement by motor vehicles. * * * The railroad has ceased to be the prime instrument of danger and the main cause of accidents. It is the railroad which now requires protection from dangers incident to motor transportation."

This Court further noted that the effect upon the railroads of constructing Federal-aid highways was to deplete existing rail traffic and revenues, and the separation of grades further intensified motor competition and depleted rail traffic. The Court held that in every case in the past where it had sustained the imposition upon railroads of a substantial part of the cost of separating grades, the new highway was an incident of the growth and development of the municipality in which it was located, but in view of the entire change of conditions and interests of the parties and the purpose at this time of eliminating grades, the Court held that the imposition of 50% of the cost of the particular grade crossing elimination was unreasonable and invalid.

The references by this Court in the *Walters* case to the importance of Federal-aid contributions, were made to indicate one of the reasons (and only one) why the purpose of grade crossing eliminations had changed; to show that, whereas formerly the hazards of railroad grade crossings resulted in large part from developments for the benefit of the railroads, thus imposing a resultant duty upon the railroads to pay a substantial part of the cost of their elimination, now the great interstate highways were constructed, in part, by Federal-aid, for entirely different purposes, and now the railroads instead of being the primary source of the hazards from grade crossings, were themselves greatly damaged and prejudiced in a variety of ways there pointed out, from the presence of grade crossings on highways, and

hence their duty in connection with their elimination had greatly lessened.

We cannot see the applicability of the reasoning above outlined upon the question of the invalidity of the gross weight limitation here involved. While there is no very definite evidence on the subject, aside from the motor vehicle registrations in South Carolina (R. 272, 273), conceding, for the sake of argument, that there has been great development in truck transportation in the Southeastern States in the past decade and a great addition to the number of large interstate trucks on the highways, still the *interest* of the State in preserving and protecting its highways has not ceased to exist, or even materially changed. Indeed, it would seem that its *interest* in and need to protect its highways had been augmented, because the added number of heavy trucks naturally increases the amount and extent of the damage to the highways; and particularly would the State's interest and duty to protect the highways be enlarged, because, as the court below expressly held, Congress has not legislated concerning the important subjects of weights and widths, and the State legislature is the only body with power to legislate thereon. Neither does the record show that in the last decade the contributions of the State to highway construction has largely or materially decreased, compared with those of the Federal Government. There is no definite evidence on this phase of the matter, even conceding it would be material.

We submit, therefore, that the quotation from the *Walters* case and the decision therein is wholly inapplicable to any question of law or state of facts arising in this case; and certainly the opinion of the court below does not point out its applicability.

The court below, also, seems to think that Congress by enacting the Motor Carrier Act, 1935, has, in some indefinite way affected or limited the State's power to enact

weight and width limitations, although it expressly held that Congress did not attempt to legislate on these subjects "but, on the contrary, expressly refrained from exercising" this power (Opinion, R. 57). The court below in this opinion says (R. 74):

> "Not only has Congress aided in the construction of the roads so that they 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 Co. *v.* Maloy, 267 U. S. 317, 324, 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."

Since Congress has admittedly expressly refrained from exercising its power to regulate the weight and width of vehicles, it is clear under all of the authorities that its failure or refusal to enter this field of regulation is as absolute in its effect as would have been its entry into this field of regulation. It did not "more or less" refrain from regulating weights and widths; it did so wholly and absolutely, and its refusal to enter into this field of regulation left the State's power therein wholly unimpaired. There must be an actual conflict to bring about any other result. See 12 *Corpus Juris,* Title "Commerce", page 18, Sec. 15; *Reid* v. *Colorado, supra; Missouri, Kansas & Texas Ry. Co.* v. *Haber,* 169 U. S. 613. The court below seems to think that the spirit of the legislation enacted by Congress to cover part of the field only, hovers over, so to speak, that part of the field Congress expressly left open to the States, so as to affect, in some undefined manner, the continued power of the States to act therein. This idea, we submit, is wholly metaphysical and is not supported either in reason or

authority. The case of *Bush & Sons Co.* v. *Maloy,* 267 U. S. 317, 324, referred to by the Court in this connection, involved a direct burden on interstate commerce, as we will hereafter point out.

The error of the court below in reaching its conclusion that the South Carolina statute violated the commerce clause resulted, in part, we think, from its assumption and holding that the South Carolina statute imposed a *direct* burden on interstate commerce and, in connection with this, from its misapplication of several decisions of this Court. The court below in three distinct places in its opinion (R. 71, 73 and top of page 74) states, in effect, that the enforcement of the South Carolina statute would place a "direct burden" on interstate commerce using the highways. It also cited approvingly in this connection the cases of *Buck* v. *Kuykendall* (R. 72), 267 U. S. 307, and *Bush & Sons Co.* v. *Maloy,* 267 U. S. 317 (R. 74). We think that neither of these cases is applicable here, because they both involve State regulations of the *business* of interstate highway carriers which constituted a *direct* burden on interstate commerce, and did not involve regulations for the protection and preservation of the highways, with a resulting *indirect* burden on interstate commerce.

The *Buck* case held invalid under the commerce clause a statute which, as construed and applied, prohibited the use of interstate highways by vehicles of common carriers for hire without first securing a certificate of convenience and necessity from the proper State official. The court said that it may be assumed that appropriate State regulations "adopted primarily to promote safety upon the highways and conservation in their use are not obnoxious to the commerce clause", where the indirect burden imposed is not unreasonable, but the court added (pages 315-316):

> "The provision here in question is of a different character. Its primary purpose is not regulation with

> a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used * * *. Thus the provision of the Washington statute is a regulation, *not of the use of its own highways,* but of interstate commerce. Its effect upon such commerce is not merely to burden *but to obstruct it.* Such state action is forbidden by the commerce clause. It also defeats the purpose of Congress expressed in the legislation giving Federal aid for the construction of interstate highways." (Italics supplied.)

The distinction between the facts and holding in the *Maloy* case, as above indicated, and the present case is entirely clear. There, the regulation was upon interstate business and commerce itself, and not for the preservation of the state's highways, as here. The burden there was direct, while here any burden is necessarily indirect and incidental. It may be also suggested that the last sentence above quoted is unnecessary to the conclusion, because if the statute directly burdened interstate commerce, as it did, that is sufficient to invalidate it, regardless of Federal regulation. *Minnesota Rate Cases,* 230 U. S. 352, 396.

The same explanation is applicable to the case of *Bush & Sons* v. *Maloy, supra.* In that case, a common carrier of freight sought a permit to do an exclusively interstate business, but the permit was denied. It was admitted that the highways were not unduly congested and were constructed so that they could carry heavier burdens than would be imposed by plaintiff's trucks. In refusing the permit, the Commission had considered whether the existing lines of transportation would be benefited or prejudiced so as to affect the public interest and apparently denied the permit on that ground. Here the highways were not constructed or improved with Federal aid. This Court held that the state action directly violated the commerce clause. It held that

the question of Federal aid was not of significance in preventing the application of the rule in the *Buck* case. We quote the last paragraph of the opinion as explaining the *Buck* case and indicating that in both cases the state's action was held to be a direct burden on interstate commerce by regulating the doing of business by common carriers on interstate highways:

> "This case presents two features which were not present in Buck *v.* Kuykendall, No. 345, decided this day (267 U. S. 307, ante, 623, 38 A. L. R. 286, 45 S. Ct. Rep. 324). The first is that the highways here in question were not constructed or improved with Federal aid. This difference does not prevent the application of the rule declared in the Buck case. 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 opened to interstate commerce. The second feature is that here the permit was refused by the commission, not in obedience to a mandatory provision of the state statute, but in the exercise, in a proper manner, of the broad discretion vested in it. This difference also is not of legal significance in this connection. The state action in the Buck case was held to be unconstitutional, *not* because the statute prescribed *an arbitrary test* for the granting of permits, or because the director of public works *had exercised the power conferred arbitrarily or unreasonably,* but because the statute, as construed and applied, *invaded a field reserved by the commerce clause* for Federal regulation." (Italics ours.)

Furthermore, in *Stephenson* v. *Binford,* 287 U. S. 251, 266-267, this Court stated that the *Buck* and *Maloy* cases dealt with state statutes affecting interstate commerce and "with discriminations relating thereto." In other words, the statute directly discriminated against interstate commerce.

In closing, we will briefly contrast the reasoning and holding in the above two cases with the holding in *Bradley* v. *Public Utilities Commission,* 289 U. S. 92. Here the Court upheld the action of State authorities in denying a certificate of convenience and necessity to operate as a common carrier in interstate commerce over a certain route because of the congested condition of the highway. We quote from the opinion of the Court (p. 95):

> "It is contended that an order denying to a common carrier by motor a certificate to engage in interstate transportation necessarily violates the Commerce Clause. The argument is that under the rule declared in Buck *v.* Kuykendall, 267 U. S. 307, 69 L. ed. 623, 45 S. Ct. 324, 38 A. L. R. 286, and George W. Bush & Sons Co. *v.* Maloy, 267 U. S. 317, 69 L. ed. 627, 45 S. Ct. 326, an interstate carrier is entitled to a certificate as of right; and that hence the reason for the commission's refusal and its purpose are immaterial. In those cases, safety was doubtless promoted when the certificate was denied, because intensification of traffic was thereby prevented. See Stephenson *v.* Binford, 287 U. S. 251, 269-272, ante, 288, 53 S. Ct. 181. *But there promotion of safety was merely an incident of the denial.* Its purpose was to prevent competition deemed undesirable. The test employed was the adequacy of existing transportation facilities; and since the transportation in question was interstate, denial of the certificate invaded the province of Congress. In the case at bar, *the purpose of the denial was to promote safety;* and the test employed was congestion of the highway. *The effect of the denial upon interstate commerce was merely an incident."* (Italics ours.)

The foregoing is directly applicable to the instant case. There, as here, the purpose of the state action is to promote safety and to preserve the highways; and there, also, as here, the effect of the state action upon interstate commerce is merely an incident. The court below, therefore, was

clearly in error in declaring and holding that the South Carolina statute assailed constituted a *direct burden* on interstate commerce, and in holding that any incidental effect of the state's weight and width limitation on interstate commerce rendered the statute unreasonable and invalid.

Conclusion.

It is respectfully submitted that upon reasoning and the authorities set forth in this brief the decree of the court below should be vacated, and the suit ordered dismissed.

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November 4, 1937.

APPENDIX I.

South Carolina Acts, 1933—Act No. 259, Page 340.

AN ACT to Regulate and Limit the Use of the Public Highways in the State by Motor Trucks, Semi-Trailer Motor Trucks, Semi-Trailers and Trailers; to Enlarge the Powers of the State Highway Department and Other Bodies Having Like Jurisdiction and Incorporated Cities and Towns in Respect Thereof; to Provide for the Enforcement of this Act and to Prescribe Penalties for the Violation Thereof and Exempting Certain of Such Motor Trucks, Semi-Trailer Motor Trucks, Semi-Trailers and Trailers From the Provisions Hereof, or Certain of Such Provisions, and to Repeal All Laws Inconsistent With This Act.

SECTION 1. *Public Policy.*—Be it enacted by the General Assembly of the State of South Carolina: It is hereby declared to be the public policy of this State that heavy motor trucks, alone or in combination with other trucks, increase the cost of highway construction and maintenance, interfere with and limit the use of the highways for normal traffic thereon, and endanger the safety and lives of the traveling public, and that the regulations embodied in this Act are necessary to achieve economy in highway costs, and to permit the highways to be used freely and safely by the traveling public.

SECTION 2. *Definitions.*—When Used in This Act: "Motor trucks" means any motor propelled vehicle designed or used for carrying freight or merchandise and not operated or driven on fixed rails or tracks; but it shall not include self-propelled trucks designed primarily for passenger transportation, though equipped with frames, racks or bodies having a load capacity not exceeding 1,500 pounds.

"Semi-Trailer Motor Trucks" means any motor-propelled truck, not operated or driven on fixed rails or tracks, designed to draw, and to support the front end of a semi-trailer. The tractor (or motor propelled truck), together with the semi-trailer shall be considered one unit, and

the words, "Semi-trailer motor truck" as used in this Act, shall mean and embrace such entire unit. Provided, That nothing contained herein shall alter or be construed to alter existing law in respect to the licensing of semi-trailer trucks, whereby the motor unit and the trailer unit are considered independent units and a license is issued to each separately.

"Semi-Trailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or motor truck tractor, and intended for the carrying of freight or merchandise and with a load capacity of over 1,500 pounds, except farm wagons used as trailers.

"Trailer" means any vehicle designed to be drawn by a motor truck, but supported wholly upon its own wheels, and intended for the carriage of freight or merchandise.

"Persons" shall include individuals, partnerships, associations, trusts and corporations, and the receivers, assignees or agents of any of them.

"Highways" shall include any public road, street, avenue, alley or boulevard, bridge, viaduct or trestle and the approaches thereto, within the limits of the State of South Carolina.

"Department" shall mean the State Highway Department of South Carolina.

"Local Authorities" shall mean every county, municipal and local board or body having jurisdiction over, and responsibility for the maintenance of, any highway other than state highways.

SECTION 2a. *Operation on Highways.*—Any person operating a motor truck, semi-trailer or other motor truck combination on or along any State highway shall, at all times, operate such vehicle to right of the center of said highway, so that the entire vehicle, including its load, shall be, at all times to the right of the center of said highway, except while overtaking or passing other vehicles traveling in the same direction. Any person operating a motor truck, semi-trailer or other motor truck combination shall not overtake or pass a vehicle traveling in the same direction when the view of the over-taking vehicle is in any way obscured, or when the vehicle to be overtaken is approaching the crest of a hill or rounding a curve.

SECTION 3. *Trailers.*—No person shall use or operate any trailer, as defined by this Act, on any highway.

SECTION 4. *Weight.*—No person shall operate on any highway any motor truck or semi-trailer whose gross weight, including load, shall exceed 20,000 pounds.

SECTION 5. *Height.*—No person shall operate on any highway any motor truck or semi-trailer motor truck whose height, including any part of the body or load, shall exceed 12 feet 6 inches, but nothing herein contained shall be construed to require the public authorities to provide sufficient vertical clearances to permit the operations of trucks with a height of 12 feet 6 inches.

SECTION 6. *Width.*—No person shall operate on any highway any motor truck or semi-trailer motor truck whose total outside width, including any part of body or load, shall exceed 90 inches.

SECTION 7. *Length.*—No person shall operate on any highway any motor truck or semi-trailer truck, the overall length of which, including load, is in excess of 35 feet. This Section shall not apply to trucks or semi-trailer trucks engaged in the transportation of lumber and logs from the mill or forest to shipping points, or from forest to mill or consumer.

SECTION 8. *Reduced Load and Speed Limits.*—(a) The State Highway Department and local authorities may, upon proper showing, issue special permits, which shall apply to roads or highways under their separate jurisdiction and supervision, for the operation of trucks, the operation of which would otherwise be prohibited under the provisions of this Act, subject to the following conditions:

(1) Any permit under the authority of this Section shall be in writing, which shall at all times be carried in the vehicle operating under the authority thereof, and shall contain such other and further restrictions as deemed necessary in the discretion of the issuing authority.

(2) Permits issued under the authority of this Section by the State Highway Department shall include authority

for the operation of such through any municipality on or along the street generally used on such highway route.

(b) County road authorities and municipal road authorities, in respect to roads under their sole supervision, may prohibit or limit the use of such roads by reducing the limitations fixed by this Act, if, in their discretion, such additional restrictions are proper and necessary; Provided, however, That on any road or street upon which such limitations shall apply there shall be conveniently and conspicuously posted such further restrictions showing the permitted maximum limits (weight, length and height) permitted over such thoroughfares. Provided, further, That no limitations shall be established by any county, municipal or other local authorities pursuant to the provisions of this Section that would interfere with or interrupt traffic as authorized hereunder over State Highways, including officially established detours for such highways, including where such traffic passes over roads, streets or thoroughfares within the sole jurisdiction of such county, municipal or other local authorities, unless such limitations and further restrictions shall have first been approved by the State Highway Department.

SECTION 9. *Exemptions.*—(a) The provisions of this Act shall not apply to motor trucks, semi-trailer motor trucks or trailers, owned by any agency of, the United States, the State of South Carolina, or any county or city or incorporated town therein, nor the equipment used only in husbandry, such as harvesting machines, threshers, and binders constructed so that they can be moved or propelled on the public highways.

(b) The State Highway Department, County Highway authorities, and municipal authorities may each issue special permits applying respectively to State Highways, County Highways and streets of municipalities, for the transportation of such over-size, over-weight, or over-length commodities as cannot reasonably be dismantled, and for the operation of such over-weight or over-size trucks, whose gross weight, including load, height, width or length, may exceed the limits prescribed in this Act, as may reasonably

be necessary for the transportation of such commodities, but such permits shall be issued subject to the following conditions:

(1) Any permit issued by the State Highway Department, or county road authorities, for the operation of a truck failing to come within the limits established by this Act or other limits already fixed by law, shall be in writing and shall be limited to one trip of the truck authorized to be moved or operated, as well as to the roads which are to be traversed by the said truck. Any such permit shall contain such further restrictions as in the discretion of the issuing authorities may seem appropriate.

(3) (Apparently misnumbered) In the case of any truck operated under the terms of any permit contemplated by this section, whether the same be issued by the State Highway Department, county road authorities or by municipal authorities, the operator shall carry in the said truck the permit for such operation so that it may be available at any time for public inspection.

(4) The operation of any motor vehicle, semi-trailer, or trailer in violation of the terms of any such permit, shall constitute a violation of this Act.

(5) Provided, That any permit issued by the State Highway Department shall give the holder thereof the right of passage over any part of the State Highway System, and all officially established detours thereof, including streets, roads and thoroughfares within the limits of any county, municipality or other local authority that are customarily used as a part of the State Highway System.

(c) The provisions of this Act shall not apply, prior to December 31, 1934, to any motor truck, semi-trailer, or trailer, which has been registered and on which has been paid the annual registration fee as provided, by the law of this State, before the date upon which this Act shall become effective, but shall, as to such trucks, be and become in full force and effect on and after December 31, 1934.

(d) The provisions of this Act shall not apply to telephone, telegraph or electric power companies, hauling by

means of their own vehicles, their own materials and equipment for construction or maintenance of their own property.

SECTION 10. *Penalties.*—The operation of any motor truck, semi-trailer motor truck or trailer, in violation of any section of this Act, or of the terms of any special permit issued hereunder shall constitute a misdemeanor, and the owner thereof, if such violation was with his knowledge or consent and the operator thereof shall on conviction be fined not more than Fifty ($50.00) Dollars, or imprisoned for not more than thirty (30) days.

(This Section as printed in the official bound volume of the South Carolina Acts, 1933, is in part misprinted and the above language of the Section is taken from an official copy of the statute filed in the office of the Secretary of State.)

SECTION 11. *Enforcement.*—Any officer hereinafter in Section Twelve enumerated, having reason to believe that the height, length, width or weight of any motor truck, semi-trailer motor truck or trailer, is in excess of the maximum limits prescribed by this Act permitted by any special permit issued under the terms hereof, is authorized to measure or weigh the same, either by means of portable or stationary scales, in the event such scales are on the route of said vehicle. Said officer shall require the operator of said motor truck, semi-trailer motor truck or trailer, to unload immediately such portion of load as may be necessary to decrease the gross weight of such vehicle to the maximum gross weight permitted by this Act or by the terms of any special permit in the possession of such operator and issued under the provisions of Section 9 (b) hereof (which excess load, when unloaded, shall be at the sole risk of the owner). The refusal of any such operator to permit his motor truck, semi-trailer motor truck or trailer to be measured or weighed or to proceed to a stationary scale, or to unload the excess load, shall constitute a violation of this Act.

SECTION 12. *Enforcement—Officers—Powers and Duties—Rights of Accused.*—Any peace officers, including sheriffs and their deputies, constables, police officers and marshals

of cities or incorporated towns, county police or patrols, State or County license inspectors and their deputies, and special officers appointed by any agency of the State of South Carolina for the enforcement of its law relating to motor trucks, now existing or hereafter enacted, shall be authorized, and it is hereby made the duty of each of them to enforce the provisions of this Act and to make arrests for any violation or violations thereof, and for violations of any other law relating to motor trucks, without warrant if the offense be committed in his presence, and with warrant if he does not observe the commission of the offense. When in pursuit of any offender for any offense committed within his jurisdiction, any such officer may follow and effect an arrest beyond the limits of his jurisdiction. If the arrest be made without warrant, the accused may elect to be immediately taken before the nearest court having jurisdiction, whereupon it shall be the duty of the officer to so take him. If the accused elect not to be so taken, then it shall be the duty of the officer to require of the accused a cash bond in a sum of not less than $25.00 for which the officers shall give a receipt stating the time and place where and when the accused is required to appear; conditioned that the accused binds himself to appear in the nearest court having jurisdiction at the time fixed in the bond. In case the arrested person fails to appear on the day fixed, the bond shall be forfeited in the manner as is provided for the forfeiture of bonds in other cases.

SECTION 13. *Severability.*—If any provision of this Act is declared unconstitutional or void for any reason or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby. It is the intention of the General Assembly that, if this Act cannot take effect in its entirety because of the judgment of any court of competent jurisdiction holding unconstitutional or void for any reason any provision or provisions thereof, the remaining provisions shall be given full force and effect as completely as though the provision or provisions held unconstitutional or void had not been included in this Act.

SECTION 14. *Repeal Provision.*—All laws, or clauses of laws, in conflict, or inconsistent, with the provisions of this Act, to the extent of such conflict or inconsistency are hereby repealed.

SECTION 15. This Act shall take effect upon its approval by the Governor.

Approved the 28th day of April, 1933.

APPENDIX II.

Acts S. C., 1931—Statutes at Large, No. 575.

AN ACT to Create a Commission for the Purpose of Investigating Motor Transportation in South Carolina; and to Report to the Next General Assembly.

SECTION 1. *Commission to Investigate Motor Transportation—When to Report.*—Be it enacted by the General Assembly of the State of South Carolina: That there is hereby created a Commission of five members for the purpose of thoroughly investigating the question of motor transportation of freight and/or passengers in South Carolina, which said Commission shall report its findings and recommendations to the next session of the General Assembly of South Carolina.

SECTION 2. *Members—Appointments.*—That said Commission shall consist of two members of the State Highway Commission, two members of the Railroad Commission of South Carolina, to be appointed by the Chairman of the Railroad Commission of South Carolina, and one member of the South Carolina Tax Commission, to be appointed by the Chairman of the South Carolina Tax Commission; that said Commission shall organize by selecting one of its members Chairman.

SECTION 3. *Authority of Commission.*—That said Commission is hereby clothed with full authority to subpœna

witnesses and administer oaths, and to require the production of any and all documents, books, and records of whatever kind and nature pertaining to the question of motor transportation and/or the costs of motor transportation and/or taxes upon motor transportation as compared with the costs and taxes of railroad carriers in South Carolina. That the report of said Commission to be made to the General Assembly of 1932, shall include full findings of fact, together with recommendations and suggested legislation, preferably in the form of bills.

SECTION 4. *Compensation of Members—Employ Clerical Help—Limit of Expenses.*—That the members of said Commission for their services shall be paid actual traveling expenses incurred in the discharge of their duties hereunder, which said sum shall be paid as now provided by law for members of the two respective Commissions. That said Commission is hereby authorized and empowered to employ such stenographic and auditing assistance as may be necessary for the proper discharge of the duties of said Commission, and that the expenses of the same shall be paid upon proper vouchers from funds collected by the Railroad Commission of South Carolina in administering the Motor Transportation Act: *but, Provided, however,* That the total expense of this investigation shall not exceed the sum of Five Thousand ($5,000.00) Dollars.

SECTION 5. All Acts or parts of Acts inconsistent herewith are hereby repealed.

SECTION 6. This Act shall take effect upon its approval by the Governor.

Approved the 27th day of June, 1931.

APPENDIX III.

Acts of South Carolina, 1920—Statutes at Large, Volume 31, pps. 1072, 1078.

ACT No. 602.

AN ACT to Create a State Highway Department, to Define Its Duties and Powers, to Provide Funds for Its Maintenance by the Licensing of Motor Vehicles Operated on the Highways of the State, to Raise Revenue for the Construction and Maintenance of a System of State Highways, and to Assent to the Provisions of an Act of Congress, Approved July 11, 1916, Entitled "An Act to Provide That the United States, Shall Aid the States in the Construction of Rural Post Roads and for Other Purposes," and All Acts Amendatory thereto.

SECTION 13. *License Fees After January 1, 1921—Limitations on Weight of Trucks—Penalty for Violation—Dealer's License—Transfer of License.*—On and after January 1st, 1921, every resident owner of a motor vehicle in the State of South Carolina shall pay to the State Highway Commission, in lieu of all other State, municipal or county licenses, an annual license as follows: For each automobile weighing not over two thousand pounds the sum of six ($6.00) Dollars, and for each additional five hundred pounds of weight, or fraction thereof, the additional sum of two ($2.00) dollars. The manufacturer's weight of automobiles shall be accepted as the weight for the purpose of registration hereunder. And for trucks the license fees shall be as follows: Trucks of a capacity not exceeding one ton, fifteen ($15.00) dollars. Trucks exceeding one ton and up to and including two tons, thirty ($30.00) dollars. Trucks exceeding two tons and up to and including three tons, sixty ($60.00) dollars. Trucks exceeding three tons and up to and including four tons, one hundred ($100.00) dollars. Trucks exceeding four tons and up to and including five tons, two hundred ($200.00) dollars. Trucks exceeding five tons and up to and including six tons, two hundred and fifty ($250.00) dollars. Trucks exceeding six tons and up to and including seven and over, three hundred and fifty

($350.00) dollars; Provided, That a reduction of twenty-five (25) per cent. on the license be allowed on all trucks using pneumatic tires on all the wheels. Lumber trucks, and other trucks with trailer attached, shall pay an annual license of $5.00 for each trailer so operated, and an additional sum of $2.00 for every thousand pounds or part thereof of ordinary loading capacity of such trailer: Provided, That no truck larger than a four ton truck shall be allowed to be used on any highway or public road of this state unless the person desiring to operate any such truck larger than a four ton truck shall first make a petition to the authorities in charge of the roads in any county where it is proposed to operate such truck, stating the road or roads proposed to be used, and such road authorities shall consent to the use of such truck on such roads, and such consent shall be approved by the State Highway Engineer, in which event such truck shall, upon payment of the license fee herein provided, be permitted to operate on the roads stated in the petition and none other; any violation of the provisions of this proviso shall be punished as herein provided in Section 15 of this Act. For each motor cycle, three ($3.00) dollars per annum. Every dealer in motor vehicles in this state, before operating any such motor vehicles upon the highways of this State for the purpose of demonstration and sale, shall pay to the State Highway Commission of this State, in lieu of all other State, municipal and county licenses, an annual license of twenty-five ($25.00) dollars for the first make of motor vehicles sold by such dealer, and an additional annual license fee of fifteen ($15.00) dollars for each other make of motor vehicle sold by such dealer. All licenses shall expire on the thirty-first day of December following the date of issue. Annual licenses shall hereafter be issued between the first day of January and the first day of February of each year. In the case of motor vehicles registering for the first time, the full annual fee shall be paid for licenses issued between January the first and March the thirty-first; three-fourths of the annual fee for licenses issued between April the first and June thirtieth; one-half of the annual fees for licenses issued between July first and September thirtieth; and one-fourth

of the annual fees for licenses issued between October first and December thirty-first. Any owner of a motor vehicle upon which the license fee for the then current year shall have been paid shall, upon the sale of said motor vehicle notify the State Highway Department of such sale, giving the name and address of the purchaser, and upon the payment of a transfer fee of fifty (50¢) cents the original license shall be transferred to the new owner. The State Highway Commission shall furnish the Clerk of Court of each County with a sufficient supply of application blanks for license for use of the people of the county.

APPENDIX IV.

Acts of South Carolina, 1924—Statutes at Large, Volume 33, Act. No. 721, Page 1182.

No. 721.

AN ACT to Regulate Traffic Upon the Highways of The State, and to Provide Penalty for Violation Thereof.

SECTION 1. *Limit of Weight and Load for Vehicles on Highways—Measurement.*—Be it enacted by the General Assembly of the State of South Carolina: That from and after the passage of this Act, it shall be unlawful to operate on any of the highways or public roads of this State whether such roads are in the State system or not, any vehicle of four wheels or less the gross weight of which, including its load, is more than twenty thousand pounds, or to operate any vehicle having a greater weight than fifteen thousand pounds on any one axle, or having a load of over six hundred pounds per inch width of wheel concentrated upon the road surface (said width in case of pneumatic tires to be measured between the flanges of the rim and in case of solid rubber tires to be the actual width of said tires.)

APPENDIX V.

Acts of South Carolina, 1930, Statutes at Large, Volume 36, Pages 1192-1193.

"No. 685.

"AN ACT to Limit the Weight, Size and Loads of Vehicles Operated on Public Highways of This State and to Provide Penalties for Violations.

"3. *Weight-Limit-Distribution—This Section Additional to Act No. 543, Acts of 1926—Hauling of Cotton.—*

"Except as authorized in Section four hereof, no vehicle, whether operated singly or in combination with other vehicles on the public roads of this State, shall exceed in gross weight twelve and one-half (12½) tons, and the gross weight on no axle of any vehicle or combination of vehicles, having more than two axles, shall exceed five (5) tons. Any vehicle having more than two axles shall be so designed and constructed as to assure a constant distribution of weight among the axles while such vehicles are in operation, regardless of irregularities in the road surface. No combination of vehicles operated as a unit on the public roads of the State shall have a gross weight exceeding twenty (20) tons: *Provided,* That this Section shall not serve to repeal any provisions of Act No. 543, Acts of 1926, but shall be construed as provided additional limitations: *Provided,* That the limitations as to width of loads as stated in this Section and in Section 2 of this Act, shall not be deemed to prohibit the hauling of bales of cotton in loads not exceeding the width of two bales lying or standing edge to edge, if the bales are touching each other at both ends. It shall be lawful to haul cotton on the public highways of the State where the width of the load does not exceed the width of two bales placed edge to edge, against each other."