its roads with materials adequate to support the loads permitted by the statute, yet inadequate to accommodate those permitted by the decree.

We further submit that the Statewide application of the statute, without geographical exception, was wholly justified and reasonable, either as a means of protecting the 57,000 miles of roads not included in the segment described in the decree, or as a means of protecting the thirty-seven and one-half miles of bridges in the State system which were not designed to carry heavier loads, plus the unnumbered others on the 57,000 miles of highways and city streets remaining. When both legitimate objects are considered together, it seems conclusive that the statute is and should be considered reasonable as a matter of fact, and that the lower court should be reversed.

This Court has repeatedly sustained the power of a state legislature to consider a problem of this character in its entirety and to refuse separate treatment of separate classes because of the administrative difficulties which might be incurred in so doing. In *Aero Mayflower Transit Co.* v. *Georgia Public Service Comm.*, 295 U. S. 285, an interstate motor carrier claimed a flat fee was an unreasonable one for highway use because he made only a limited use of the entire State road system. In that case, the Court said:

> "The appellant urges the objection that its use of roads in Georgia is less than that by other carriers engaged in local business, yet they pay the same charge. The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. The fee is for the privilege for a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed."

It will be observed that in that case, in passing upon the reasonableness of a tax assessed against interstate carriers,

the Court not only considered administrative difficulties but also took into consideration the highways of the State as a whole and found the fee reasonable for the privilege of using all of the roads even though it might have been excessive for the use of a limited portion of such system.

The Supreme Court of Wisconsin pursued the same principle in *Interstate Trucking Co.* v. *Damman,* 241 N. W. 625, 630. In that case interstate motor carriers challenged the State fee as an unreasonable burden, contending that the amount of the fee was made excessive by reason of the costs incurred by the State in maintaining highways and in carrying on other activities not utilized by or benefiting interstate motor carriers. On that point, the Court said:

> "Plaintiffs call attention to the allocation for fire roads. Section 20.49 (6) Stats. Roads within the forest preserves are nevertheless public roads and an integral part of the state highway system. They may not be used ordinarily by interstate truckers, but neither are many town roads. *The rule does not require an allocation to the particular road used by the trucker who is taxed.* Another allocation is for purchasing timber land adjacent to highways. Section 20.49 (7a), Stats. This was apparently intended to preserve timber along some of the highways to add to the attractiveness of the highways from a scenic point of view, which is clearly an incidental highway use. *The State's highway program and budget must be taken as a whole.*" (Italics ours.)

In *Carley and Hamilton* v. *Snook,* 281 U. S. 66, 74 L. Ed. 704, 50 S. Ct. 204, the Court considered a license fee required of intrastate operators, and the Commerce Clause was not in the case. Nevertheless the Court's following statement is applicable to interstate commerce, as shown by later decisions of the Court. The Court said:

> "A corollary of this contention is that although the fees are not per se disproportionate to the privilege of

> operating over all the highways of the state, appellants are nevertheless entitled to receive licenses limiting the operation of their motor cars to the few highways which they wish to use, upon the payment of correspondingly reduced fees. But no constitutional principle is suggested, and we know of none, which would enable a licensee thus to regulate the extent of the privilege granted or to assail an otherwise valid tax upon it merely because a reduction of the privilege and the tax would better suit his convenience or his pocketbook."

The *Aero Mayflower* case, *supra,* decided after the *Snook* case, clearly applied that principle to interstate commerce.

This Court has always sustained the principle that difficulty of enforcement is a proper basis for defining the boundaries of a classification, or for the failure to subdivide a broad general class. 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.

In *Euclid* v. *Ambler Realty Co., supra* (272 U. S. 365), a zoning ordinance was considered in which it was urged against the validity of the ordinance that it excluded not only offensive and dangerous industries, but also the inoffensive. The Court said:

> "Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive nor dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this court has upheld, although drawn in general terms so as to include individual cases that may turn out to be innocuous in themselves. (Citing cases.) *The inclusion of a reasonable margin to insure*

> *effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity.* Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separate in terms of legislation." (Italics supplied.)

In *Purity Extract and Tonic Co.* v. *Lynch,* 226 U. S. 192, a statute forbade not only the sale of intoxicating liquors but also non-alcoholic malt liquors. The latter provision was sustained as a necessary aid to the enforcement of the law forbidding the sale of intoxicating liquors. The Court said:

> "It does not follow that because a transaction separately considered, is innocuous, it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose the admitted power of the Government."

In *Silz* v. *Hesterberg, supra* (211 U. S. 31), this Court upheld the provisions of a statute, as an aid necessary, in the judgment of the Legislature, to the enforcement of the game laws of the State of New York, which made it an offense to possess certain game birds during the closed season whether they were killed within the State of New York or elsewhere. This decision was made in the face of a showing that the game birds in question had been killed in Russia during the open season and imported to New York during the New York open season, and that such birds were readily distinguishable from those native to New York, both while feathered and otherwise.

In *Holyoke Water Power Co.* v. *American Writing Paper Co.* (decided March 1, 1937), 81 L. Ed. (adv.) 383, the Court said, with reference to the complaint that an exception from the general terms of a statute should be made to fit the case

of one whose operations were not of the type at which the statute was actually aimed:

> "No principle of constitutional law, no dictate of fair dealing, lays a duty upon the Congress to single out for special treatment an individual or a few among the members of a common mass."

In *Bayside Fish Flour Co.* v. *Gentry,* 297 U. S. 422, a statute of California required licenses of those engaged in the business of canning, curing or processing fish. The appellant challenged the Act as a violation of the "Commerce Clause" and of both the "Due Process" and "Equal Protection" clauses of the 14th Amendment, showing that the fish it used were largely caught in waters outside the jurisdiction of the State. The Court held that the plain purpose of the Act was to conserve for food the fish found within the State and that its effect on interstate commerce was purely incidental. In disposing of appellant's claim that the Act violated the Commerce Clause, the Court said:

> "Sardines taken from waters within the protection of the state and those from without are, of course, indistinguishable; and to the extent that the act deals with the use or treatment of fish brought into the state from the outside, its legal justification rests upon the ground that it operates as a shield against the covert depletion of the local supply, *and thus tends to effectuate the policy of the law by rendering evasion of it less easy.*" (Italics supplied.)

See *Hebe Co.* v. *Shaw,* 248 U. S. 297, 63 L. Ed. 255, 39 S. Ct. 125, and *Pierce Oil Corp.* v. *Hope,* 248 U. S. 498, 63 L. Ed. 381, 39 S. Ct. 172.

The applicability of the above cases to the instant case is plain. In fixing the gross load limitation at a point which will protect *all* of its highways, the State is acting within its power to include "a reasonable margin to insure effective enforcement."

Under the holding in the above case the State, in order to protect 57,000 miles of highway, 96% of all public roads in the State, had an absolute right to make its limitations apply to and include traffic over the remaining four 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. Failure to exclude such roads did not result in the unreasonableness of the statute as applied to any of the roads, either under the 14th Amendment or the Commerce Clause. Because the lower court so held, the decree is erroneous and should be reversed.

4. *Crediting appellees' evidence with all the effect which may properly be attributed to it, the reasonableness of the statute remains a fairly debatable question which should have been left to the Legislature* (Assignment of Errors Nos. 16, 24, 27).

From all the cases cited above it is clear that fairly debatable questions as to the reasonableness of a statute enacted to accomplish an end, which end is within the power of the Legislature, are those which should be left to the exclusive determination of the Legislature. *Sproles* v. *Binford, supra* (286 U. S. 374); *N. Y., N. H. & H. R. Co.* v. *New York, supra* (165 U. S. 628); *N. C. & St. L. R. Co.* v. *White,* 278 U. S. 456; *Silz* v. *Hesterberg, supra* (211 U. S. 31); *Bayside Fish Flour Co.* v. *Gentry, supra* (297 U. S. 422); *McLean* v. *D. & R. G. R. R. Co.,* 203 U. S. 38; *Morris* v. *Duby, supra* (274 U. S. 135); *Standard Oil Co.* v. *Marysville, supra* (279 U. S. 582); *Zahn* v. *Board of Public Works,* 274 U. S. 325; *Euclid* v. *Ambler Realty Co., supra* (272 U. S. 365).

A careful review of the record, and of the facts of which the Court may take judicial notice, clearly shows that there are several fundamental considerations sustaining appellants' position in regard to which there is no conflict in the evidence and that there remain numerous factors

bearing on the reasonableness of the statute which, when crediting appellees' showing with the greatest effect that can fairly be attributed to it, leave fairly debatable questions for the exclusive determination of the Legislature.

There is *no* evidence to show that the statute is unreasonable (1) as a means of protecting all of the highway bridges in the State except for twenty-five percent of those on the 6100 miles of roads in the State system, or of protecting the safety of those who use them, or (2) as a means of protecting the more than 57,000 miles or about 96 percent of all the roads in the State not surfaced with concrete or bituminous concrete pavement, or the safety of those who use them, or (3) that certain portions of even the definite segment of the State's highways are not surfaced either with concrete or bituminous concrete. As shown above, we submit that these undisputed facts which are conclusively shown in the record, are enough to reverse the lower court's decree.

We further submit that in the light of all the circumstances argued above, of the conflict in the testimony outlined above, and of the facts which the Court may and should judicially notice there are many questions bearing on the question of reasonableness which the most appellees have succeeded in doing is to show that they are fairly debatable. Since the burden is on appellees to show that the statute is so arbitrary and unnecessary as to admit of no reasonable difference of opinion as to its unreasonableness we submit that appellees have failed to sustain such burden, that such failure is fatal to their case and that the decree should be reversed.

Such questions which are not shown to be resolved against appellants or which are at least fairly debatable include the following: Is the statewide application of the statute reasonable as a means of protecting both the bridges and the

roads and the safety of traffic upon them? Is the statewide application of the statute reasonable as a means of establishing a standard for future highway construction or reconstruction? Is there a real relationship between a gross load limitation, in general, or the 20,000 pounds gross load limitation in particular, and the protection of the South Carolina pavements either concrete or otherwise, or between such limitations and the safety and convenience of those who use the roads? If the gross load limitation in question is reasonable, is there a real relationship between the provision that a tractor-semitrailer shall be considered as one unit for determining gross load and the protection of the roads? Is wheel and axle load the only reasonable limitation for vehicles using the roads of the State and are the roads in question capable of supporting axle loads of 16,000 to 18,000 pounds when they are not surfaced with concrete, when they are so surfaced, or when 60 percent of the concrete surfacing is without center joint? Is a 90 inch, as contrasted with a 96 inch, width limitation reasonable as a means of protecting either the roads and bridges or the safety of those who use them? Does a well connected system of concrete paved roads exist in South Carolina and are the gaps in the definite segment which are not surfaced with concrete "important" or "unimportant"?

We submit that all these, and many others, are questions in this case which have either been answered in favor of the statute or remain unanswered, and that those which are unanswered are fairly debatable; that each has a material bearing on the reasonableness of the statute when it is charged that the statute is either a violation of the Commerce Clause or the 14th Amendment, and that the Court erred in undertaking to decide such questions and that the decree should therefore be reversed.

III.

The Court's conclusions as to the invalidity of the statute are erroneous because based upon improper tests of reasonableness (Assignments of Error Nos. 12, 19, 20, 21, 24).

It is obvious from the District Court's opinion that it was decisively influenced by three factors which actually are wholly irrelevant to any issues of fact or law in the case. These are the following: (1) The Court thought that the Federal Highway Act (Secs. 1 to 56, Title 23, U. S. C.), and (2) that the Motor Carrier Act, 1935 (Secs. 301 to 327, Title 49, U. S. C.) in some way circumscribed the State's power to enact weight and width limitations statutes, and (3) the Court also in the 7th to 16th findings of fact (R. 78-81) laid great stress upon the alleged inconvenience, expense and loss occasioned interstate truckers and their shippers by the statute, and applied all of such factors as tests of reasonableness.

It is evident that the Court's emphasis on these three factors arose, in part, from erroneous conclusions the Court drew from four decisions of this Court: *Buck* v. *Kuykendall,* 267 U. S. 307 (R. 72); *Bush* v. *Malloy,* 267 U. S. 317 (R. 74); *Morris* v. *Duby, supra* (274 U. S. 135) (R. 71); *Nashville, C. & St. L. Ry.* v. *Walters,* 294 U. S. 405 (R. 68).

At this point we will endeavor to show the errors of the District Court in the above respects and in so doing will first discuss the three above described factors, then point out the effect of the Court's erroneous application of the four decisions above cited to the Court's consideration of such three factors.

The Three Above Factors.

It is conclusively settled by the decisions of this Court that these three factors, singly or in combination, are

wholly irrelevant to the issues in this case. We discuss them in the above order.

(1) *The Federal Highway Act:*

Preliminary to a discussion of this and the Motor Carrier Act, 1935, consideration must be given to the effect of an Act of Congress upon state police power statutes.

Where, as here, a State has power to act in the absence of national legislation, it is the uniform holding of all the decisions of this Court that such power is superseded by an Act of Congress *only* when the Act actually conflicts with the state law in issue. As was said in *Townsend* v. *Yeomans,* No. 781, decided May 24, 1937, 81 L. Ed. (adv.) 840, 847:

> "The case calls for the application of the well-established principle that Congress may circumscribe its regulation and occupy a limited field, and that the intent to supersede the exercise by the state of its police power as to matters not covered by the federal legislation is not to be implied unless the latter fairly interpreted is in actual conflict with the state law" (citing cases).

In *Carey* v. *South Dakota,* 250 U. S. 118, it was held that the Federal Migratory Bird Act did not displace a state law which forbade the shipping out of the state of wild duck killed in season, because the Federal Act did not cover the precise subject matter of the state act. Authority to this effect could be multiplied almost indefinitely. See *Mintz* v. *Baldwin,* 289 U. S. 346, and *A., T. & S. F. R. Co.* v. *Railroad Commission,* 283 U. S. 380, and cases therein cited.

The rule apparent from the foregoing cases is this: *Where the Act of Congress does not actually supersede state power, then such Act has no effect whatsoever upon the state power.* It is clearly a case of "all the one thing or all the other." Every decision of this Court on this

subject has so held. This Court has *never* held that an Act of Congress which did not supersede State power, did in *any way* affect the State power. The attitude of the District Court on this point is contrary to every decision of this Court. *Buck* v. *Kuykendall, supra,* and *Bush* v. *Malloy, supra,* do not support the District Court.

Applying this and other principles it is plain that the Federal Highway Act does not and was never intended to in any way affect State power *to enact weight and size limitations.*

(a) The Act shows by its terms not only that Congress did *not* intend to occupy the field of weight and size limitations but also shows affirmatively the intention of Congress to *leave this power to the States.* Thus it restricts State powers in certain particulars but does not mention weight or size limitation; by Section 9 the aided highways are required to be "free from tolls of all kinds" and by Sections 15 and 48 the States are required to maintain the aided roads. These are the only provisions of the Act limiting State power or imposing duties on the States with respect to completed highways. By expressly restricting State power in these respects and by failing to mention the subject of weight or size limitation, Congress showed its intention to leave weight and size limitation to the States. *Sturges* v. *Draper,* 12 Wall. 19, 27; *Walla Walla* v. *Walla Walla Water Co.,* 172 U. S. 1, 15. By Sections 8 and 10 of the Act the approval of the Secretary of Agriculture in certain respects is required before Federal aid can be extended for new highway construction; and by Section 19 the Secretary is authorized to make such *recommendations* to the State highway departments (*not the State legislatures*) "as he may deem necessary for preserving and protecting the highways and insuring the safety of traffic thereon." The adoption of the recommendations

authorized by Section 19 are not included in the conditions precedent to granting of Federal aid which the Secretary may require under the authority of Sections 8 and 10; furthermore, whatever may be the powers conferred on the Secretary by Section 19 he has never prescribed weight or size limitations. See *Northwestern Bell Tel. Co.* v. *Nebraska State Railway Com.*, 297 U. S. 471, 478, 479.

In *Carley & Hamilton* v. *Snook, supra* (281 U. S. 66), a law of California requiring motor vehicle license fees was attacked on the ground that such fees were forbidden by Section 9 of the Federal Highway Act which requires Federal aid highways to be "free from tolls of all kinds." In upholding the California statute the Court said, (page 74):

> "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 supplied.)

Paraphrasing the above, it assuredly cannot be supposed that Congress having restricted State power in certain particulars in the Federal Highway Act, intended to restrain State power to enact weight and size limitation laws without more explicit language than is contained in the Act.

(b) Since the States by Sections 15 and 48 of the Federal Highway Act are required to maintain the Federal aid highways, it follows that state weight limitation laws are the sole concern and function of the State since they are the greatest factor in maintenance. The reasoning in

Carley & Hamilton v. *Snook, supra,* that State license fee laws are not prohibited by Section 9 because, for one thing, States must maintain the highways, applies with equal force to the proposition that State weight limitation laws are likewise left to the State.

This Court calls attention to the provisions of the Federal Highway Act requiring maintenance by the State as evidencing one of two separate grounds justifying the right of the State to fix motor vehicles weight limitations irrespective of the Act, in *Morris* v. *Duby, supra,* (274 U. S. 135), as follows:

> "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."

(c) Any agreement to relinquish police power over its highways that might be found or implied in the acceptance by a State of Federal aid would be invalid for two interrelated reasons, (1) that a State cannot surrender such powers by anything short of a constitutional amendment, and (2) that the exaction of such an agreement from a state as a condition to receiving Federal aid is beyond the power of the Federal Government and would render the agreement and the appropriation of Federal aid unconstitutional. *U. S.* v. *Butler,* 297 U. S. 1, *Ashton* v. *Cameron County Water Improvement Dist.,* 298 U. S. 513.

It is thus apparent from the above that the Federal Highway Act does not and was never intended to in any way affect State power to enact weight and size limitations because (a) the Act itself shows the intention of Congress not

to occupy that field and affirmatively shows its intention to leave such power to the States; (b) the responsibility for maintenance, exclusively in the State, carries with it the power and duty to fix size and weight limits as a means of preservation, and (c) the convention between the Federal Government and the States is not an agreement by the States to relinquish police power over its highways because the States have no constitutional power to make such agreement and the Federal Government has no constitutional power to require it as a condition precedent to the receipt of Federal aid.

(2) *The Motor Carrier Act, 1935:*

The District Court held that this Act did not supersede the size and weight laws in question (Fourth conclusion of law, R. 84; Opinion, R. 57-64). Appellees did not take any cross-appeal. Every court to which this question has been presented has reached the same conclusion, obviously the only one possible.

L. & L. Freight Lines v. *Railroad Comm. of Florida,* 17 Fed. Supp. 13;

Werner Transp. Co. v. *Hughes,* 19 Fed. Supp. 425;

Houston & North Texas Freight Lines v. *Phares,* 19 Fed. Supp. 420;

Railroad Comm. of Texas v. *Southwestern Greyhound Lines,* 92 S. W. (2d) 296;

Werner Trans. Co. v. *O'Brian* (decision not published, D. C., S. Dist. Iowa, Feb. 15, 1937).

For the reasons stated at the beginning of (1) above, it is clear that the Motor Carrier Act, 1935, does not in any respect modify the exercise of State power in issue.

(3) *Inconvenience, Expense and Loss Occasioned Interstate Truckers and Their Shippers by the Statute:*

In Findings of Fact Nos. 7 to 16, inclusive (R. 78-81), the District Court recites the inconvenience that would be caused by enforcement of the South Carolina laws. We submit that (a) such findings and evidence bearing on them are wholly immaterial to any of the issues in this case; (b) that the appellants were under no obligation to rebut such evidence, and (c) that even without any attempt by the appellants to rebut such evidence, its weight, in the light of other evidence in the record, is insufficient to support such findings.

These findings dwell at great length upon the alleged inconvenience to interstate truckers and their shippers as the result of the enforcement of the Act. As will be hereafter indicated, such findings were *controlling influences,* in the lower court's conclusions as to the unreasonableness of the Act. It is elementary that if the power in the State exists and that if the means adopted bears a reasonable relationship to the exercise of that power, the consequent effect upon interstate commerce of the exercise of that power is entirely immaterial.

In the Court's opinion in the case of *Erie Railroad Co.* v. *Board of Public Commrs.,* 254 U. S. 394, is found a strong statement to that effect. There the railroad had been directed to pay the expense of eliminating fifteen grade crossings. The requirement was made in the exercise of the State's police power. The railroad challenged the Act, among other reasons, as imposing an unreasonable burden on interstate commerce. The case was decided in 1921 long after the enactment of the Interstate Commerce Act. The railroad was a part of an inter-connected national system of railways. The railroad contended, as do appellees here, that the Act must be reasonable in order to be upheld. It

put in evidence that it did not have assets sufficient to make the changes, at least without interfering with the proper development of its interstate commerce and contended that it was "not reasonable to require an expenditure of $2,000,000 from a company that has not more than $100,000 available." The order, and statute upon which it was based, were upheld solely upon the power of the State to provide for the safety of its citizens and the duty of the interstate carrier to contribute to the accomplishment of that legitimate object as establishing the relationship between the order and its object. The consequent effect of the order on interstate commerce was disregarded and in that respect, when speaking of public thoroughfares, the Court said:

> "Grade crossings call for a necessary adjustment of two conflicting interests—that of the public using the streets, and that of the railroads and the public using them. Generically the streets represent the more important interest of the two. There can be no doubt that they did when these railroads were laid out, or that the advent of automobiles has given them an additional claim to consideration. They always are the necessity of the whole public, which the railroads, vital as they are, hardly can be called to the same extent. Being places, to which the public is invited, and that it necessarily frequents, a state, in the care of which this interest is, and, from which ultimately the railroads derive their rights to occupy the land, has a constitutional right to insist that they shall not be made dangerous to the public, *whatever may be the cost to the parties introducing the danger.* That is one of the most obvious cases of the police power; or, to put the proposition in another form, the authority of the railroads to project their moving masses across thoroughfares must be taken to be subject to the implied limitation that it may be cut down whenever and so far as the safety of the public requires." (Italics supplied.)

Likewise, it can be said in this case as between trucks and the highways of South Carolina the highways represent the more important interest of the two. They always are the necessity of the whole public, while the trucks, vital as they are, hardly can be called to the same extent. Being places to which the public is invited, and that it necessarily frequents, the State, in the care of which this interest is, and from which, ultimately, the trucks derive their right to occupy the roads, has a constitutional right to insist that its highways shall not be made dangerous to the public, *whatever may be the cost to the parties introducing the danger.* The authority of the trucks to project their moving masses along highways must be taken to be subject to the implied limitation that it may be cut down whenever and so far as the safety of the public requires.

Again, and on the same page, the Court said:

> "It is said that if the same requirement were made for the other grade crossings of the road it would soon be bankrupt. *That the states might be so foolish as to kill the goose that lays the golden eggs for them has no bearing on their constitutional rights.* If it reasonably can be said that safety requires the change, it is for them to say whether they will insist upon it and neither prospective bankruptcy nor engagement in interstate commerce can take away this fundamental right of the sovereign of the soil (citing cases). To engage in interstate commerce the railroads must get onto the land; and to get on to it must comply with the conditions imposed by the state for the safety of its citizens * * * *if the burdens imposed are so great that the road cannot be run at a profit it can stop, whatever the misfortune the stopping may produce.*" (Italics supplied.)

In *N. Y., N. H. & H. R. Co.* v. *N. Y., supra* (165 U. S. 628), a New York statute requiring both interstate and intrastate trains to be heated in a certain way was challenged as an "unreasonable burden on interstate commerce."

That case was decided in 1897, long after the enactment of the Interstate Commerce Act. In that case, as here, the carriers involved were part of an inter-connected national system for transportation regarding which Congress had partially occupied the field of regulation. Concerning the effect upon interstate commerce of the enforcement of the State statute, sustained as a police measure, the Court said:

> "Counsel for the railroad suggests that a conflict between state regulations in respect of the heating of passenger cars used in interstate commerce would make safe and rapid transportation impossible; that to stop an express train on its way from New York to Boston at the Connecticut line in order that passengers may leave the cars heated as required by New York, and get into other cars heated in a different mode in conformity with the laws of Connecticut, and then at the Massachusetts line to get into cars heated by still another mode as required by the laws of that commonwealth, would be a hardship on travel that could not be endured. These possible inconveniences cannot affect the question of power in each state to make such reasonable regulations for the safety of passengers on interstate trains as in its judgment, all things considered, is appropriate and effective. Inconvenience of this character cannot be avoided so long as each state has plenary authority within its territorial limits to provide for the safety of the public according to its own views of necessity and public policy, and so long as Congress deems it wise not to establish regulations on the subject that would displace any inconsistent regulations of the states covering the same ground."

Sproles v. *Binford, supra,* is specific authority on this point. The record in that case shows that the District Court made exactly the same findings with reference to shippers and truck operators in Texas as did the lower court in this case. This appears at the bottom of page 383

of this Court's opinion. The possibly greater convenience of truck transportation does not prevent the Legislature from providing regulations which, within the range of its judgment, are suitable for highway conservation. *Sproles* v. *Binford, supra* (at page 394). See also *Morris* v. *Duby, supra* (at page 144). The fish and game cases are also authority for this proposition. In *Bayside Fish Flour Co.* v. *Gentry,* 297 U. S. 422, and in *Silz* v. *Hesterberg, supra* (211 U. S. 31), as in this case, the State's police power was invoked to *preserve the State's property.* In those cases, the acts were sustained even though they *prohibited* foreign commerce. See also *McLean* v. *D. & R. G. Ry. Co., supra* (203 U. S. 38).

From the above, 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. On the same authority, it is just as clear that *such effect, being immaterial, cannot, conversely, be applied as a test of the reasonableness and consequent validity of a police power measure.* As will be hereafter shown, the lower court did consider the effect upon interstate commerce of the enforcement of the South Carolina statute *as a test of its reasonableness.*

It is submitted that, since the voluminous evidence introduced by appellees bearing upon the effect of the enforcement of the Act was wholly immaterial as a test of reasonableness, the appellants were entirely justified in not undertaking to rebut it. The record shows that appellants made no such effort, which should be considered in weighing the effect of the great volume of appellees' evidence on the subject.

It may be that such evidence was admissible to show appellees' interest as plaintiffs or to show that the statutes complained of constituted a burden on interstate commerce as *preliminary* to a showing that such burden was an *un-*

reasonable one. However, the statistics of truck registrations in South Carolina do not support the inference that higher weight limitations are desired upon the South Carolina highways by more than a very small percentage of truck operators and industries in general. Of the 30,497 trucks registered in South Carolina in 1936, only 328 were registered for authority to carry more than three tons of net weight, and of these only 19 were registered for authority to carry more than four tons of net weight (R. 272). Carriers for hire use semi-trailer combinations of two to three tons capacity (R. 229). If there existed such a demand for heavy duty truck transportation in South Carolina, we may reasonably assume that the truck registration figures in South Carolina would show a much higher percentage of registration for authority to carry four or five tons of net load. A truck weighs less than a semi-trailer combination, and the smallest tractor semi-trailer combination weighs about twelve thousand pounds empty (R. 114). It therefore appears that the vehicles thus referred to could carry net loads of eight thousand to ten thousand pounds and still comply with the 20,000 pounds gross weight limit law (R. 114), yet only one per cent of the trucks are registered to carry eight thousand pounds, and only .06 per cent of the trucks are registered to carry as much as ten thousand pounds. On the other hand, over 27,000 of the trucks are registered to carry not more than four thousand pounds net load (R. 272).

Mr. Moorefield's statement (R. 257) reads, in part, as follows: "the total number of trucks having more than two tons capacity, together with all the busses and lighter trucks carrying trailers, now operating in the State would not exceed 3,000. This means that the State is expending $18,000,000 to accommodate 3,000 vehicles and combinations of vehicles. These 3,000 vehicles represent only a little more than one per cent of the total number of vehicles using the State

highways, while the estimate of $3,000 per mile additional construction cost necessary in order to provide for these vehicles represents about 15 per cent of the average per mile construction cost."

From the above, it is clear the Court's conclusion as to the magnitude of the alleged burden on interstate commerce was unsupported by the weight of the evidence, and that all of such evidence was immaterial and could not properly be applied as a test of the reasonableness of the statute.

It is plain that the Court erred in allowing itself to be influenced in the slightest degree, in passing on whether or not the statute in question is a violation of the commerce clause, by the consideration of either the Federal Highway Act or any developments pursuant to it, the Motor Carrier Act, 1935, or the increased cost of or inconvenience to interstate commerce occasioned by the enforcement of the statute. The only real issue is whether the South Carolina statute is a legitimate measure as a *means of protecting its highways and those who use them,* utilized by the Legislature to accomplish its admitted power to so protect.

The Four Decisions Erroneously Applied.

One of the elements which contributed to the confusion of the District Court in this respect was its failure to understand *Buck* v. *Kuykendall*, and *Bush* v. *Maloy*. The Court's peculiar misunderstanding of these cases is made plain in its opinion (R. 72, 73, 74). The lower court's fundamental difficulty was its failure to observe the well established distinction between, on the one hand, the exercise of State power which is forbidden by the Commerce Clause without action in the premises by Congress (sometimes called the exclusive power), and, on the other hand, the exercise of State power which is permitted until Congress has precisely and completely occupied the field (sometimes

rather inaccurately called the concurrent power). The distinction between these two kinds of power and the principles regarding them is explained in *The Minnesota Rate Cases* (*Simpson* v. *Shepard*), 230 U. S. 352 at 399-400, where many illustrative cases are cited, and in *Townsend* v. *Yeomans, supra,* 81 L. Ed. (adv.) 840 at 848. Of course the line of demarcation between the two is often difficult of ascertainment, but that was not the difficulty into which the District Court fell.

It is manifest that *Buck* v. *Kuykendall* and *Bush* v. *Malloy* are ruled by the first described principle, that the power the States sought to exercise in those cases was exclusively in the Congress, or, as stated in *Stephenson* v. *Binford, supra,* (287 U. S. 251) at page 266, the statutes involved in those cases imposed "discriminations relating" to interstate commerce. This was evident from the beginning, and was expressly stated in *Bradley* v. *Public Utilities Commission,* 289 U. S. 92 at 95. The *Bradley* case is an example of the second principle, that is, concurrent power which the State can exercise until Congress acts. This Court's reference in the *Buck* case to the Federal Highway Act was first explained in the *Bush* case. It was further explained in the *Bradley* case when the Court made it clear that such reference in the *Buck* case did not mean that such Act superseded or affected the State action there in question, *because such State action was invalid under the Commerce Clause without any entry into the field by Congress.* The reference in the *Buck* and *Bush* cases to the Federal Highway Act was for the purpose of showing that such Act merely made explicit in matters in the exclusive field of Congressional power the implied prohibition against discrimination contained in the Commerce Clause. The subsequent decisions of this Court have sharply confined this language to the facts of the case in which it was used, namely, to situations where

a State action invades the exclusive field and discriminates against interstate commerce.

The Court, in the *Bradley* case, said (p. 95), referring to the *Buck* and *Bush* cases:

> "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.*" (Italics supplied.)

The *Bradley* case also expressly identified *Morris* v. *Duby, supra,* and *Sproles* v. *Binford, supra,* as falling within the second principle, that is, they involved State power which might be exercised until Congress acts, as does the latest pronouncement of the Court on this subject, *Townsend* v. *Yeomans, supra.* The *Bradley* case did not turn on the failure of the interstate carrier to show that no other route was available for its purpose. Reference to such failure was made to show that the primary purpose of the Ohio Act in question was to prevent highway congestion, thus identifying the Act as one in the field where the States may act until Congress sees fit to do so. *Morris* v. *Duby, supra,* was decided two years after the *Buck* and *Bush* cases. In that case the Court referred to the *Buck* case as authority for the proposition "that the state may not discriminate against interstate commerce" and held that notwithstanding the Federal Highway Act conserving limitation is something which must rest with the road supervising authorities of the state.

Morris v. *Duby* requires more than a brief analysis on the point now under discussion because of the way the District Court misunderstood and misapplied it. In its opinion (R. 68, 71) and in a preliminary statement at the commencement of the trial (R. 98) the Court stressed the following sentence from page 145 of the Duby opinion:

> "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 purpose 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.''* (Emphasis supplied.)

For convenience, the italicized portion of the above quotation will hereinafter be referred to as the ''unless clause.''

After repeating the above quotation at the beginning of the trial the Court then said: ''In other words, we will pass upon the question as to whether the Act constitutes an unreasonable burden on interstate commerce * * *.''

The opinion of the lower court (R. 68, 71) is explanatory of its findings. In explaining its conclusions as to the unreasonableness of the South Carolina Act, the court first observes that the highways it describes in its decree are ''great arteries of interstate commerce'' that they ''carry the larger part of interstate traffic moving to and from the state, as well as such traffic passing through the state to and from Georgia and Florida and the states to the north'' and concludes ''we think it an unreasonable burden upon the interstate commerce moving over them to enforce the restrictions above mentioned, and thereby virtually close the roads of the state to a large part of such commerce * * *.'' The court then (R. 65) observes the development of commerce by truck and the dependency of southeastern states upon such truck commerce, that a large part of this interstate traffic would be virtually barred from the highways of South Carolina and concludes (R. 65) that ''the reasonableness of the restrictions must be viewed in the light of such a consequence.'' The court again (R. 68) refers to the Federal aid which had been extended to the State of South Carolina and states that while the fact that the Federal government has aided in the construction of the highways does not detract from the power of the State to regulate and control them ''it is, we think, a circumstance

which should be considered in passing upon the reasonableness of a state statute the effect of which would be to drive an important part of interstate commerce from the highways and withdraw them to that extent from the use for which they were intended and for which the federal aid was granted." The court then quotes a long excerpt from *Nashville etc. R. Co.* v. *Walters, supra,* in order to show the purpose of Congress in extending Federal aid, then refers to the experience of other States and the judgment of those having special knowledge with respect to dealing with size and weight of vehicles using the highways as bearing upon the reasonableness of the statute. The opinion is replete with affirmative statements to the effect that the findings of fact and conclusions of law reached by the court pertaining to the reasonableness of the South Carolina statute are based directly upon the court's consideration of the effect of the enforcement of the statute upon interstate commerce and not exclusively upon the relationship between the statute as a means and the preservation of the highways and safety upon them as the end sought to be accomplished. It is apparent that this course was pursued by the lower court in reliance upon its misunderstanding of the "unless clause" in the above quoted portion of the opinion in the *Duby* case.

We will now endeavor to demonstrate (what perhaps needs no demonstration) that *this* court did not mean to say, in the above quoted excerpt from the *Duby* case, or at any other place in the opinion, that the Federal Highway Act or any developments under it supersedes or affects in any degree the power of the State to make and enforce weight and size limitation laws. This is evident from the principles involved in the discussion just above of *Buck* v. *Kuykendall* and *Bush* v. *Malloy,* from an independent consideration of the *Duby* opinion as a whole, and from the subsequent opinions of this Court construing and applying it.

It will be observed from the above that the lower court attributed to the "unless clause" in the *Duby* opinion authority (1) to test the reasonableness of the South Carolina act in question by the effect upon interstate commerce of its enforcement and (2) to test the reasonableness of the South Carolina act by its effect upon the purposes of Congress evidenced by the Federal Highway Act and its financial contributions thereunder. We submit that in both of these respects the lower court was in error and that such error so permeated its entire opinion, findings and conclusions as to produce fatal error in its decree.

As stated above, there are two fundamental rules of law established by long lines of decisions by this Court which the lower court's application of the "unless clause" in the *Duby* case violates. These rules are (1) That the consequent effect upon interstate commerce of the exercise of a State's police power, otherwise valid, is entirely immaterial and, being immaterial, cannot be applied as a test of its reasonableness and consequent validity and (2) Where an act of Congress does not actually supersede police power which a State may exercise until Congress acts the Federal act has no limiting effect whatever upon the State power, that supersession will not be implied unless the Federal act, fairly interpreted, is in actual conflict with the State law.

We submit that if a State police power statute providing one limitation, and reasonable under ordinary tests, must provide a higher limitation in order to preserve its validity when its reasonableness is further tested by its consequent effect upon interstate commerce, to subject the statute to such further test violates the first of the above well established rules. We further submit that if a State police power statute, reasonable under ordinary tests, may be unreasonable or must be less stringent when further tested by the terms or effect of the Federal Highway Act, or any

developments pursuant thereto, the State's power is thereby and to that extent directly circumscribed by such Federal Highway Act and that to apply such test violates the second well established rule mentioned above.

The "unless clause" upon which the lower court based its decision, appears as a qualifying clause used in a negative sense in the next to last sentence in the *Duby* opinion. Since the meaning ascribed to that clause by the lower court would have meant the overturning of at least two well established and long standing rules of law it is inconceivable that the Supreme Court would have intended its words to have such meaning without some explanation of its former decisions, the reasons for their reversal and the basis and reason for the establishment of such an entirely new rule. The fact that such meaning was not intended is further proven when in the *Sproles* case, *supra,* and the *Bradley* case, *supra,* such meaning was not attributed to its language. It is not enough to avoid the rule that such State acts may not be tested by their effect on interstate commerce to point out that in the *Sproles* case and the *Duby* case no well connected system of highways was involved because the same rule was applied in the *Erie* case, *supra* (254 U. S. 394), and the *New Haven* case, *supra* (165 U. S. 628). In those cases a national system of well connected railways was involved yet the reasonableness of the State police power statutes was not subjected to the test of their effect on interstate commerce. Neither is the rule avoided by pointing out that in the *Duby* case and the *Sproles* case there was no such showing of interference with interstate commerce as was made in the instant case. The reasonableness of the State statute in the *Erie* case was not tested by its effect on interstate commerce even though the court said that if compliance by the railroads was burdensome "it could stop". In the *New Haven* case compliance with the regulations "could not be endured". In the *Bay-*

side case, *supra* (297 U. S. 422), and the *Hesterberg* case, *supra* (211 U. S. 31), interstate commerce was absolutely prohibited as a means of preserving the State's property. In short, the meaning ascribed by the lower court to the language in the "unless clause" cannot possibly be reconciled with prior or subsequent decisions nor with the preceding portions of the *opinion in which it appears,* and it is not to be assumed that the court intended to invalidate two old rules and lay down a new one in the manner in which it used such language.

The meaning ascribed by the lower court to the "unless clause" in the *Duby* opinion is inconsistent with previous statements in the same opinion. There the court said:

> "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."

The Federal Highway Act had been passed when the *Duby* opinion was rendered and was one of the acts examined. In fact that act was necessarily one of those so examined because the alleged limiting effect of such act was the principal claim relied upon by the appellant in that case. There was nothing in it "express or implied" to subject the State statute to the test of compliance with the purpose of such act. The "national legislation especially covering the subject of interstate commerce" could not therefore have meant the Federal Highway Act and for the

same reason the Motor Carrier Act, 1935, could not constitute the requisite Act of Congress for it does not regulate size and weight of vehicles. The above excerpt was quoted in the *Sproles* case and no such limitation as the lower court would read into the "unless clause" was there applied.

The court in the *Duby* opinion next quotes with approval from the *Buck* case the following:

> "With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject (citing cases). Neither the recent Federal Highway acts nor the earlier post road acts do that (citing statutes).

There the court rejects the contention that the Federal Highway Act does, in any manner, affect State power because it does not deal "specifically with the subject" of size and weight. The meaning ascribed by the lower court to the "unless clause" would be inconsistent with the above quotation.

The *Duby* opinion then reaffirms the first general rule mentioned above when it rejects the inability of a truck company to make a profit as a test of the reasonableness of the act. If the purpose of the Congress expressed through the Federal Highway Act may be defeated by the increase in operating cost of interstate carriers using South Carolina roads with trucks which comply with the law (as the lower court would interpret the "unless clause") the observation in the *Duby* case concerning the carrier's inability to make a profit would be inconsistent with the

lower court's interpretation of the "unless clause" in the same opinion.

The court then rejects the claim of fraud by placing complete reliance in the judgment of the Highway Commission on the question of the need for the regulations *as a means of preserving the roads.* The only test there applied was the Commission's judgment as to the need for the regulations for conservation purposes, not the question of conflict with the aims of Congress or the effect of their enforcement on interstate commerce.

At no point in the *Sproles* case is there any intimation by the court that the reasonableness of the Texas act was to be in any way subjected to the tests the lower court in this case would read into the "unless clause". In the *Bradley* case the court quotes the *Duby* case as authority for the proposition that since "Congress has not dealt with the subject" * * * "The State may exclude from the public highways vehicles engaged exclusively in interstate commerce, if of a size deemed dangerous to the public safety." In the *Bradley* case the only qualifications on State power to enact and enforce size and weight laws or even regulations to prohibit the use of congested roads, which were mentioned by the court, were the object (to promote safety) and the legislative judgment deeming them necessary. Neither their consequent effect on interstate commerce nor their effect on the object of Congress as expressed in the Federal Highway Act were applied as tests. No mention of such a meaning of the "unless clause" was even intimated by the court in the *Bradley* case.

It is also pertinent that the "unless clause" in the *Duby* case was used in a negative sense. Even to attribute to it the meaning adopted by the lower court (which we do not believe is justified), attention is called to the fact that the court did not affirmatively hold that regulations, otherwise valid, which would defeat the "useful purpose" for which

the contributions were made, would result in the invalidity of the act. Attention is also called to the fact that in the sentence preceding that in which the "unless clause" appears the court, without qualification, held that *conserving limitation* must rest with the road supervising authorities of the State. The following sentence refers to *"regulations as to method of use."* There may have been some significance in the differentiation in terminology in the two sentences, for obviously "regulations as to methods of use" has a different meaning than "conserving limitation."

From all of the above it is clear that whatever the court did mean by the use of the "unless clause" in the *Duby* opinion it did *not* mean (1) that the reasonableness of a size and weight limitation may be tested by its effect on interstate commerce or (2) that size and weight limitations may be tested as to reasonableness by their effect upon the purpose of Congress in passing the Federal Highway Act or making financial contributions thereunder. It is clear that the lower court, in construing the "unless clause" as it did, erroneously applied the law and that such error resulted in the erroneous decree.

Having shown by the foregoing that the Supreme Court, in the *Duby* case, did not intend by the use of the so-called "unless clause" the meaning which was attributed to it by the lower court, if it is pertinent to the issues in this case we hereby briefly summarize our affirmative position as to what the court did mean by that language.

The meaning of the "unless clause", shown by the propositions announced by the court in the preceding portions 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.

But even if we should be in error as to the meaning of the so-called "unless clause" and if "the useful purposes" of Congress expressed in the Federal Highway Act were to be considered as the standard by which the validity of the State statute is to be measured, that fact would not restrict the State's police power to regulate the *size and weight* of trucks using the roads in the absence of specific provisions by Congress to that effect. Although the obvious purpose of the Federal Highway Act was to help the States construct better roads it was not its purpose to prescribe the size and weight of vehicles which might use them nor to prevent the States from so doing. There is no provision in the Act to that effect. This Court, in the *Duby* opinion, expressly declared that there is nothing in such act, express or implied, which would do that. The attack on the Oregon statute in that case was based upon the alleged defeat of the purpose of Congress in contributing funds under such act. The trucking company there charged that a 16,500 pound weight limitation applied to an interstate carrier using a Federal aid road would do so, and that its inability to make a profit in its operations had the same effect. These and all other allegations of the bill, admitted as true on motion to dismiss, did not avail to prevent the dismissal of the suit on the ground "that it did not state a cause of action".

In the instant case the lower court concluded that the enforcement of the assailed statute would make it more expensive for appellees to operate in South Carolina than in some other States because they must haul lighter loads or

use more narrow trucks. From this it concluded that some interstate commerce might be burdened or prohibited and, from that, concluded that one of the purposes of Congress in extending Federal aid might be interfered with or defeated. From the *Duby* case alone it is clear that even such increased expense (which we do not concede was proven in the case at bar) would not operate to defeat any purpose of Congress referred to in the "unless clause" in the *Duby* case.

In relating the two Federal Acts and the inconvenience to interstate motor carriers to the reasons for its decision the lower court stressed some of the statements in *Nashville, C. & St. L. Ry.* v. *Walters,* 294 U. S. 405 (R. 68). After referring to the qualifying language in the last sentence of the *Duby* opinion as the basis for its new rule for testing the reasonableness of the statute, it refers to a long excerpt from the opinion in the *Walters* case as explanatory of the purpose of the aid extended by the Federal Government under the Federal Highway Act in the development of interstate commerce. For the reasons above urged it is apparent that the purpose of the Congress, as explained in such Highway Act, or otherwise, can not possibly operate to circumscribe State power without outright supersession. The *Walters* case is not authority for the interpretation placed upon the Federal Highway Act by the court below, nor is it controlling on any of the issues in the instant case. In the *Walters* case the Supreme Court of Tennessee had refused to consider evidence offered by the railroad company bearing upon the reasonableness and consequent validity of a State statute requiring the railroad to pay one-half of the cost of a grade separation. Part of the testimony in question was that which pertained to the Federal Highway Act and the many developments in transportation resulting from motor vehicles and highways. It is part of this Court's summary of the proffered evidence which is quoted

by the court below. In the *Walters* case this Court held that the reasonableness of the Tennessee requirement bearing upon the obligation of a particular property owner depended upon the *relationship* of that property owner *to the evil* sought to be corrected by the statute. It held that evidence pertaining to developments in highway transportation and similar matters was pertinent in determining the reasonableness of the Act under the 14th Amendment *because it bore upon the relationship between the means and the end,* that is, the obligation *or duty* of the railroad to eradicate the evil or to effectuate the convenience sought to be accomplished by its financial contribution. There the relationship rested upon the duty of the railroad, previously the cause of the danger and the chief beneficiary of the convenience, to pay the cost of curing the evil. It held that the evidence quoted by the court below plus much other evidence as to changes in economic conditions might bear on the railroads responsibility for the danger or the amount of benefit it received from the improvement. This Court did not pass upon that evidence but merely held that it was pertinent in considering whether or not the duty under such circumstances still exists.

There is no parallel in the *Walters* case with any of the questions involved herein. Here, the relationship is purely a matter of physics. None of the evidence of the character discussed in the *Walters* case and cited by the court below operates to reduce or eliminate the destructibility of a motor vehicle, or to minimize the duty of highway users to avoid the destruction of the roads they use. The statute here in issue is based on the obvious principle of requiring one who is benefited by the highways to conform to regulations which conserve them. In the *Walters* case the court did not announce any new principle of law; it only applied well settled rules to the facts presented. *But the application which the District Court sought to make of the two Federal*

statutes above mentioned and the above cases, unlike the Walters case, calls not for the application of established rules to the record facts but for the abandonment of long established rules of law and the making of a new rule.

The lower court not only applied tests of reasonableness which were erroneous as a matter of law but improperly applied such erroneous tests as a matter of fact. To state it briefly, the lower court held the Act unreasonable because it concluded that its enforcement would defeat the useful purposes for which the Congress, pursuant to the Federal Highway Act, has extended Federal aid to the State of South Carolina. We submit that if it is material to the issues, the enforcement of the Act in question will *carry out,* rather than defeat, the purpose for which Congress has made such contribution. Without an extended discussion of the purpose of Congress in extending such aid, it must be admitted that it was extended to assist in the construction of highways, whatever may be the purpose for which such highways, once built, may be used. By the acceptance of such aid the State undertook to maintain the aided roads. If highways are to be used at all, they must be preserved. If trucks heavier than those which the roads may properly bear are permitted to use them, the roads themselves will be destroyed. If trucks wider or heavier than those which are safe are indiscriminately permitted on the roads, then the expected use of, and commerce over, the roads will be impaired. It necessarily follows that size and weight limitation statutes are, in fact, aids to interstate commerce. They preserve the roads over which it is conducted and which make such commerce possible. It must be conceded that some weight and width limit is necessary. One witness testified (R. 156) that trailers built by his company were capable of carrying loads of from seven and one-half tons up to *one hundred tons.* Neither Congress nor any Federal administrative body has laid down limita-

tions to preserve roads. Whether or not Congress or any subordinate agency may do so is not involved in this appeal. The State is the sole agency which now has the power to do so. If discrepancy exists between State limitations to such an extent as to interfere with the interstate commerce *passing over* the roads, once built and properly maintained, there is no evidence that Congress has deemed it sufficiently material to defeat its purpose, for there has been passed no act of Congress bearing on the subject. That Congress has *not* deemed its purpose frustrated is evidenced by section 325 of the Motor Carrier Act, 1935, where it directs the Interstate Commerce Commission to "investigate" and "report" on the "need" for such regulation. No such report is shown and if such report had been made in the affirmative, that would not mean that the Congress would agree with its subordinate agency.

If Congress intended that the commerce it contemplated necessarily included trucks weighing more than 20,000 pounds each, it would have confined its aid to roads built of concrete. The only roads for which the court held the Act unreasonable were those surfaced with concrete. The Congress has not limited its aid to such roads and the record affirmatively shows its aid has been extended for roads surfaced with other materials (R. 253). Of the 2,797 miles in South Carolina on which Federal aid has been expended with approval of the U. S. Bureau of Public Roads, only 989 miles, or less than 36 per cent, have been surfaced with concrete or bituminous concrete. If roadways surfaced with concrete are essential to the movement of heavier and wider vehicles than those permitted by the statute, and that is the effect of the lower court's decision, the Congress has expressed no intent to promote interstate commerce *by such heavier and wider vehicles* because Federal aid has not been confined to the construction of *concrete* roads. Because the lower court concluded that Congress intended to pro-

mote interstate commerce by truck, it does not follow that it necessarily intended such truck commerce should be by vehicles heavier than 20,000 pounds or more than 90 inches wide. There is no showing of any such intent by even the Interstate Commerce Commission on the subject. It is therefore clear that weight and size limitations are aids to interstate commerce and there is no showing in the record that the specific limitations involved here are such as to defeat any ascertainable intention of the Congress. As previously pointed out, the highway traffic over South Carolina roads conducted by vehicles as heavy as 20,000 pounds is enough to be dangerous to roads and safety, yet is negligible when compared with the aggregate traffic by automobile and lighter trucks. Even to carry out the intent of the Federal Highway Act, it is obvious that doubts as to ability of pavements should be resolved against heavier trucks in the fair consideration of the rights and interests of the great majority of those who use the highways.

It may be argued that even though the Federal Highway Act may not be a proper test of the reasonableness of the statute, the development of interstate highways as the result of such Act, and the development of traffic over them, has operated to change the nature of the subject matter of the statute so that it is no longer a "matter which admits of local treatment according to the requirements of local circumstances." We submit that the evidence does not warrant any such conclusion and in fact shows the converse. Common observation shows that weight and size limitations pertaining to motor vehicles depend, for their validity upon the physical characteristics of the highways over which they operate. National uniformity in such regulations must necessarily depend upon national uniformity in the physical characteristics or the load supporting capacity of public highways. There was not even any attempt by appellees to show national uniformity of high-

ways in either respect. The thickness of the concrete pavement was a premise upon which each expert witness based his opinion as to the capacity of the slab. There is no showing as to any semblance of national uniformity in the thickness of slabs on such roads as are surfaced with concrete, and we submit that none exists. There is no showing as to any semblance of an interconnected national system of *concrete* highways, and we submit that none exists. The record in *Sproles* v. *Binford, supra,* indicates the absence of such system in Texas and the record here indicates the absence of such system in South Carolina.

Furthermore, even if such uniformity in concrete slabs did exist, we have shown in our subdivision (d) under Point II—1—of this brief that the subgrade is an essential part of every road, that there is no uniformity in subgrade conditions, and that they vary greatly with soil and climatic and other conditions throughout the country. The National Conference on Street and Highway Safety frankly recognizes these facts (Appendix VI, p. 159) when it says that "In view of the varying conditions of traffic, and lack of uniformity in highway construction in the several states, no uniform gross weight limitations are here recommended for general adoption throughout the country."

Aside from these physical considerations, the sheer impracticability of the enforcement of such regulations by a national corps of Federal traffic officers, who would be obliged to prosecute violators of such limitations in Federal tribunals as violators of Federal laws is convincing proof that these matters are, and still remain, matters not only admitting but requiring local treatment according to local circumstances.

It is, furthermore, obvious that these limitations are not only local matters but that their effect upon interstate commerce is purely incidental. The Act applies to interstate and intrastate commerce alike. It does not apply directly

to the business of the appellees. It does not apply at all unless appellees seek to use the highways belonging to the State in the conduct of their business.

To adopt the tests of reasonableness and the rule which would be required in sustaining the lower court's decision would be to subject the States, in the management of their own property and their own affairs, to such an "intolerable supervision as to be repugnant to our fundamental ideas of government." In the ambitious promotion of highway commerce by the Congress, the States would be subjected to the burden of surfacing their own highways in such a manner as to be capable of bearing any type of commerce the Congress might see fit to develop and to the intolerable burden of so policing their highways as to confine the heavy traffic to the "great arteries" of interstate commerce in order to keep it from breaking over, at the innumerable intersections within the States' borders, upon the weaker roads incapable of supporting heavy loads without destruction. The meager showing by appellees in this case is no justification in fact or in law for the adoption of such a far-reaching and unwise policy.

IV.

The District Court had no power to classify the roads and bridges or to rewrite the width limit as those are legislative functions; and lacking such power the Court was required under the evidence and applicable law to hold the entire statute valid as to all roads and bridges (Assignments of Error Nos. 24, 28, 29).

The Court held in its second conclusion of law and by paragraph (3) of its decree that the statute is reasonable as to all of the 60,000 miles of roads in the State except those described in paragraph (1) of the decree, hereinabove referred to as the "definite segment" and the "indefinite

segment", and in such paragraph (1) it enjoined enforcement of the weight limit as to such described roads (R. 84, 85, 86). Those so described in paragraph (1) include a part of the 2,417 miles of concrete and bituminous concrete described by the Court as "standard pavement" (Finding of Fact No. 17, R. 81) and the portions of low type roads interspersed among the mileage of such "standard pavement" (Finding of Fact No. 18, R. 81). The Court also in paragraph (1) of the decree enjoined enforcement of the 90 inch width limit on the roads described in such paragraph, provided the vehicle does not exceed 96 inches in width (R. 86). In paragraph (2) of the decree it is provided that the injunctive order in paragraph (1) shall not extend to bridges on the described highways too weak or narrow to carry trucks permitted to operate by paragraph (1), provided notices forbidding such use are posted on such bridges (R. 86).

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 of course well settled that courts can not take over legislative functions, *Maxwell* v. *Moore,* 22 How. 185, 191. But it will no doubt be urged that this is no case of forbidden judicial legislation but is only an instance of the principle of severability of the valid in a statute from the invalid. 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.

It is clear that the Court's action cannot be justified on the theory that it was declaring the statute partially invalid

and saving the remainder. The principle of saving part of a statute by holding it severable from an invalid part is of course familiar, but that principle has never been, and cannot properly be, extended to authorize the decree in this case. The rule of severability is applied in two ways. In the usual application some of the words in a statute are physically pared away to leave a valid act. The other way, rarely used, is that the original wording is left intact but the act is held to apply only to permissible objects.

Of course this second named manner of application is the only one that could prevail here, but a brief consideration of the law involved makes clear that it cannot be relied on to support the Court's action.

Where it is sought to leave the wording of a statute intact, but to limit its application to permissible objects, this can be accomplished only (a) where the statute in the same words includes both objects as to which the State has no power whatsoever to legislate and objects as to which it has such power, *and* (b) where an intention can be read into the statute that it is intended to be applied only to the permissible objects. Unless both of these elements are present the principle of severability cannot apply. *Singer Sewing Machine Co.* v. *Brickell,* 233 U. S. 304, 312-314, and cases cited.

It is manifest that the South Carolina Legislature (a) had power to enact a weight limitation statute applicable to *all* roads in the State, and (b) that it intended this particular statute to govern all such roads. Plainly the rule of severability cannot be invoked to justify the Court's decree taking out from under the statute 4 per cent of the roads.

The point of the foregoing is this: Since the Court's action cannot be justified by the principle of severability, the Court was doing nothing else but legislating, was forsaking its own proper judicial function and usurping the

legislative prerogative. It may be at once urged, however, that this discussion only demonstrates that the Court should have declared the statute invalid as to all roads, and that this Court should now do so. But that argument is entirely unsound, and wholly overlooks the principles which actually govern the case.

In the first place, the fundamental rule of law that should prevail here (assuming now for argument the District Court's premise that the statute is unreasonable as to the 2,417 miles plus the interspersed low type mileage) is the principle, announced in many cases, that a police power statute enacted to cover a general situation admittedly requiring regulation is not rendered invalid because in the necessarily broad general class there is a small marginal class which the statute burdens. This rule is explained and applied to situations similar to the one here involved in cases heretofore cited: *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365; *Purity Extract and Tonic Co.* v. *Lynch,* 226 U. S. 192; *Hebe Co.* v. *Shaw,* 248 U. S. 297; *Silz* v. *Hesterberg,* 211 U. S. 31; *Pierce Oil Corp.* v. *Hope,* 248 U. S. 498; and *Holyoke Water Power Co.* v. *American Writing Paper Co.,* decided March 1, 1937, 81 L. Ed. (adv.) 383. This rule in itself demonstrates the validity of the statute and that the Court improperly indulged in legislation. That the marginal class is small is established by the fact, among others, that only one per cent of the trucks registered in South Carolina are registered to carry more than three tons of net load, and only .06 per cent to carry more than four tons of net load (R. 272).

In the second place, the point that the Court is powerless to legislate demonstrates the necessity of sustaining the action of the South Carolina Legislature. That is, if the District Court had understood that it was powerless to classify the South Carolina highways, it assuredly would have upheld the statute as applied to all highways. Putting

it another way, if the Court had held the Act invalid as to all highways and bridges there cannot be the least question but that its decree under the evidence would be reversed. *Sproles* v. *Binford, supra* (286 U. S. 374). And since it had no power to classify, the decree must be reversed and the Act held valid as to all roads and bridges of the State.

The above considerations also apply to the Court's action respecting bridges. An analysis of the decree makes it evident that the decree has made the carrying capacity of *each* bridge in South Carolina the subject of an individual judicial investigation. The effect of paragraph (2), (R. 85), is to open all bridges to truck traffic *with no restriction as to weight,* but the State Highway Department can close any bridge by posting a notice thereon; and in paragraph (5), (R. 86), the Court retains jurisdiction to conduct a hearing on the propriety of each notice. It is doubtful if American legal history contains an instance of mass assumption of legislative authority by the courts that even approaches this.

The Legislature, in the admitted scope of its authority made one weight limit for all of the bridges of the State. This was too generous for some weak bridges and is absolutely necessary for 75 per cent of the 50 miles of bridges on the State highway system, and it did, without question, open all bridges to *at least* 99.94 per cent of all of the trucks registered in the State when loaded to capacity (R. 272, 114, 229). Assuredly a law applicable generally to a class of objects cannot be nullified by the decision of a court that it will make each individual object covered by the statute a separate subject of judicial investigation.

These considerations also apply to the action of the Court in enjoining the 90 inch width limit on the designated highways in paragraph (1) of the decree, provided the width does not exceed 96 inches (R. 85), but this provision requires

some additional consideration of its own. Obviously the Court had no power to fix a new limit; this was not severing the valid from the invalid but was writing a new statute. It is important to observe that the Court recognized that some width limit is necessary; it felt it must not leave the door wide open as to width limits as it had done in the case of weight limits. *Therefore it is apparent that had the Court not been laboring under the erroneous theory that it could, in vacating one width limit, fix another, it would not have disturbed the 90 inch limit fixed by the Legislature, for a difference of only 6 inches.*

Now it may be argued against the above that *this* Court should simply declare the width limit invalid and stop at that. But that is entirely unsound. That would be neither to affirm nor reverse the decree, but it would be to enter a new decree not justified by the evidence nor by any principles of law.

The Court thus applied as a test of reasonableness of the statute not the correctness of the legislative judgment as to *all* of the roads, nor its own judicial reasoning based on a consideration of the proper sphere of the judicial function; but the test the Court did apply was what it might have done had it been a member of the Legislature. These considerations alone require reversal.

Conclusion.

For all of the foregoing reasons, which are summarized in the subject index, and in the summary of argument on page 34 hereof, it is respectfully submitted that the Act here in question should be declared constitutional as to all of the roads and bridges of the State, and that the decree of the District Court should be reversed and the injunction dissolved. We believe this result is required by settled

principles of law announced by the decisions of this Court, which we have cited.

Respectfully submitted,

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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."

APPENDIX VI

Summary of Proceedings, Fourth National Conference on Street and Highway Safety, May 23, 24, 25, 1934.

Act V—Uniform Act Regulating Traffic on the Highways, Article XVI—Size, Weight and Load, pp. 37-8.

SEC. 146. Gross weight of vehicles and loads. 11 (a) No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limits specified below:

1. The gross weight upon any one axle of a vehicle shall not exceed the limits prescribed in section 145 of this Act.
2. Subject to the limitations prescribed in section 145 of this Act the gross weight of any vehicle having two axles shall not exceed — pounds.
3. Subject to the limitations prescribed in section 145 of this Act the gross weight of any single vehicle having three or more axles shall not exceed — pounds.
4. Subject to the limitations prescribed in section 145 of this Act the gross weight of any combination of vehicles shall not exceed — pounds.

(b) The Commissioner, upon registering any vehicle under the laws of this State which vehicle is designed and used primarily for the transportation of property or for the transportation of 10 or more persons, may require such information and may make such investigation or test as necessary to enable him to determine whether such vehicle may safely be operated upon the highways in compliance with all the provisions of this Act. He shall register every such vehicle for a permissible gross weight not exceeding the limitations set forth in this Act. Every such vehicle shall meet the following requirements:

1. It shall be equipped with brakes as required in section 124 of this Act.
2. Every motor vehicle to be operated outside of business and residence districts shall have motive power adequate to propel at a reasonable speed such vehicle and any load thereon or to be drawn thereby.

(c) The commissioner shall insert in the registration card issued for every such vehicle the gross weight for which it is reigstered, and if it is a motor vehicle to be used for propelling other vehicles he shall separately insert the total permissible gross weight of such motor vehicle and other vehicles to be propelled by it. He may also issue a special plate with such gross weight or weights stated thereon, which shall be attached to the vehicle and displayed thereon at all times. It shall be unlawful for any person to operate any vehicle or combination of vehicles of a gross weight in excess of that for which registered by the commissioner or in excess of the limitations set forth in this Act.

11. In view of the varying conditions of traffic, and lack of uniformity in highway construction in the several States, no uniform gross weight limitations are here recommended for general adoption throughout the country. For the protection of bridges, the American Association of State Highway Officials recommends the following formula: $W = 700\ (L + 40)$ where $W =$ the gross weight in pounds and L equals the length in feet between the centers of the first and last axles of a vehicle or combination of vehicles.

INDEX.

SUBJECT INDEX.

CASES CITED.

STATUTES CITED.

United States Statutes.

South Carolina Statutes.

GENERAL PUBLICATIONS CITED.

APPENDIX VII.

Heavy blue line indicates route apparently traveled by witness Tucker (R. 126).

Map of SOUTH CAROLINA

STATE HIGHWAY SYSTEM

LEGEND

HARD SURFACE COMPLETED
HARD SURFACE UNDER CONSTRUCTION
EARTH TYPES COMPLETED
EARTH TYPES UNDER CONSTRUCTION
STATE MAINTENANCE PENDING RECONSTRUCTION
ROADS OPEN TO TRAFFIC
PROJECTED ROADS NOT OPEN TO TRAFFIC
COUNTY ROADS, HARD SURFACED
COUNTY ROADS, OTHER TYPES
DISTANCES BETWEEN INTERSECTIONS

STATE ROUTE NUMBER 22 — U. S. ROUTE NUMBER 21
AIRPORTS (HANGER ACCOMMODATIONS)

RAILROADS
STREAMS
COUNTY LINES
RED CROSS FIRST AID STA.
STATE FOREST PARKS

TOWNS
McConnellsville — UNDER 1,000
Woodruff — 1,000 TO 5,000
Hartsville — 5,000 TO 10,000
Rock Hill — 10,000 TO 25,000
Charleston — OVER 25,000

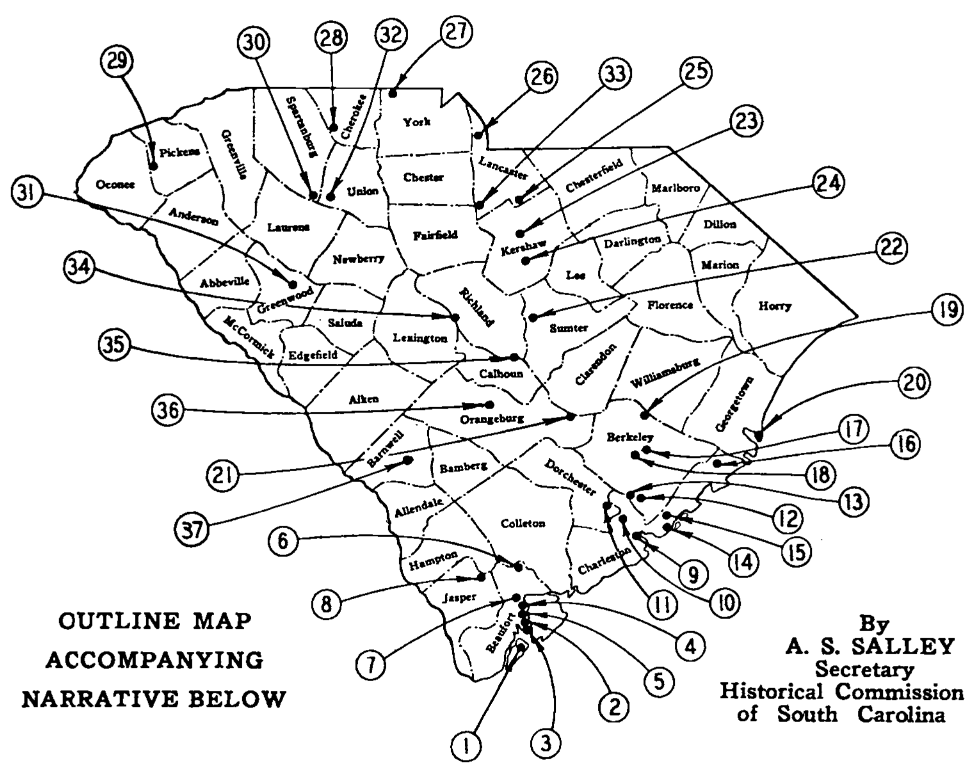
COUNTY SEAT

SCALE OF MILES
10 5 0 10 20 30

INDEX

TO CITIES AND TOWNS

Points of Historical Interest In South Carolina



OUTLINE MAP ACCOMPANYING NARRATIVE BELOW

By
A. S. SALLEY
Secretary
Historical Commission of South Carolina

1. The first point of what is now South Carolina touched by an explorer was Hilton Head, discovered on St. Helen's Day, 1525, by Pedro de Quexos, a Spaniard, and named by him Punta de Santa Elena. The adjacent harbor and country were long called Santa Elena by Spain.

2. On Whitsunday, May 17, 1562, a French expedition under Jean Ribaut sailed into Santa Elena. Ribaut called it Port Royal, built a little palisade fort on the island now called Parris and left a garrison of 29 men there. About a year later the men built a ship and returned to France leaving with the Indians one man who refused to go.

3. In May, 1566, Pedro Menendez de Aviles, governor of Florida, built Fort San Felipe and planted a settlement on the same island. Indians drove them out in 1576 and burned the fort, but they returned in 1577, built Fort San Marcos and made another settlement which flourished there for ten years.

4. In November, 1684, a Scotch colony under Henry Erskine, Lord Cardross, settled Stuart Town on Port Royal Island. Spaniards drove them out, August 17, 1686, and burned the town. In 1758 Fort Lyttelton was built (of tabby) on the site. It saw action in the Revolution. A japonica garden of John R. Todd now occupies the site.

5. Between 1732 and 1736 Fort Frederick was built (of tabby) on the southeastern end of Port Royal Island. It was abandoned in 1758, but its ruins are still conspicuous.

6. Ruins of Church of Prince William's Parish, built between 1745 and 1757; burned by British troops, May, 1779; rebuilt in 1826; burned by Sherman's troops, January, 1865.

7. Battle of Port Royal Island, February 4, 1779. American victory.

8. Pocotaligo, site of Indian town where Yamasee War began in 1715 with massacre of the whites in the town. British Fort Balfour there captured by S. C. Militia in March, 1781. Washington was entertained there, May, 1791. Federal troops several times defeated there, 1862-1864. Destroyed after the Confederates evacuated it.

9. Site of first Charles Town, 1670. Removed to present site of Charleston, 1680.

10. Church of St. Andrew's Parish, completed in 1733; burned March 10, 1763; rebuilt 1764.

11. Site of Dorchester settled by Congregationalists from Dorchester, Mass., 1697; abandoned about 1835. Ruins there of their church, of the P. E. church of St. George's Parish, Dorchester, and of a tabby fort of the Revolution.

12. Medway, brick home of John D'Arssens, a Belgian nobleman who was granted a manor of 12,000 acres in 1686 and built in 1687.

13. Church of St. James's Parish, Goose Creek, built 1706-1711 on site of an earlier church.

14. Sullivan's Island, dedicated to defensive purposes by S. C. in 1671 and never in private hands. A British fleet defeated on the western end and an army on the eastern end, June 28, 1776. Saw much fighting, 1861-1865.

15. Church of Christ Church Parish, built soon after the Revolution, the British having burned an earlier church on the site.

16. Church of St. James's Parish, Santee, built about 1768.

17. Ruins of the Church of St. John's Parish, Berkeley. First on site, 1710-1711, burned 1755; rebuilt in 1761; used by British as a post in 1781; burned as they retreated, July 16, 1781; rebuilt soon after, and burned about 1869.

18. First site of Monck's Corner. A British victory there April 14, 1780.

19. Church of St. Stephen's Parish, built in 1767.

20. North Island, where the Marquis de Lafayette first landed in America, June 14, 1777, and spent the night there with Maj. Benjamin Huger.

21. Battle of Eutaw Springs, September 8, 1781. Indecisive.

22. Site of Stateburgh, layed out by Gen. Sumter in 1783; seat of Claremont County, 1785-1798, of Sumter District, 1798-1806. Church of the Holy Cross, built of pisa, there.

23. Battle of Sanders Creek, or Gum Swamp, August 16, 1780. British victory.

24. Battle of Hobkirk Hill, April 25, 1781. Indecisive.

25. Hanging Rock. Battles there August 1st and 6th, 1780. American victories. Washington spent the night of May 26, 1791, there with James Ingram.

26. Site of home of James Crawford. "I was born in So. Carolina, as I have been told, at the plantation whereon James Crawford lived about one mile from the Carolina road xg of the Waxhaw Creek."—Andrew Jackson to James H. Witherspoon, July 11, 1824.

27. Battle of King's Mountain, October 7, 1780. American victory.

28. Battle of Cowpens, January 17, 1781. American victory.

29. Fort Prince George. Built by the province of South Carolina, November-December, 1753. Beseiged by Cherokees, 1760.

30. Battle of Musgrove's Mill, August 19, 1780. American victory.

31. First site of Ninety Six. First bloodshed of the Revolution in South Carolina, September 1775. Star shaped redoubt constructed there by the British in 1780; besieged by Greene, May-June, 1781; evacuated in August, 1781; name changed to Cambridge May 8, 1787. Cambridge College established there March 19, 1785, finally closed December 17, 1823. Town moved to the railroad about 1855.

32. Battle of Blackstock's, November 20, 1780, Gen. Sumter badly wounded. American victory.

33. Site of U. S. establishment, Mount Dearborn, begun in 1796, but afterwards abandoned. Another U. S. military school, similar to West Point, was projected for this site.

34. British "post at the Congarees" established in 1780; captured by the Americans, May 15, 1781.

35. British "post at Motte's" established in 1780; captured by the Americans, May 12, 1781.

36. British garrison at Orangeburgh captured May, 1781.

37. Old Presbyterian Church at Barnwell, where Judge A. P. Aldrich, distinguished jurist, resigned his judgeship after the Confederate War, the Court House having been burned by Kilpatrick's Division of Sherman's Army. Seeing that the judiciary would be subordinated by military depotism, on this dramatic occasion he addressed the jury in these words: "Gentlemen of the Jury, the Court stands adjourned, the voice of Justice is stifled in our land. Pure and unstained, I lay aside this ermine, but I will wear it again, please God."

Use

SAFETY SIGNALS

TO PROTECT YOURSELF AND OTHERS

STANDARD HAND SIGNALS

Indicate by standard hand signal any change of course.

Cultivate the habit of careful driving.

Moderate speed to fit road conditions.

Never pass another car when hill or curve obstructs vision.

See that brakes and lights are properly adjusted.

Don't park car on bridge or fill.

Don't double-park—please!

Observe grade crossing signs.

Drive on your side (right-hand) of center line, with plenty of room for clearance.

Cooperate with patrolmen and police officers to prevent accidents.

Courtesy has its place on the highways.

Your driver's license is valuable. It gives you the right to use the roads as long as you

Drive Carefully

Published by
SOUTH CAROLINA
STATE HIGHWAY
DEPARTMENT
Columbia, S. C.

MEMORANDA

DON'T READ THIS MAP WHILE DRIVING

MILEAGE TABLE

BELOW ARE GIVEN THE APPROXIMATE DISTANCES BETWEEN THE COUNTY SEATS AND SOME OF THE PRINCIPAL TOWNS OF THIS STATE ALONG THE MOST PRACTICABLE ROUTES. DISTANCES SHOWN ON THE FACE OF THE MAP ARE FROM INTERSECTION TO INTERSECTION; AND THE MILEAGES SHOWN IN THIS TABLE ARE DISTANCES BETWEEN INTERSECTION WITHIN TOWNS.

HOW TO USE THIS TABLE—The distance between any two towns is shown at the intersection of the vertical and horizontal lines opposite the two towns; i. e. to find the distance between Charleston and Spartanburg, follow the vertical line under "Charleston" downward to its intersection with the horizontal line opposite "Spartanburg". The figure, 218, found at the intersection of the two lines is the distance between the two towns.

	Abbeville	Aiken	Allendale	Anderson	Asheville, N. C.	Atlanta, Ga.	Augusta, Ga.	Bamberg	Barnwell	Batesburg	Beaufort	Bennettsville	Bishopville	Camden	Charleston	Charlotte, N. C.	Cheraw	Chester	Chesterfield	Clemson College	Columbia	Conway	Darlington	Dillon	Edgefield	Florence	Gaffney	Georgetown	Greenville	Greenwood	Hampton	Hartsville	Jacksonville, Fla.	Kingstree	Lancaster	Laurens	Lexington	McCormick	Manning	Marion	Moncks Corner	Myrtle Beach	Newberry	Orangeburg	Pickens	Raleigh, N. C.	Ridgeland	Rock Hill	Saluda	Savannah, Ga.	Spartanburg	St. George	St. Matthews	Sumter	Union	Walhalla	Walterboro	Washington, D. C.	Winnsboro
Aiken	69																																																										
Allendale	119	52																																																									
Anderson	31	97	150																																																								
Asheville, N. C.	116	170	222	93																																																							
Atlanta, Ga.	141	189	228	134	207																																																						
Augusta, Ga.	64	16	55	95	175	173																																																					
Bamberg	116	47	29	144	217	236	63																																																				
Barnwell	104	35	17	132	205	220	47	25																																																		
Batesburg	59	29	79	87	155	218	45	65	62																																																	
Beaufort	179	112	60	210	282	288	115	76	77	139																																																
Bennettsville	190	159	173	205	211	331	175	144	162	131	190																																														
Bishopville	145	114	128	169	196	286	130	99	117	86	145	45																																													
Camden	123	92	112	147	174	264	108	91	95	64	153	67	22																																												
Charleston	190	127	94	218	284	316	143	80	100	131	71	150	119	127																																										
Charlotte, N. C.	137	153	190	148	121	267	158	169	173	126	232	90	90	79	206																																									
Cheraw	178	147	167	191	197	319	163	145	150	119	191	14	46	55	151	76																																								
Chester	89	107	142	100	118	230	111	121	125	78	196	105	78	56	183	48	91																																							
Chesterfield	167	142	162	178	184	308	158	141	145	114	190	27	45	50	164	63	13	78																																						
Clemson College	49	115	167	18	84	128	113	162	150	105	228	219	187	165	236	139	205	114	192																																					
Columbia	91	60	80	119	171	232	76	59	63	32	134	99	54	32	122	110	87	62	82	137																																				
Conway	231	200	190	256	283	372	216	166	191	172	167	72	87	109	96	161	86	164	99	274	140																																			
Darlington	167	136	145	191	217	308	152	116	139	108	167	30	22	44	120	96	31	99	44	209	76	65																																		
Dillon	209	178	173	230	236	350	194	144	169	150	190	25	65	87	144	115	39	130	52	244	118	51	43																																	
Edgefield	47	22	74	75	148	188	26	69	57	26	134	157	112	90	149	139	145	91	140	93	58	198	134	176																																
Florence	176	145	140	201	229	317	161	111	136	117	157	40	32	54	110	106	41	109	54	219	85	55	10	33	143																															
Gaffney	98	119	169	84	87	211	125	155	152	92	229	154	130	108	219	56	140	52	127	83	97	213	148	179	105	158																														
Georgetown	220	166	152	248	289	355	182	128	153	161	129	107	107	115	58	182	117	171	130	266	129	38	86	86	187	76	223																													
Greenville	55	109	161	32	61	159	113	156	144	95	221	188	161	139	229	108	174	83	161	31	107	247	182	213	87	192	52	236																												
Greenwood	14	55	107	42	115	155	59	102	90	45	167	176	131	109	176	123	164	75	153	60	77	217	153	195	33	162	84	206	54																											
Hampton	134	67	15	165	237	243	70	32	32	94	45	176	131	123	79	201	177	153	173	182	91	175	148	176	89	143	184	137	176	122																										
Hartsville	160	129	143	184	203	301	145	114	132	101	160	30	15	37	134	82	31	85	37	199	69	79	14	55	127	24	134	100	168	146	146																									
Jacksonville, Fla.	322	274	233	353	437	324	262	256	250	303	224	380	335	343	271	420	381	369	380	371	319	367	349	381	284	348	383	329	371	317	230	350																									
Kingstree	178	124	115	206	247	313	140	86	111	119	132	79	65	73	71	145	80	129	93	224	87	80	49	72	145	39	181	42	194	164	118	63	323																								
Lancaster	118	131	151	129	147	259	147	130	134	100	192	76	51	39	166	40	62	29	49	143	71	135	70	101	114	80	78	154	112	104	162	56	382	112																							
Laurens	40	78	130	44	96	181	84	123	113	59	190	161	125	103	189	104	147	56	134	62	72	212	147	186	59	157	58	201	35	26	145	140	342	159	85																						
Lexington	78	47	75	106	163	219	63	58	58	19	134	112	67	45	124	123	100	75	95	124	13	153	89	131	45	98	99	142	102	64	88	82	308	100	84	67																					
McCormick	24	49	95	55	140	161	40	96	84	48	155	179	134	112	176	148	167	100	162	73	80	220	156	198	27	165	109	209	79	25	110	149	298	167	125	51	67																				
Manning	156	102	93	184	219	291	118	64	89	97	110	87	43	51	76	130	88	107	88	202	65	102	57	80	123	47	159	64	172	142	96	58	300	22	90	137	78	145																			
Marion	199	168	163	224	252	340	184	134	159	140	180	40	55	77	125	129	54	132	67	242	108	32	33	19	166	23	181	67	215	185	166	47	371	57	103	180	121	188	70																		
Moncks Corner	184	121	95	212	255	310	137	74	99	125	92	119	88	96	31	175	120	152	133	230	110	120	89	112	143	79	204	82	217	170	80	103	282	40	135	182	118	173	45	97																	
Myrtle Beach	251	199	185	276	296	388	215	161	186	192	162	92	107	129	91	181	106	184	119	294	160	20	85	71	218	75	233	33	267	237	170	99	362	75	155	232	173	240	97	52	115																
Newberry	51	58	109	73	125	192	64	95	94	32	170	142	97	75	161	95	128	47	119	91	44	184	119	162	44	129	61	173	64	37	124	112	322	131	70	29	39	55	109	152	154	204															
Orangeburg	114	56	47	142	209	245	72	18	43	55	87	126	81	79	76	157	127	109	126	160	47	148	98	126	78	93	144	110	148	100	50	96	272	68	118	113	48	103	46	116	70	143	85														
Pickens	62	126	178	31	64	148	126	173	161	114	238	207	180	158	247	127	193	102	180	20	126	266	201	232	104	211	71	255	19	71	193	187	384	213	131	54	121	86	191	234	236	286	83	167													
Raleigh, N. C.	301	265	290	301	256	420	291	261	273	235	308	117	163	172	257	151	124	201	137	292	215	157	147	119	267	152	209	195	261	276	293	147	500	191	175	257	223	301	200	138	232	177	245	243	280												
Ridgeland	171	104	52	202	274	280	107	68	69	131	36	187	142	150	75	236	188	188	187	219	126	171	164	187	126	154	221	133	213	159	37	157	193	129	189	182	126	147	107	177	89	166	161	79	230	304											
Rock Hill	109	127	162	120	122	250	131	141	145	98	216	103	78	66	193	28	89	20	76	134	82	162	97	128	111	107	51	181	103	95	173	83	389	139	27	76	95	120	117	130	162	182	67	129	122	181	208										
Saluda	43	35	87	71	139	184	41	81	70	16	147	147	102	80	147	118	135	70	130	89	48	188	124	166	21	133	84	177	78	29	102	117	299	135	93	43	35	32	113	156	141	208	23	71	97	258	139	90									
Savannah, Ga.	195	128	76	226	302	278	127	99	93	155	72	223	178	186	111	266	224	218	223	243	156	207	200	223	150	190	245	169	237	183	73	193	160	165	225	206	151	171	143	213	125	202	185	115	254	340	36	238	163								
Spartanburg	78	116	168	64	68	191	122	154	151	91	229	156	129	107	218	76	142	51	129	63	96	215	150	181	97	160	20	222	32	64	183	136	380	180	80	38	98	89	158	183	206	235	60	143	51	229	220	71	81	244							
St. George	145	76	58	173	241	265	92	29	54	87	63	127	82	90	51	169	128	140	127	191	78	149	104	127	98	94	175	111	180	131	51	97	253	69	129	145	80	125	47	117	45	144	117	32	199	244	60	156	103	96	174						
St. Matthews	120	70	61	148	197	259	86	32	57	61	101	130	85	67	89	145	122	97	117	166	35	152	111	135	87	97	132	114	142	106	64	100	286	72	106	107	42	109	50	120	83	147	79	14	161	232	93	117	77	129	131	45					
Sumter	136	105	105	164	202	276	121	76	101	77	122	68	23	31	96	110	69	87	68	182	45	95	50	73	103	40	139	84	152	122	108	38	312	42	70	117	58	125	20	63	65	115	89	58	171	185	119	97	93	155	141	59	62				
Union	76	92	144	87	87	217	98	128	127	65	203	137	108	86	192	72	123	32	110	89	70	196	131	162	78	141	27	199	58	62	157	117	356	157	61	43	72	87	135	164	180	216	34	117	77	221	194	52	57	220	26	148	105	115			
Walhalla	66	132	184	35	93	117	130	179	167	122	245	236	204	182	253	156	222	131	209	17	154	291	226	261	110	236	100	283	48	77	199	216	388	241	160	79	141	90	219	259	247	311	108	177	29	309	236	151	106	260	80	208	183	199	106		
Walterboro	155	86	45	183	256	273	100	39	51	104	42	148	103	111	49	190	149	159	148	201	97	145	125	148	108	115	194	107	195	141	30	118	232	90	150	162	97	135	68	138	50	140	134	50	212	265	39	179	120	75	193	21	64	80	167	218		
Washington, D. C.	540	535	560	551	494	672	561	531	543	505	578	387	433	442	527	403	394	451	407	542	485	427	417	389	532	422	459	465	511	526	563	417	770	461	445	507	493	551	470	408	502	447	498	513	530	270	574	431	521	610	479	514	502	455	471	559	535		
Winnsboro	87	94	116	108	134	228	100	95	99	68	170	106	61	39	158	74	94	26	83	126	36	148	83	126	80	93	74	154	99	73	127	76	342	112	34	64	49	91	90	116	135	168	36	83	118	209	162	46	59	185	73	114	71	70	47	143	133	477	
York	112	130	165	119	109	246	134	144	148	101	219	119	94	79	206	32	105	23	92	118	85	178	113	144	114	123	35	194	87	98	176	99	392	152	43	79	98	123	130	146	175	198	70	132	106	185	211	16	93	240	55	163	120	110	40	135	182	435	49