SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 161

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT, SOUTH CAROLINA PUBLIC SERVICE COMMISSION, ET AL., APPELLANTS,

vs.

BARNWELL BROTHERS, INC., POOLE TRANSPORTATION, INC., HORTON MOTOR LINES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 26, 1937.

[fols. 1-2]

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, AT CHARLESTON

BARNWELL BROS., INC., a North Carolina Corporation; POOL TRANSPORTATION, INC., a South Carolina Corporation; Horton Motor Lines, Inc., a North Carolina Corporation; National Convoy & Trucking Co., a North Carolina Corporation; Planters Fertilizer & Phosphate Co., a South Carolina Corporation; Carolina Transfer & Storage Co., a North Carolina Corporation; Sarah A. Geraty, John W. Geraty, and Charles W. Geraty, Trading as William C. Geraty Co., a South Carolina Partnership; Dewey D. Maner, a Sole Trader, Trading as Maner Transfer Co., of Rome, Georgia; Merchant's Fertilizer Co., a South Carolina Corporation; Akers & Hudson Motor Lines, Inc., a North Carolina Corporation; and South Carolina Produce Association, a South Carolina Corporation, Plaintiffs,

VS.

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT, SOUTH CAROLINA PUBLIC SERVICE COMMISSION, Joseph M. Poulnot, Individually, and as Sheriff of Charleston County, and as Representative of All Such Officers; George Bell Timmerman, Individually, and as Chairman of the State Highway Commission of South Carolina, and as Representative Thereof; Ben M. Sawyer, Individually, and as Chief Highway Commissioner of South Carolina; Alfred W. Bohlen, Individually, and as Director of the Motor Vehicle Division of the State Highway Department of South Carolina, and as Representative of Said Department; S. Eakin Wilson, Individually, and as State Inspector for the State Highway Department of South Carolina for Charleston County, and as Representative of All Like Officers in South Carolina; Tee Hutto, Individually, and as Patrolman for the State Highway Department of South Carolina in Charleston County, and as Representative of All Like Officers in South Carolina; James W. Wolfe, Individually, and as Chairman of the South Carolina Public Service Commission, and as Representative thereof; William W. Goodman, Individually, and as

Superintendent of the Motor Transportation Division of the South Carolina Public Service Commission, and as Representative Thereof; Benjamin K. Sanders, Individually, and as State Inspector for the South Carolina Public Service Commission for Charleston County, and as Representative of All Like Officers in South Carolina; Harold Fox, Individually, and as Magistrate's Constable in Charleston County, and as Representative of All Like Officers in South Carolina; Christian H. Ortmann, Individually, and as Chief of Police for the City of Charleston, South Carolina, and as Representative of All Municipal Police Officers in the State of South Carolina, Defendants

BILL OF COMPLAINT—Filed August 11, 1936

[fol. 3] To the Honorable the Judge of the United States District Court for the Eastern District of South Carolina:

The plaintiffs above named in the caption hereof bring this bill of complaint against the defendants above named, and for their cause and action respectfully represent unto your Honor:

I

1. That the plaintiffs, Planter's Fertilizer & Phosphate Co., and Merchant's Fertilizer Co., with their principal offices and place of business in the City of Charleston, South, Carolina; Poole Transportation, Inc., with its principal office and place of business at Greenville, South Carolina; and South Carolina Produce Association, with its principal office and place of business in the town of Meggetts, South Carolina, are each of them a corporation, organized and existing under and by virtue of the laws of the State of South Carolina.

That the plaintiffs, Barnwell Bros., Inc., with its principal office and place of business in the City of Burlington, North Carolina; Horton Motor Lines, Inc., National Convoy & Trucking Company, and Carolina Transfer & Storage Co., with their principal offices and places of business in the City of Charlotte, North Carolina; and Akers & Hudson Motor Lines, Inc., with its principal office and place of business in the City of Gastonia, North Carolina; are each of them a corporation, organized and existing un-

der and by virtue of the laws of the State of North Carolina.

That the plaintiffs, Sarah A. Geraty, John W. Geraty, and Charles W. Geraty, constitute a partnership trading as William C. Geraty Co., and are each of them residents of Yonge's Island, in the County of Charleston South Carolina and are each of them citizens of the State of South Carolina.

That the plaintiff, Dewey D. Maner, is a sole trader, trading as Maner Transfer Co., and is a resident of the City of Rome, Georgia, and is a citizen of the State of Georgia.

2. That the defendants, South Carolina State Highway Department, and South Carolina Public Service Commission, are administrative agencies of the State of South Carolina, organized and existing under and by virtue of the laws of the State of South Carolina.

That the defendant, Joseph M. Poulnot, is a resident of the County of Charleston, in the Eastern District of South Carolina, and is Sheriff of such County, and that he is representative of all such officers in the State of South Carolina.

That the defendant, George Bell Timmerman, is a resident of the town of Lexington in Lexington County, South Carolina, in the Eastern District of South Carolina, and is chairman of the State Highway Commission of such State, and that he is representative of such Commission.

That the defendant, Ben. M. Sawyer, is a resident of the City of Columbia, South Carolina, in the Eastern District of South Carolina, and is Chief Highway Commissioner of South Carolina.

[fol. 4] That the defendant, Alfred W. Bohlen is a resident of the City of Columbia, South Carolina, in the Eastern District thereof, and is Director of the Motor Vehicle Division of the State Highway Department of such State, and that he is representative of all officers and employes of such Division.

That the defendant, S. Eakin Wilson, is a resident of the City of Charleston, South Carolina, in the Eastern District thereof and is State Inspector for the State Highway Department of such State for the County of Charleston, and that he is representative of all such officers in such State.

That the defendant, Tee Hutto, is a resident of the County

of Charleston, South Carolina, in the Eastern District thereof, and is a Patrolman for the State Highway Department of such State for the County of Charleston, and that he is representative of all such officers in such State.

That the defendant, James W. Wolfe, is a resident of the Town of Inman, Spartanburg County, South Carolina, in the Western District thereof, and is Chairman of the Public Service Commission of such State, and that he is representative of the members of such Commission and the officers thereof.

That the defendant, William W. Goodman, is a resident of the City of Columbia, South Carolina, in the Eastern District thereof, and is Superintendent of the Motor Transportation Division of the South Carolina Public Service Commission, and that he is representative of the officers and employees of such Division.

That the defendant, Benjamin K. Sanders, is a resident of the Town of Walterboro, Colleton County, South Carolina, in the Eastern District thereof, and is State Inspector for the Public Service Commission of such State for the County of Charleston, and that he is representative of all such officers in such State.

That the defendant, Harold Fox, is a resident of Charleston County, South Carolina, in the Eastern District thereof, and is a Magistrate's Constable in Charleston County, and that he is a representative of all such officers in such State.

That the defendant, Christian H. Ortmann, is a resident of the City of Charleston, South Carolina, in the Eastern District thereof, and is Chief of Police of the City of Charleston, and that he is representative of all municipal police officers in the cities of such State.

That each of said individual defendants is an officer either of the State of South Carolina, or of a County or municipality thereof, and all of the above-mentioned defendants are charged with the duty of enforcing, and are empowered to enforce the various laws of the State of South Carolina affecting the plaintiffs hereto, as hereinafter appears, including Act No. 259 of 1933, Regulating and Limiting the Use of the Public Highway in Such State by Motor Trucks, and including Chapter 162 (Sections 8507-8530) Code of Laws of South Carolina, 1932.

II

3. That the jurisdiction of this Court is invoked because the subject matter of the action involves the rights of the plaintiffs under the laws and the Constitution of the United States and the amount in controversy, as to each of the plaintiffs, exclusive of interest and costs, exceeds the sum and value of $3,000.00, as will hereafter appear; and because the suit arises under a law of the United States regulating commerce.

[fol. 5] III

4. That across the State of South Carolina lie trunk arteries of interstate commerce, directly serving and affecting the people of the State of South Carolina, and the people of the States of the Southeast, the Atlantic Seaboard, the Northeast, and the Middle West; that these trunk arteries are natural and essential channels, in the commerce of the nation, for the transportation and exchange of commodities and for intercourse between the peoples of the several states of the United States.

That the fundamental economic and social needs of the peoples of the State of South Carolina and of the various states served by these channels of interstate commerce have for many years past required, do now require, and will continue increasingly to require, that a large share of the movement of goods and commodities in such commerce be transported by motor carriers; that certain necessary and indispensable services and functions of interstate commerce can be performed only by motor transportation on the interstate highways, other methods of transportation being for such purposes totally inefficient and inadequate.

That to meet these needs and to perform these essential functions and services, various corporations and individuals, representative of whom are seven of the plaintiffs hereto, have for many years past invested their monies, properties, and efforts, and have developed, and now offer, and desire to continue to offer, to the people of South Carolina, and to the people of the various States served by these channels of commerce, an adequate, economical and efficient transportation service by motor carriage on the highways; that such commerce requires the use of certain trunk highways leading into, from and across the State of South Caro-

lina; that these highways have been constructed with the aid of funds derived from the users of such highways, and from the government of the United States under the Federal Highway Act, as amended, and other Federal Acts, and that they are and have been maintained by funds derived from the users of such highways; that these motor carriers, including the seven representative plaintiffs hereto, have always contributed and will continue to contribute their due and proportionate share of these costs of construction and maintenance; that these highways have been built and maintained in accordance with the best engineering standards and specifications for highway construction, under the most favorable climatic and sub-soil conditions, and in accordance with the requirements of the Federal Highway Act that *"only such durable types of surface and kinds of material shall be adopted for the construction and reconstruction of any highway for the primary or interstate * * * systems as will adequately meet the existing and probable future traffic needs and conditions thereon", and in accordance with the specifications adopted by Secretary of the Agriculture pursuant to the said Federal Highway Act;* that these highways are now adequate, were designed, and by the specifications adopted by the Secretary of Agriculture pursuant to said Federal Highway Act, as amended, and other Federal Acts, were intended to carry the volume and description of motor traffic now borne by them, including equipment of such specifications as that now possessed and in use by the aforesaid interstate motor carriers and the seven representative plaintiffs hereto, and such motor traffic as may be reasonably expected in the development of a more adequate and efficient interstate system of motor transportation, without causing unreasonable or disproportionate wear and tear upon said highways, or the deterioration thereof, or in any unreasonable manner endangering the safety and lives of the traveling public, or increasing the cost of maintenance of said highways.

5. That, nevertheless, the General Assembly of South [fol. 6] Carolina, in 1933, enacted its Act No. 259, approved April 28, 1933 (38 State. 340) entitled: An Act to Regulate and Limit the Use of the Public Highways in the State by Motor Trucks, Semi-trailers, and Trailers, to Enlarge the Powers of the State Highway Department and Other Bodies

Having like Jurisdiction in Incorporated Cities and Towns in Respect Thereof; and to Provide for the Enforcement of this Act and 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.

That Section 3 of such Act provides that *"no person shall use or operate any trailer, as defined in this Act, on any* highway." Section 2 of such Act defines a "trailer" as *"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."*

That Section 4 of such Act provides that *"No person shall operate on any highway any motor truck, or semi-trailer truck whose gross weight, including load, shall exceed* 20,000 *pounds"*. Section 2 of such Act defines a "semi-trailer motor truck" as *"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."*

6. The plaintiffs hereto alleged that Section- 3 and 4 of such Act are in violation of the 14th Amendment to the Constitution of the United States, in that they constitute an unreasonable, arbitrary and capricious interference with the rights of the plaintiffs to use the highways in a reasonable manner and for a lawful purpose; that such regulations have no real and substantial relation to the avowed objects and purposes of such Act, as declared in Section 1 thereof; that is, to achieve economy in highway costs and to protect the safety and lives of the traveling public, and no real and substantial relation to any other objects or purposes properly within the police power of the State of South Carolina; that the enforcement of such Act will not only not achieve such objects and purposes, but will tend to damage and destroy the highways of South Carolina and prevent the free and safe use of the highways of South Carolina by the traveling public, by increasing the number of vehicles on the highways, and diverting the traffic of motor transportation to smaller, over-loaded, and more

dangerous trucks; that the actual result of its enforcement will be economic, not economical, and will be to limit arbitrarily and unreasonably the use of the public highway by motor trucks engaged in interstate commerce.

7. Plaintiffs further allege that such provisions of said Act are in violation of Section 8 of Article 1 of the Constitution of the United States, in that they have operated, and if enforced, will continue to operate, as a direct and substantial burden on interstate commerce; that the maximum gross weight allowed by other States through which pass the channels of interstate commerce into, from and across the State of South Carolina, are far in excess of the maximum weight allowed by such Act of the State of South Carolina, although the highways of such States are no better constructed or maintained than the highways of the State of South Carolina, and in most cases are not as well constructed or maintained as the highways of the State of South Carolina; that the essential services and functions of interstate commerce cannot be performed by the several plaintiff carriers with the use of motor equipment limited to a maximum weight of 20,000 pounds; that the effect of [fol. 7] such disparity in the case of the State of South Carolina is effectively to disturb and block the orderly and efficient flow of transportation through said channels of interstate commerce into, from and across the State of South Carolina, and effectively to prevent all interstate motor carriers, of which the seven carrier plaintiffs hereto are representative, from rendering to the public that adequate, economical and efficient transportation which is essential to the communities served by them, and which is required by law, and which it is their duty and desire to perform, if permitted so to do.

8. That such Sections of said Act are so arbitrary and unreasonable as to defeat the useful purposes for which the Government of the United States, pursuant to the Federal Highway Act, as amended, and other Federal Acts, has made its large contribution towards the bettering of the highway system of the United States, and for the purposes of the national defense.

9. That the Seventy-fourth Congress of the United States, in August, 1935, passed an Act, entitled the "Motor Carrier Act, 1935," amending and supplementing the Inter-

state Commerce Act, as amended, said Motor Carrier Act being designated as Part II of the Interstate Commerce Act, and was approved by the President of the United States on August 9, 1935; that the said Motor Carrier Act vests in the Interstate Commerce Commission and in "Joint Boards" created under such Act, full, complete and exclusive control and jurisdiction over interstate commerce by motor vehicle and all interstate motor carriers, and thus pre-empted the field of their regulation, and thereby prohibited and excluded the several States of the Union from regulating interstate commerce by motor carriers and motor carriers engaged in interstate commerce, and superseded such legislative enactments of the several states attempting to regulate interstate commerce, as may have been enacted and effective before its passage, including the aforesaid Act of the State of South Carolina.

The said Motor Carrier Act, specifically or by necessary intendment, vests in the Commission and in the "Joint Boards" to be created under such Act, complete and exclusive jurisdiction, as to interstate commerce by motor carriers, over all certificates of public convenience and necessity, permits, rates, fares, charges, practices, discriminations, preferences, adequate service, through rates, economical and efficient service, instrumentalities, vehicles, safety or operation and equipment, standards of equipment, maximum hours and qualifications of employees, weights, lengths, widths, heights, brakes, lights, and other appliances, and all other matters in connection with safety of operation and equipment and standards of equipment, which may now or hereafter require regulation in connection with interstate commerce by motor carriers.

That the said Motor Carrier Act, in Section 205 thereof, recognizing the need for co-operation with the States as to matters of local concern, provides that the Interstate Commerce Commission may refer various matters to Joint Boards, which shall be composed solely of members from the interested States; that the Commission may refer to a Joint Board any matter not specifically mentioned in said section which may arise under the Motor Carrier Act; that pursuant to the provisions of said Section, the State of South Carolina has nominated and the Interstate Commerce Commission has appointed Joint Board representatives for the State of South Carolina.

That in Section 202 (a) of said Motor Carriers Act it is declared to be the policy of Congress "to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound [fol. 8] economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between and co-ordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense, and co-operate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part."

That such Act of the State of South Carolina, in addition to provisions arbitrarily excluding trailers from the highways and limiting the gross weight of all motor trucks and semi-trailer trucks to 20,000 pounds; further, in Sections 5, 6, and 7 thereof, regulates the height, width, and length of all motor-trucks and semi-trailer trucks operating on the highways of South Carolina, including those operating in interstate commerce; and by other sections thereof regulates other matters relating to the safety of operation and equipment and standards of equipment, including those drivers employed by motor carriers engaged in interstate commerce.

Plaintiffs allege that the Motor Carrier Act, 1935, has entirely and completely superseded the said Sections 3, 4, 5, 6, and 7 of such Act of South Carolina, insofar as they may apply to motor carriers engaged in interstate commerce, and such other provisions of such Act that regulate other matters relating to the safety of operation and equipment and standards of equipment of trucks engaged in interstate commerce, and the qualifications of drivers employed by motor carriers engaged in interstate commerce; and that such provisions were void and of no effect, as to such motor carriers, from the date of the passage of such Motor Carrier Act.

That pursuant to the duty imposed and the authority conferred upon it by Section 204 (a) (1) and (2) of such

Motor Carrier Act, 1935, the Interstate Commerce Commission did on July 1, 1936, promulgate proposed safety regulations.

Plaintiffs allege that the enforcement of said provisions of such Act of South Carolina as to motor carriers engaged in interstate commerce, does and will operate as a direct and substantial burden on and interference with interstate commerce, and is thus in violation of Section 8, Article 1, of the Constitution of the United States, in that such enforcement subverts and defeats the declared purposes of the said Motor Carrier Act; that such provisions were not intended to and do not operate to "recognize and preserve the inherent advantages of, and foster sound economic conditions in" motor transportation; that enforcement of such provisions of said Act will prevent, rather than promote "adequate, economical and efficient service by motor carriers"; will create "unjust discriminations, undue preferences and advantages", will operate to discriminate against and destroy the business and service of interstate transportation by motor carriers into, from and across the State of South Carolina, in favor of other forms of transportation, and will render of no effect the effort of Congress by the Motor Carrier Act to "improve the relations between, and to co-ordinate transportation by and regulation of, motor carriers and other carriers"; that such enforcement will operate to destroy the present highway transportation system into, from and across the State of South Carolina, and prevent the development and preservation of "a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense", as contemplated by said Motor Carrier Act, 1935.

[fol. 9] That such defendants, and those for whom they are by this bill alleged representative, and their officers, deputies, agents and employees, purporting to act under and pursuant to such Act, and under color of their representative offices, have unlawfully interferred with and are threatening to interfere with, and as the plaintiffs hereto are informed and believe, propose to interfere with, the lawful operation on the highways of South Carolina by the several interstate motor carriers plaintiffs hereto, of motor equipment which does not, and cannot—if the present adequate, economical and efficient transportation service is to be

maintained, and if the necessary and indispensable services and functions of interstate commerce are to be performed comply with the restrictions and limitations of the Sections 3 and 4 of such Act of the State of South Carolina; that said defendants have arrested, prosecuted, and caused to be fined the agents, servants and employees of such plaintiffs lawfully operating such motor equipment on the highways in interstate commerce, and under the jurisdiction of the Interstate Commerce Commission as heretofore appears; and threaten in the future to arrest, prosecute and cause to be fined such agents, servants and employees of such plaintiffs; that the South Carolina Public Service Commission has refused, and is continuing to refuse to issue such interstate carriers, plaintiffs hereto, operating licenses for equipment not complying with the aforesaid limitations of such Act, although by the laws of South Carolina, operating licenses must be obtained by said plaintiffs for each unit of equipment operated on the highways; that the officers and agents of such Public Service Commission of South Carolina, defendants hereto, and their deputies and employees have arrested, prosecuted and caused to be fined, the agents, servants and employees of such carriers, and threaten in the future to arrest, prosecute and cause to be fined such agents, servants and employees of such carriers, for their failure to have such licenses; that such unlawful interference by arrests, prosecutions, and fines, has interrupted and impaired the service rendered by such carriers, and that if continued, will cause the plaintiffs hereto irreparable damage; that if the aforesaid threats and proposals are carried out, the plaintiffs will be irreparably damaged in great amount, and their businesses will be jeopardized, if not entirely ruined, as will appear more fully hereafter.

That such defendants, and those for whom they are by this bill alleged representative, and their officers, deputies, agents and employees have been enforcing, are enforcing, and threaten to continue to enforce the provisions of Section 5, 6, and 7 of such South Carolina Act, and other sections thereof regulating other matters relating to the safety of operation and equipment and standards of equipment and qualifications of drivers, engaged and employed in interstate commerce.

10. That the plaintiff, Barnwell Bros., Inc., is now, and was for a number of years prior to the passage of such Act

of South Carolina, engaged in the transportation of property in interstate commerce as a common carrier; that it offers by its own facilities or through connecting agencies door to door delivery and daily direct service in the District of Columbia, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Virginia, and other States, and has branch offices and terminals at Atlanta, Ga., Baltimore, Md., Charlotte, N. C., Cumberland, Md., Greenville, S. C., Newark, N. J., New York City, Philadelphia, Pa., Shelby, N. C., and Washington, D. C.

That the plaintiff, Poole Transportation, Inc., is now, and was for a number of years prior to the passage of such Act of South Carolina, engaged in the transportation of [fol. 10] property in interstate commerce as a common carrier, that it offers door to door delivery and daily direct service into, from, within, and across the State of South Carolina, from and to the States of Delaware, District of Columbia, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Virginia and other States, and has traffic agents at Greenville, S. C., Atlanta, Ga., Baltimore, Md., Burlington, N. C., Chester, Pa., Richmond, Va., Charlotte, N. C., Paterson, N. J., and Kings Mt., N. C.

That the plaintiff, Horton Motor Lines, Inc., is now and was for a number of years prior to the passage of such Act of South Carolina, engaged in the transportation of property in interstate commerce as a common and contract carrier; that it offers door to door delivery and daily direct service in the District of Columbia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and other States, as a direct and connecting carrier for the transportation of property into, from and across the State of South Carolina, and has warehouses and terminals at Baltimore, Md., Burlington, N. C., Charlotte, N. C., New York City, Philadelphia, Pa., Richmond, Va., Washington, D. C., Wilkes-Barre, Pa., Cumberland, Md., Hickory, N. C., Greensboro, N. C., and Pittsburgh, Pa.

That the plaintiff, National Convoy & Trucking Co., is now and was for a number of years prior to the passage of such act of South Carolina, engaged in the transportation of property in interstate commerce as a common and contract carrier, offering door to door delivery and daily direct service in Georgia, North Carolina, South Carolina, Tennessee, Alabama, and other States, with traffic agents at

Atlanta, Ga., Chattanooga, Tenn., Greenville, S. C., High Point, N. C., Knoxville, Tenn., Spartanburg, S. C., Winston-Salem, N. C., and Birmingham, Ala.

That the plaintiff, Carolina Transfer & Storage Co., is now, and was for many years prior to the passage of such Act of South Carolina, engaged in the transportation of property in interstate commerce as a contract and irregular common carrier; that it has specialized in the movement of household furniture and goods in interstate commerce, which is an indispensable service and function of such interstate commerce; that it offers such service among all the several states of the United States, but that 35% of its total traffic moves into, from or across the State of South Carolina.

That the plaintiff, Dewey D. Maner, trading as Maner Transfer Company, of Rome, Georgia, is now, and was for many years prior to the passage of such Act of South Carolina, engaged in the transportation of property in interstate commerce as a common carrier; that he offers door to door delivery and daily direct service in Georgia, North Carolina, South Carolina, Tennessee, Alabama, Virginia, Maryland, Pennsylvania, New York, and other States, with terminals at Baltimore, Md., Philadelphia, Pa., New York City, Chattanooga, Tenn., Atlanta, Ga., Birmingham, Ala., and Rome, Ga.

That the plaintiff, Akers & Hudson Motor Lines, Inc. is now and was for many years prior to the passage of such Act of South Carolina, engaged in the transportation of property in interstate commerce as a contract carrier, that it offers door to door delivery and daily direct service in the States of Connecticut, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and other States, with traffic agents at Gastonia, N. C., Baltimore, Md., Newark, N. J., New York City, Reading, Pa., South River, N. J., Trenton, N. J., and Chester, Pa.

That all of the foregoing plaintiffs are now complying with, and at all times have been willing to comply with, and in the future will continue to comply with, all valid laws and [fol. 11] regulations of the United States and of the State of South Carolina, and its several administrative bodies, applicable to their respective operations; that each of them was in bona fide operation in the capacity alleged on June

1, 1935, and on July 1, 1935, and have complied with all the requirements and provisions of the Motor Carrier Act, and are now lawfully operating under such Act and under the jurisdiction of the Interstate Commerce Commission; that such plaintiffs are charged by the Motor Carrier Act with the duty of providing continuous, adequate, economical and efficient service to the communities and persons served by them, but that the performance of such duty requires the employment of equipment of reasonable size and weight, and such equipment as may not be subjected to the limitations of such Act of South Carolina; that such plaintiffs are by said Motor Carrier Act forbidden to cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality or description of traffic in any respect whatsoever, or to subject any particular person, port, gateway, locality or description of traffic to any unjust discrimination, or any undue or unreasonable prejudice or disadvantage in any respect whatsoever; but that, if denied the use of equipment of reasonable size and weights, the plaintiffs herein, and other carriers engaged in interstate commerce, will be compelled to make, give, and cause unreasonable preferences and advantages to particular persons, ports, and localities, and will be compelled to subject particular persons, ports, and localities served by the natural channels of interstate commerce into, from and across the State of South Carolina, to unjust discriminations, disadvantages, and undue and unreasonable prejudices.

That the result and effect of the enforcement of such Act of South Carolina will be to substantially increase the cost of and time of transportation by such plaintiffs, and will thereby substantially increase the costs of such transportation to the public served by them, and will substantially affect and increase the price of goods moving in interstate commerce to the public purchasing such goods; that it has been and will be necessary that such plaintiffs divert and re-direct their routes of transportation to avoid the obstruction created by such Act, since the natural channels through which flow the normal interstate traffic, and through which, in the absence of such Act and its enforcement, it would continue to flow, have been obstructed, and such flow has been and will be in greater measure diverted to other and unnatural interstate channels; that the quantity

of goods moving in such interstate commerce has been and will continue to be substantially decreased; that channels through which the normal interstate flow occurs have been so obstructed and will continue to be so obstructed if such Act is enforced, that such plaintiffs and other interstate motor carriers will be unable to perform the necessary and indispensable services and functions of interstate commerce.

That the plaintiffs, Merchants Fertilizer Company, and Planter's Fertilizer & Phosphate Company are and were for many years prior to the passage of such South Carolina Act engaged in the manufacture and preparation of large quantities of fertilizers and agricultural chemicals, serving extensive agricultural communities with essential fertilizer needs in Georgia, South Carolina, North Carolina, Florida, and other States; that economy and efficiency of service has required and now requires that delivery from point of manufacture to the communities and persons served be accomplished by motor transportation employing equipment of reasonable weights and sizes, but that such service could [fol. 12] not have been, and cannot be effected with equipment unreasonably limited in accordance with such provisions of said South Carolina Act.

That the plaintiff, South Carolina Produce Association, Inc., is, and was for many years prior to the passage of such South Carolina Act, a profit-making co-operative marketing association, incorporated by the State of South Carolina, in accordance with the Federal and State co-operative marketing acts; that it has some 200 members who are large and extensive producers of fresh vegetables and farm products in the State of South Carolina, that the Association ships 75% of such produce into interstate commerce which must move across certain trunk highways of the State of South Carolina in order to reach the natural markets of the Association in the urban and metropolitan centers of the North, Northeast and Middle West; that the Association furnishes to the peoples of these sections of the United States an indispensable delivery service of fresh vegetable foods from field to market; that practically all of such commerce moves, and because of the exigencies of time and cost of transportation, and necessity for refrigeration, must move, by motor carriage over the highways of South Carolina into connecting highways of other States;

that no other form of transportation is able to perform such indispensable service and function of interstate commerce either efficiently or adequately; that the necessity for refrigeration and economy of ultimate cost to the consumer requires that the motor equipment carrying such commerce exceed the gross limit allowed by such South Carolina Act; that the enforcement of the South Carolina Act will destroy the plaintiff's business by rendering it impossible to compete with its seasonal competitors in other sections of the United States, and will prevent the Association from serving its natural markets with fresh farm produce when it has no competition because of differences in harvest time.

That the plaintiffs, Sarah A. Geraty, John W. Geraty and Charles W. Geraty, trading as William C. Geraty Company, are large and extensive producers of fresh vegetables and farm products in the State of South Carolina; that such produce is shipped by motor carriage on the highways of South Carolina in interstate commerce; that such Act of South Carolina, its enforcement, and threatened enforcement, has tended to destroy their business and prevent tham from contributing to the indispensable and necessary services and functions of interstate commerce in the manner above alleged as to the plaintiff, South Carolina Produce Association, Inc.

That the enforcement of such South Carolina Act will result in irreparable dam-ge to the business and services of such plaintiffs, the Planter's Fertilizer & Phosphate Company, Merchant's Fertilizer Company, South Carolina Produce Association, and William C. Geraty Company; will seriously curtail the volume of their business, will add to the cost of their products and substantially increase the price to the consumer; will lengthen the time and seriously impair the efficiency of their delivery service; will result in unjust and unreasonable discrimination, disadvantage, and prejudice against them and in favor of their competitors in other sections of the United States.

11. That each of the plaintiffs hereto has made large investments of money, property and effort in the respective businesses in which they are engaged as alleged heretofore; that the necessary effect of the enforcement of the South

[fol. 13] Carolina Act will be to curtail the business of each of the plaintiffs, damage or destroy their investments in an amount, and reduce their lawful profits, in an amount, greatly in excess of One Thousand ($1,000.00) Dollars for each month that they are thus unlawfully prevented from a reasonable use of the highways of the State of South Carolina.

12. That the plaintiffs hereto are but a numbered few of numerous carriers, manufacturers, producers, and shippers who perform services and engage in business in the stream of interstate commerce that flows through the aforesaid natural channels of trade into, from and across the State of South Carolina and that the necessary effect of the enforcement of such Act of South Carolina has been, and will be, to damage them and discriminate against them in like manner as the plaintiffs have alleged above as to themselves.

13. That the plaintiffs hereto are without adequate remedy at law, and must seek relief from such unlawful interference and must attempt to avoid such irreparable damage in a Court of Equity.

IV

To the end that the plaintiffs may have that relief which they can obtain only in a Court of Equity, they hereby pray:

That writ of subpœna issue out of and under the seal of this Court directed to each and all of the defendants hereto, and that duplicate writs be issued against such defendants as are alleged herein to be residents of the Western District of South Carolina, directed to the Marshal of said District, in accordance with Section 52 of the Judicial Code;

That it be adjudged and decreed that Sections 3 and 4 of the Act of South Carolina, 1933, No. 259 (38 Stats. 340) are in violation of the 14th Amendment to the Constitution of the United States, in that they are unreasonable, arbitrary, and capricious, and that they have no real and substantial relation to the objects sought to be obtained by such Act; that Sections 3 and 4, 5, 6 and 7 of such South Carolina Act, and such other sections thereof relating to the safety of operation and equipment and standards of

equipment, and qualifications of drivers engaged and employed in interstate commerce, are void and of no effect as to interstate commerce and the instrumentalities of interstate commerce, as they have been superseded by the Motor Carrier Act, 1935, and are in violation of Section 8, Article 1 of the Constitution of the United States, as they constitute a direct and substantial burden on interstate commerce, and a direct and substantial interference with the declared objects and purposes of the Motor Carrier Act, 1935.

Plaintiffs further pray that upon final hearing herein a permanent injunction may be granted enjoining said defendants, their representatives, officers, deputies, agents and employees, and all persons acting or attempting to act under or by virtue of their authority, direction or control, and any person and every person acting or attempting to act under or by virtue of the authority, of said Act of South Carolina, from in any way enforcing the said provisions of such Act against the plaintiffs hereto, their [fol. 14] agents, servants, or employees, while engaged in interstate commerce, from bringing or prosecuting any suit, action, or proceedings, criminal or civil, to enforce the penalties provided in said Act, or to compel compliance with such Act, or from doing any act or in any way interfering with the rights of the plaintiffs to carry on their businesses in interstate commerce free from the invalid requirements of such Act.

That plaintiffs may have such other and further relief as the exigencies of the case may require and to the Court may seem meet and proper.

Dated this, the 11th day of August, 1936.

By (Signed) S. King Funkhouser, J. Ninian Beall, Frank Coleman, L. Mendel Rivers, Counsel for Plaintiffs.

(Complaint verified.)

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed September 19, 1936

Now come the defendants and move the Court to dismiss the bill of complaint upon the following grounds:

1. The bill of complaint fails to state a cause of action in equity entitling the plaintiffs to the relief prayed for therein.

2. There is no averment of facts sufficient to show a violation of any of the sections of the Constitution of the United States relied upon in the complaint or to show an invasion of any constitutional right of plaintiffs.

3. The allegations in the bill of violation of the Fourteenth Amendment to the Constitution of the United States fail to disclose any unreasonable, arbitrary or capricious interference with the rights of plaintiffs to use the highways of the State of South Carolina.

4. The respects in which the Act is alleged to violate the Fourteenth Amendment are within the police power of the State of South Carolina and the State has found as a fact and declared by its legislation in said Motor Carrier Act [fol. 16] of 1933 that the standards of weight, height, width and length prescribed by said Act are necessary to achieve economy in highway cost and permit its highways to be used freely and safely by the traveling public, and that the operation of trailers on any highway in the State endangers the safety and lives of the traveling public.

These limitations and prohibitions are manifestly subjects within the broad range of legislative discretion and it is not within the competency of the courts to set aside such exercise of police power of a State because of dispute of the facts so found by the legislature.

5. The provisions of the South Carolina Motor Carrier Act of 1933 which are alleged by the bill to violate the Fourteenth Amendment to the Constitution of the United States are sustained as a valid and reasonable exercise of the police power of the State, by facts of which there is common knowledge and of which the Court will take judi-

cial notice. The allegations of the bill seeking to deny or controvert such facts are insufficient to warrant the Court in setting aside such valid exercise of the police power of the State.

6. The averments of fact, if any, contained in the bill to sustain the charge of violation of the Fourteenth Amendment and a violation of Section 8 of Article I of the Constitution have been advanced from time to time and the questions are foreclosed by the decisions of the Supreme Court of the United States. The Supreme Court of the United States and the Supreme Court of South Carolina, on identical or like averments of fact, in a suit involving the constitutionality of the Motor Carrier Act of 1933 (State v. Jno. P. Nutt Co., 185 S. E. 25, certiorari denied, 56 S. Ct. Rep. 668) held the plaintiff not entitled to proof of such allegations, upon the ground that said questions had been foreclosed by the decisions of courts of both per- [fol. 17] suasive and controlling authority.

7. The averments in Paragraph 8 of the bill relying upon the Federal Highway Act do not state a cause of action for that it has been held as matter of law by the Supreme Court of the United States and the Supreme Court of South Carolina that the police power of a state concerning its highways has not been impaired by the federal highway aid statutes. This was conclusively so held as matter of law by the Supreme Court of the United States in the case of Morris v. Duby, 274 U. S. 135, and by the Supreme Court of South Carolina, certiorari denied by the Supreme Court of the United States, as to the South Carolina Act of 1933 regulating motor carriers, in the case of "State v. Jno. P. Nutt Co.," 185 S. E. 25, certiorari denied, 56 S. Ct. Rep. 668.

8. The averments in Paragraph 9 that the Act of Congress known as the Motor Carrier Act of 1935 has entirely and completely superseded Sections 3, 4, 5, 6, and 7 of the Act of South Carolina, in so far as they apply to motor carriers engaged in interstate commerce, are insufficient in law in that the Act of Congress relied upon shows upon its face that the federal government has not occupied the field.

9. The averments in Paragraph 9 that the Act of Congress known as the Motor Carrier Act of 1935 has entirely and completely superseded Sections 3, 4, 5, 6, and 7 of the

Act of South Carolina, in so far as they apply to motor carriers engaged in interstate commerce, are insufficient in law in that for an Act of Congress to regulate the size and weight of motor vehicles to be employed upon the highways of a state is beyond the power of Congress under the Commerce Clause and in violation of the Tenth Amendment to the Constitution of the United States.

[fol. 18] 10. In the event the foregoing motion to dismiss the whole complaint should be overruled, defendants further move, in the alternative, to dismiss paragraphs 4, 5, and 6 thereof, on grounds 3, 4, 5 and 6 of this motion set out above as reasons for dismissal of the whole complaint.

11. Defendants further move in the alternative, in the event the motion to dismiss the whole complaint be overruled, to dismiss paragraphs 7 and 8 thereof, on ground 7 set out above as reason for dismissal of the whole complaint.

12. Defendants further move in the alternative, in the event the motion to dismiss the whole complaint be overruled, to dismiss paragraphs 9 and 10 thereof, on grounds numbered 8 and 9 set out above as reasons for dismissal of the whole complaint.

John M. Daniel, Attorney General; J. Ivey Humphrey, Assistant Attorney General; M. J. Hough, Assistant Attorney General; Blease & Griffith, Counsel for Defendants.

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM ON MOTION TO DISMISS BILL—Filed October 24, 1936

Plainly the essentials for Federal jurisdiction are present. Decision of the case involves both laws and Constitution of the United States. A special statute of Congress regulating Interstate Commerce will have to be construed in deciding the case. In addition to the constitutional question involved, diversity of citizenship is present. Plainly the amount involved exceeds Three Thousand Dollars.

The Bill of Complaint seeks a permanent injunction against two South Carolina Administrative Bodies, Highway Commission and Public Service Commission. The complaint is directed at an Act of the Legislature of South Carolina approved April 28, 1933, 38 Statutes, 340, entitled "An Act to Regulate and Limit the Use of The Public Highways in the State by Motor Trucks, Semi-trailers Trucks, semi-trailers, and Trailers, to Enlarge the Powers of the State Highway Department and Other Bodies Having Like Jurisdiction in Incorporated Cities and Towns in Respect Thereof; and to Provide for the Enforcement of this Act and to Prescribe 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." Sections 3 and 4 of the Act are summarized in the Bill as follows:

"That Section 3 of such Act provides that *'no person shall use or operate any trailer, as defined in this Act, on any highway.'* Section 2 of such Act defines a 'trailer' as *'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.'*

"That Section 4 of such Act provides that *'No person shall operate on any highway any motor truck, or semi-trailer whose gross weight, including load shall exceed* 20,000 *pounds.'* Section 2 of such Act defines a 'semi-trailer motor truck' as *'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."

[fol. 20] It is alleged that the enforcement of these Sections will constitute an unreasonable, arbitrary and capricious interference with the rights of the plaintiffs to use the highways in a reasonable manner and for a lawful purpose, and that such enforcement will be in violation of the 14th Amendment to the Constitution of the United States. It is further alleged, paragraph 7 of the Bill, that the provisions of this Act when enforced will act as a direct and

substantial burden on Interstate Commerce. That, therefore, this Act is violative of the constitutional provisions placing the power of regulating Interstate Commerce with the National Congress. Paragraph 8 of the Bill alleges that this Act is in violation with certain provisions of the original Federal Highway Act, under the terms of which the Federal Government has made large contributions to the construction of the highway systems in the United States and for the purpose of national defense.

In addition to the foregoing attacks on the South Carolina Statute, which are similar to attacks made on this and other State Statutes in many previous cases, a new attack is made in this Bill. This grows out of the passage by Congress of a Statute known as the "Motor Carrier Act of 1935". So far as we have been able to ascertain, this new attack has never been ruled upon by any Federal Court.

We, therefore, divide our discussion of the Motion to Dismiss into two major headings; the first involving all of the attacks on the Constitutionality of the South Carolina Statute which have been before the Courts a number of times; and the second, the attack on the Constitutionality of the section based upon the contention that Congress has by the "Motor Carrier Act of 1935" legislated upon the same matters and that, therefore, the State Act must yield to the Federal Act.

The Motion to Dismiss will, in our opinion, have to be granted as to the grounds embraced in the first major division. To state the matter very briefly, but perhaps at as great length as is necessary, we take the view that the allegations of the Bill as to those Constitutional questions are so similar to the allegations in many cases which have been decided by the United States Supreme Court that we are safe in concluding that the decisions in these previous cases control this case absolutely. Such cases as Morris v. Duby, 274 U. S. 140; Sproles vs. Binford, 286 U. S. 374; and Continental Baking Co. vs. Woodring, 286 U. S. 352, point the way to a correct decision of this case on the grounds referred to so definitely that we do not hesitate to grant the Motion to Dismiss on these grounds. In addition to all that, the United States Supreme Court denied certiorari in the case of State Ex Rel. Daniel, Attorney General, vs. John P. Nutt Company, Inc., et al. 297 U. S. 724; 185 S. E. 25. This was a decision of the South Caro-

lina Supreme Court involving the identical statute complained of here. Certainly, therefore, the Supreme Court has taken the view that so far as these constitutional attacks on the statute are concerned they are controlled by the previous decisions of that Court.

[fol. 21] Argument is next made that under the limitations upon the doctrine of "stare decisis" which the Supreme Court of the United States has recognized in constitutional cases depending for decision upon the actual factual application of the statute to greatly changed conditions, a situation is presented here where the Court should take the testimony and rule upon the constitutional question in the light of the changed situation since the last decision of the Supreme Court.

We recognize the force and effect of the proposition so earnestly advanced by counsel for the plaintiffs. We go further and say that such a situation might be alleged where a Court taking judicial knowledge of these major changes in the national life, to which the Court cannot shut its eyes without stultifying itself, and anticipating the probable factual showing, refuse to dismiss a bill involving the same constitutional questions dealt with in the previous decisions. But even construing the doctrine of "Stare decisis" as being limited by this more or less well established practice, we do not think that the instant case calls for the application of that practice.

Of course, the transportation of this country is moving more and more in motor vehicles. No one would doubt that the complainants could probably show an enormous increase in motor transportation in the last few years, but we have serious doubts that any revolutionary change has taken place with respect to the Interstate motor transportation through South Carolina since the Supreme Court of the United States denied certiorari in the Daniels vs. Nutt case. Attention is invited to the fact that this denial of certiorari was as late as March 30, 1936.

But while willing to dismiss the Bill so far as these contentions are concerned without taking testimony on the allegations of the Bill, we think that a new question is presented by paragraph 9 of the Bill. This paragraph as indicated above, makes an attack on the Statute of South Carolina on the ground that it conflicts with the "Motor Carrier Act of Congress 1935". In short, it is alleged that

Congress by the "Motor Carrier Act of 1935" has exercised the power given it by the Federal Constitution to regulate Interstate Commerce and that the Statute of South Carolina attempting to control the same subject matter must fall.

No one will contend that this abstract proposition of constitutional law is not sound. The ruling on motion to dismiss must be based upon the construction of the Statute rather than the decision of the final constitutional question of whether or not the power of Congress to regulate Interstate Commerce will here overrule the police power of a State to regulate travel over its own highways. The Supreme Court of the United States in such cases as Sproles v. Binford et al has certainly shown great deference to the police power of a State with respect to the regulation of all travel over the highways within the State, but all of these questions were decided by the Supreme Court of the United States before the "Motor Carrier Act of 1935" was passed and never in any of these cases, therefore, was the question [fol. 22] presented or decided as to where the power of Congress, when exercised by a definite Statute, ends in the control of Interstate Commerce, and the police power of the State, exercised for the safety of its citizens and preservation of its own highways, begins. Plainly, the decision of this delicate question of constitutional law can much better be made after the taking of testimony and the presentation of the factual situation as it actually exists, and consideration thereof by the Court.

But conceding all of this, and conceding that the constitutional rights of a citizen can best be decided by an Appellate Court in the light of full factual revelation, and conceding that this doctrine has been so recognized by the Supreme Court that it has developed a separate and distinct standard with respect to factual review in constitutional law cases from that used in cases involving no constitutional point,* the State of South Carolina still contends that here there is no need for taking the testimony because the statute itself (Motor Carrier Act 1935) shows on its very face that Congress has not attempted to regulate the size and weight of

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*"The Committee appointed on uniform Rules for Practice in Actions at Law and Suits in Equity in Federal Courts have confessedly recognized that this distinction exists.

the vehicles (trailers included) to be used in such Interstate Commerce.

Manifestly, if the Act does not purport to give to the Interstate Commerce Commission the power to regulate the same matters which are regulated by the South Carolina Act, already sustained as to its constitutionality on other grounds, then no occasion will exist for a decision of the delicate question of constitutional law above outlined. So, we come to the question which must control our decision on the motion to dismiss, namely, does the "Motor Carrier Act" when reasonably construed attempt to regulate the same matters which are regulated by Sections 3 and 4 of the South Carolina Act of 1933? The problem is one, therefore, of statutory construction.

We take the following principles to be involved:

I

The Supreme Court has since the day of Gibbons v. Ogden construed the constitutional provisions giving the Federal Congress control over Interstate Commerce most liberally in favor of the control by the central government of every activity which directly affects Interstate Commerce. We think the continued growth of American business depends upon the continued adherence to this principle.

[fol. 23]

II

Whenever a State has enacted a Statute which upon full investigation of the factual situation compels the conclusion that the Statute will substantially affect and constitute a direct burden upon Interstate Commerce the State Statute cannot stand in the face of Federal regulation of the same subject matter.

III

When Congress passes a Statute and the Courts are called upon to construe it, it must be construed in the light of the situation existing at the time the Statute was passed.

IV

That in interpreting a Statute dealing with subject matter closely akin to the subject matter of another Statute which has been frequently before the Supreme Court, the decisions of the Supreme Court on questions dealing with kindred

subject matter should point the way to the decision of a case involving the new Statute, therefore, we think the decisions of the Supreme Court dealing with the Transportation Act 1920 should guide us in the interpretation of the "Motor Carrier Act of 1935". In the one, Congress gave the Interstate Commerce Commission very large authority as to minute details in controlling the transportation by railroads; in the other, Congress has after years of discussion finally enacted a Statute which gives to the same Commission large powers over Interstate transportation by motor carriers.

On first study of the "Motor Carrier Act of 1935", we were impresed with the fact that there had been a studied avoidance of the use of the words "size" and "weight" in the Act. When some of the committee discussions and reports were argued to this Court, it seemed that this studied avoidance was the result of the decision of Sproles vs. Binford and Baking Company vs. Woodring. Indeed some of the Members of Congress and Senators supporting the legislation seemed to have very serious doubts as to whether or not the Congress could, in the light of Sproles vs. Binford and Baking Company vs. Woodring, regulate the size and weight of the vehicles used in Interstate Commerce and over the roads of particular states. In addition to this, the insertion of Section 225 in the Act as finally passed lends strong support to the contention that Congress did not intend to give the Interstate Commerce Commission power to regulate the size of trucks and trailers to be actually used. It is contended that all of this was done because Congress had serious doubts about its own authority to deal with matters which the Supreme Court had already said were within the police power of a state. If Congress, therefore, thinking the limitation existed, studiously avoided control over the matter of size and weight, then how can it be said that the Act gives the Interstate Commerce Commission power over these two subject matters? This argument, however, is to our mind more of an academic argument than one which should control our decision. A broad principle of statutory construction we think should control [fol. 24] us here, namely, that when Congress asserts its power to regulate some phase of Interstate Commerce and vests this power in a Federal regulatory body, then it will be held that Congress meant to give that body full power

over all phases of the subject matter which are necessary to the full and complete exercise of the Federal power over that phase of Interstate Commerce. Succinctly, if the Interstate Commerce Commission is to perform all of the duties and functions which are put upon it by this new Act, it is hard to escape the conclusion that it will be necessary for the Commission to have power to regulate the size of the motor vehicles, trucks and trailers used by the carrier under their control.

Now, as to the impending conflict between Federal regulation of Interstate Commerce and the inherent police power of a State, that is a delicate, difficult and important question of constitutional law which must be later decided. What we now decide is that merely on the pleadings, without enlight-ment as to the factual situation actually existing in the country today, we are unwilling to say that the plain and definite meaning of the "Motor Carrier Act of 1935" was to exclude from the powers given to the Interstate Commerce Commission all power to regulate the size and weight of motor vehicles used in Interstate Commerce.

We, therefore, think that we would be abusing our discretion and committing error of law to dismiss this Bill as to the contentions raised by paragraph 9 thereof without affording the complainants an opportunity to offer testimony thereabout. We cannot escape the conclusion that this Court, after hearing testimony similar to that presented to the committees of Congress when the Statute was being discussed can much more correctly construe the intention of Congress than we could merely upon considering the Statute itself. Dictionary definitions of terms are frequently misleading, particularly when those terms are used in the light of factual situations recently developed and having a very definite meaning by reason of the facts out of which the legislation grows. This principle has been recognized by the Supreme Court in interpreting the Transportation Act of 1920. This particular Court was faced with a similar problem in the case of P. & N. vs. Interstate Commerce Commission et al 286 U. S. 299. There the dictionary meaning of the words in a phrase had to yield to the meaning which the phrase took on when considered in the light of the factual situation in the light of which Congress passed the Statute. To sum up our position, therefore, we think.

I

An Order should be granted dismissing the Bill as being without merit as a matter of law as to all of the allegations in paragraphs 6, 7 and 8 thereof; that these questions have been adjudicated so recently by the Supreme Court of the United States that there is no occasion to hear testimony thereon.

[fol. 25] II

That, however, as to the allegations in paragraph 9 with respect to the interpretation and force and effect of the Motor Carrier Act of 1935" a new question is presented and that the complainants are entitled to introduce testimony thereon within the discretion of this Court. The Court is of the opinion that a correct ruling on these allegations can much better be had after the testimony has been heard than merely upon considering the allegations of the Bill and the words of the Statute itself.

III

That the questions thus presented will, as the Court now sees them, be substantially as follows:

1. Does the "Motor Carrier Act of 1935", when construed in the light of testimony offered, control and regulate the question of sizes and weights of the motor trucks and trailers used in Interstate Commerce? This will be a problem of statutory construction in the light of factual showing.

2. Should this Court decide that the Statute does not give the Interstate Commerce Commission power over this subject matter, the Bill would then be dismissed on its merits; should, however, the Court come to the conclusion that the Statute "Motor Carrier Act of 1935" does give the Interstate Commerce Commission control over the sizes and weights of the vehicles involved, then the Court would be compelled to address itself to the delicate, difficult and important question of constitutional law, namely, to decide which controls in the instant case—power of Congress over Interstate Commerce by reason of constitutional provision thereabout, or inherent power of a sovereign state. To decide this question will be difficult enough with a full factual showing before the Court. To risk a decision on pleadings

and rule in an abstract way, deciding the question more or less in vacuo, would, we think, be an absurdity. The importance of a complete factual showing in questions involving constitutional law has been adverted to time after time by the Supreme Court of the United States. Perhaps never before has the wisdom of taking testimony in such cases been more strongly stated than in the recent decision of N. C. & St. L. Ry. vs. Walters 55 Sup. Ct. Rep. 486, 294 U. S. 405. There the trial Judge heard the testimony in such case and ruled on it and the Supreme Court of the United States finally held that it was proper for him to do so, and pointed out that in such cases constitutional questions can best be decided when facts are fully developed. We are not called upon at the present time to deal with the interesting question so recently discussed in the St. Joseph stockyards case as to the weight attributed to findings when once made by regulatory bodies when such findings are reviewed by a Court, but the importance of the general subject of factual findings in deciding constitutional cases is made clear when the Supreme Court devotes so much time to pointing out the correct rule of appraising the factual findings when once made.

[fol. 26] Let the attorneys for the complainants submit a proposed Order refusing to dismiss the Bill as to the legal question raised by paragraph 9 of the Bill, and let the attorneys for the defendants submit a proposed Order dismissing the Bill with respect to the allegations of constitutionality and illegality of the Statute as set forth in paragraphs 6, 7 and 8 of the Bill.

(Signed) J. Lyles Glenn, United States District Judge.

October 22nd, 1936.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING MOTION TO DISMISS BILL OF COMPLAINT IN CERTAIN PARTICULARS—Filed November 2, 1936

For the reasons stated in a brief memorandum Opinion of this Court dated October 22, 1936, and on motion of Hon. John M. Daniels, Attorney General of South Caro-

lina, and Messrs. Blease and Griffith, special counsel herein, it is

Ordered, Adjudged and Decreed that the motion to dismiss the bill of complaint herein be, and the same is hereby granted as to paragraphs 4, 5, 6, 7 and 8 of major paragraph 3 of the said bill of complaint. That this Order granting the motion to dismiss be, and the same is without prejudice to the plaintiffs to insist upon the contentions set forth in paragraph 9 and the other portions of said bill.

It is so Ordered.

J. Lyles Glenn, United States District Judge.

October 30, 1936, Rock Hill, South Carolina.

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING MOTION TO DISMISS AS TO PARAGRAPH 9 OF BILL OF COMPLAINT—Filed November 2, 1936

This cause came on this day to be heard upon the Bill of Complaint filed herein, upon the motion of defendants to dismiss the Bill, upon the argument of counsel heretofore made and briefs in support thereof heretofore filed. Now, Therefore, upon due consideration of such pleadings and the argument and briefs of counsel, it is hereby Adjudged, Ordered and Decreed

That the motion to dismiss the Bill as to Paragraph 9 thereof be and the same is hereby overruled.

It is Further Ordered that the defendants be allowed 20 days from this date within which to Answer or otherwise plead.

J. Lyles Glenn, United States District Judge.

Oct. 30th, 1936.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR TEMPORARY INJUNCTION—Filed November 2, 1936

The plaintiffs herein now move the Court for a temporary injunction restraining and enjoining the defendants,

or any of them, during the pendancy of this action, from committing, doing or performing, or attempting to commit any of the acts described and set forth in the prayer of the Bill of Complaint in this cause, on the ground that the Motor Carrier Act, 1935, supercedes Sections 4, 5, 6 and 7 of the Act of the General Assembly of South Carolina, 1933, No. 259, approved April 28, 1933, (38 State. 340), for the following reasons:

1. By decree of this Court heretofore entered the defendants' motion to dismiss the Bill of Complaint has been overruled as to Paragraph 9 of the said Bill of Complaint, putting the defendants to answer, and entitling the plaintiffs to a trial on the merits as to the issues raised in said Paragraph 9.

2. That the plaintiffs are informed and verily believe that the defendants will on the 1st day of November, 1936, commence rigid state-wide enforcement of the provisions of such Act.

3. That such threatened enforcement of such Act, even though the period of enforcement be for only a short period of time, and only for a period between November 1, 1936, [fol. 30] and the date of final hearing and decision in this suit, will cause the plaintiffs herein immediately and irreparable injury, loss and damage for which they would have no adequate remedy at law.

S. King Funkhouser, J. Ninian Beall, Frank Coleman, L. Mendel Rivers, Counsel for Plaintiffs.

October 30, 1936.

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING THE FILING OF MOTION FOR TEMPORARY INJUNCTION—Filed November 2, 1936

This day came the Plaintiffs, by counsel, and asked leave to file their written motion for Temporary Injunction, which leave is hereby granted and the same is hereby filed.

J. Lyles Glenn, United States District Judge.

Oct. 30, 1936.

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OPINION ON MOTION FOR TEMPORARY INJUNCTION—Filed November 2, 1936

The plaintiffs above named filed their bill in this Court seeking a permanent injunction against the defendants. The defendants are State Officers who in various capacities are charged with the enforcement of laws regulating motor carriers for hire over the highways of South Carolina. The bill was filed on August 11, 1936, extension of time for answering was agreed upon pending the argument and decision of a motion to dismiss. As soon as possible this Court heard the motion to dismiss. After due consideration the motion to dismiss was granted in part and denied in part, the ruling of the Court being evidenced by a Memorandum Opinion dated October 22nd. An Order was signed and filed on October 30th carrying into effect the views stated in the Opinion. On the same day, after notice, plaintiffs' motion for a restraining order was heard. The Court allowed the plaintiffs to file an application for a restraining order or interlocutory injunction. On this motion for interlocutory injunction, for so it is in fact no matter by what name the desired order be called, was heard testimony taken and decision must now be made on this motion. The [fol. 33] enforcing agencies have declared their intention to begin enforcement of the statute complained of on Monday, November 2nd, and unless restrained by this Court such enforcement will become a reality and seriously injure the plaintiffs' businesses.

It is important to know that no such danger was imminent on August 11, 1936, when the bill was filed, but such danger has become imminent by reason of the threatened enforcement of the Act. Manifestly, with no interlocutory injunction sought in the original bill there was no occasion to even consider the application of Section 266 Judicial Code, Section 380, Title 28 U. S. C. A. and the convening of a Three Judge Court. But, now that an application for interlocutory injunction has been filed a serious question is presented as to whether or not this Court has jurisdiction to grant any Orders except those preliminary to the convening of a Three Judge Court. If Section 380 applies,

the duties and powers of the individual Judge are very limited. See Stratton vs. St. L. & S. W. Rwy. Co. The State contends that although the bill has been dismissed as to a number of its paragraphs, there still remains in the bill contention based on a substantial claim of unconstitutionality, under the Federal Constitution, of the State Statute in question. Prima facie, therefore, it would seem that beyond question the case is one to which Section 380 applies and Three Judges must hear the application for interlocutory injunction.

The plaintiffs suggest, however, that this Court, composed of an individual Judge, hearing the motions has power to issue the injunction. It is contended that the situation is similar to that presented in Baird vs. Smith 12 Fed. Sup. page 964. Further authorities, consideration of which will [fol. 34] make plain the contentions in this regard, are Ex Parte Hobbs 280 U. S. 168 and the cases cited therein. We think, however, that as the real substance of the plaintiffs' attack on the South Carolina Statute still consists of a vigorous assertion of its unconstitutionality, under the Federal Constitution, that we cannot say that no serious Constitutional question is present. It is true that some of the cases dealing with a situation where State Statutes regulating transportation have been superseded by a Federal Statute based on Federal control of Interstate Commerce that the Courts have said that no serious Constitutional question was involved. Typical of this class of cases is C. R. I. P. R. R. vs. Elevator Co., 57 Law Ed. page 285. But in these cases there is practically a concession on the part of the State enforcing agencies that the Federal Statute is paramount to and overrides the State Statute, the two statutes controlling the same subject matter. No such concession is made here by the State enforcing agencies, on the contrary the State contends that even if the "Motor Carrier Act of 1935" attempts to control "size" and "weight" that nevertheless, the State Statute is still Constitutional as a valid exercise of inherent police power. Without going extensively into the matter, we point out that the factual situation wherein police power is exerted over travel on highways owned and built by the State is not the same thing as police power exerted over commerce moving over railroads owned and operated by private companies, as the State does not surrender its contentions about

the validity of the State Statute, neither do the plaintiffs yield one inch in their contention as to the unconstitutionality of the Statute. As we view the case, both on application for interlocutory injunction and for trial on its final merits, it is essentially a question involving the constitutionality of a State Statute.

To attempt to draw an Order sustainable under Ex Parte [fol. 35] Hobbs is but to substitute sophistry and verbiage for logic and substance. Indeed when Ex Parte Hobbs is read carefully, we find that the injunction there granted by the one Judge was based entirely upon his construction of certain provisions of a State Statute. Such a situation is not at all presented here in the instant case.

But, if it is plain that a single District Judge cannot grant an interlocutory injunction where Section 380 is applicable, it is nevertheless plain that it is frequently his duty to grant an injunctive order of a less permanent nature, commonly called a temporary restraining order. The cases dealing with Section 380 make it plain that he has authority to preserve the status until the Court of Three Judges can be physically convened, and the hearing on the application for interlocutory injunction be had. In many cases the failure to grant such a restraining order would make a subsequent issuance of an interlocutory injunction an academic victory of no practical value. Therefore, we come to the question of whether we think we should grant such a temporary restraining order while the Three Judge Court is being convened and until the application is heard.

Testimony was taken before me which satisfies me that this Court should grant such a temporary restraining order here. Without reviewing this testimony at great length, it is sufficient to say that shippers more than carriers would suffer irreparable injury if the enforcement of this Statute was not temporarily restrained. Two major industries of South Carolina, the textile industry in the Piedmont and the trucking industry in the coastal regions, would I am satisfied suffer immediate and irreparable injury if drastic enforcement of this Statute were commenced on Monday morning, November 2, 1936. Surely the preservation of [fol. 36] the present status of control until the application for interlocutory injunction can be heard by a Court of higher dignity will do no serious harm and is the course which in my judgment should be followed. This temporary

restraining order, of course, will be effective only until the application for interlocutory injunction is heard and a ruling made thereon.

(Signed) J. Lyles Glenn, United States District Judge.

October 31, 1936.

[fol. 37] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed November 2, 1936

This cause coming on to be heard upon the Bill of Complaint filed herein, upon the motion of the defendants to dismiss the Bill, upon the decree of this Court sustaining said motion in part and overruling said motion in part, and upon the written motion of the Plaintiffs for a Temporary Injunction against the defendants on the ground that Sections 4, 5, 6 and 7 of the Act of the General Assembly of South Carolina, 1933, No. 259, approved April 28, 1933 (38 Stats. 340), are superseded by the Motor Carrier Act, 1935, and upon motion of the plaintiffs for a Temporary Restraining Order pending the hearing of such application for interlocutory Injunction, and all parties, both plaintiffs and defendants, having appeared by Counsel, and the Court having heard the pleadings, the evidence taken in open court and the arguments of counsel on this the 30th day of October, 1936, and it appearing to the Court therefrom:

1. That the defendants herein have threatened and intend to commence rigid enforcement of the South Carolina Act involved in this suit on the 1st day of November, 1936, and

2, That it is impossible for a hearing and decision on the motion for a Temporary Injunction to be had prior to said date, and

3. That such threatened enforcement will cause immediate and irreparable loss and damage to the plaintiffs herein before such hearing and decision can be had, and, it [fol. 38] appearing meet and proper so to do, it is hereby Ordered, Adjudged and Decreed

That the defendants hereto, their officers, agents, servants, employees, attorneys, and all persons acting or attempting to act under or by virtue of their authority,

direction or control, and any person and every person acting or attempting to act under or by virtue of the authority of said Act of South Carolina, be and they are hereby

Enjoined and Restrained, until the further order of this Court, from in any way enforcing Sections 4, 5, 6 and 7 of the Act of the General Assembly of South Carolina, 1933, No. 259, approved April 28, 1933, (38 Stats. 340), said sections regulating respectively the weight, height, width and length of motor-trucks operating on the highways of South Carolina, against all persons, their agents, servants or employees operating motor vehicles in interstate commerce, into, from or across the State of South Carolina under authority of the Motor Carrier Act of 1935, from bringing or prosecuting any suit, action or proceedings, criminal or civil, to enforce the penalties provided in said Act, or to compel the compliance with said Act, or from doing any act or in any way interfering with the rights of such persons, their agents, servants or employees to conduct such operations in interstate commerce free from the limitations of said sections of such Act.

Provided, However, that said injunction is contingent upon the plaintiffs giving security in the sum of Ten Thousand Dollars ($10,000) covering damages to be sustained by defendants by reason of said injunction, such security to be approved by this Court and filed with the Clerk within three days from this date.

It is Further Ordered and Decreed that this temporary restraining order be, and the same is hereby continued until a Three Judge Court can be convened and pass upon the application for interlocutory injunction herein sought. The Three Judge Court herein referred to will be convened by a separate Order in keeping with Section 380, Title 28, U. S. C. A.

(Signed) J. Lyles Glenn, United States District Judge.

October 31, 1936.

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed November 7, 1936

Come now the defendants in the above-entitled cause and for answer to the bill of complaint herein say:

1. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of paragraph 1 of the bill.

2. Defendants admit the allegations of paragraph 2 of the bill.

3. On information and belief defendants deny the allegations of paragraph 3 of the bill.

4. Defendants deny the allegations of paragraph 4 of the bill.

5. Answering paragraph 5 of the bill, defendants admit that the General Assembly of South Carolina in 1933 enacted its Act No. 259, approved April 28, 1933 (38 Stats. 340) entitled "An Act to Regulate and Limit the Use of the Public Highways in the State by Motor Trucks, Semitrailers, and Trailers, * * *", etc., commonly known as the Motor Carrier Act of 1933, to which Act reference is hereby made for a true and complete statement of the terms, provisions, and effect thereof. Except as herein admitted, defendants deny the allegations of said paragraph 5.

6. Answering paragraph 9 of the bill, defendants admit that the United States Congress in August, 1935, passed [fol. 40] an Act entitled the "Motor Carrier Act, 1935", and that said Act was approved by the President on August 9, 1935, to which Act reference is hereby made for a true and complete statement of the terms, provisions, and effect thereof. On information and belief defendants admit that the State of South Carolina has nominated, and the Interstate Commerce Commission has appointed, Joint Board representatives for the State of South Carolina. Defendants admit on information and belief that the Interstate Commerce Commission did on July 1, 1936, promulgate proposed safety regulations, but defendants aver that said regulations contain no provisions affecting or in any way dealing with the size and weights of trucks or trailers. Defendants admit that the South Carolina Public Service Commission has refused, and is continuing to refuse, to issue operating licenses for equipment not complying with the limitations prescribed by the South Carolina Motor Carrier Act of 1933. Defendants admit that the officers and agents of said Public Service Commission, their deputies

and employees, have arrested, prosecuted, and caused to be fined agents, servants, and employees of certain of the plaintiffs, and will continue to arrest, prosecute, and cause to be fined such agents, servants, and employees of plaintiffs and others for failure to have such licenses. Defendants admit that defendants, and those for whom they are by this bill alleged to be represented, and their officers, deputies, agents, and employees have been enforcing, are enforcing, and will continue to enforce the provisions of said South Carolina Motor Carrier Act of 1933. Except as herein expressly admitted, defendants deny each and every allegation of said paragraph 9 of the bill.

7. Answering the separate subparagraphs of paragraph 10 of the bill of complaint:

(1) Defendants deny any information sufficient to form a belief as to the allegations of subparagraphs (1), (2), [fol. 41] (3), (4), (5), (6), and (7).

(2) Defendants deny the allegations of subparagraphs (8) and (9).

(3) Defendants deny any knowledge or information sufficient to form a belief as to the allegation in subparagraph (10) that the Merchants Fertilizer Company and the Planter's Fertilizer & Phosphate Company are, and were for many years prior to the passage of the South Carolina Motor Carrier Act of 1933, engaged in the manufacture and preparation of fertilizer and agricultural chemicals for serving communities with fertilizers in the states referred to. Defendants deny the other allegations of subparagraph (10).

(4) Defendants deny any knowledge or information sufficient to form a belief as to the allegations in subparagraph (11) that the South Carolina Produce Association, Inc., is, and was for many years prior to the passage of the South Carolina Motor Carrier Act of 1933, a profit-making cooperative marketing association incorporated by the State of South Carolina in accordance with the Federal and State cooperative marketing acts; that it has some two hundred members who are producers of vegetables and farm products in the State of South Carolina; and that it ships 75 per cent of such produce into interstate commerce. Defendants deny the other allegations of subparagraph (11).

(5) Defendants deny any knowledge or information sufficient to form a belief as to the allegations of subparagraph (12) that Sarah A. Geraty, John W. Geraty, and Charles W. Geraty, trading as William C. Geraty Company, are large and extensive producers of farm products in South Carolina and that such produce is shipped by motor carriers on the highways of South Carolina in interstate commerce. Defendants deny the other allegations of subparagraph (12).

(6) Defendants deny the allegations of subparagraph (13).

[fol. 42] 8. Answering paragraph 11 of the bill, defendants deny any knowledge or information sufficient to form a belief as to the allegation that each of the plaintiffs has made large investments of money, property, and effort in their respective businesses. Defendants deny the other allegations of paragraph 11.

9. Defendants deny the allegations of paragraph 12 of the bill.

10. Defendants deny the allegations of paragraph 13 of the bill.

11. For a separate and distinct defense defendants allege that if contrary to its true intent and construction the Federal Motor Carrier Act of 1935 should be construed to supersede the provisions of the South Carolina Motor Carrier Act of 1933 regulating sizes and weights of motor vehicles engaged in interstate commerce upon the highways of the State of South Carolina, the Act as so construed is beyond the power of Congress under the Commerce Clause and in violation of the Tenth Amendment to the Constitution of the United States.

And now having fully answered, defendants deny that plaintiffs are entitled to the relief prayed for in the bill of complaint, or to any part thereof, or to any other relief against these defendants, and pray that the bill of complaint be dismissed with costs.

John M. Daniel, Attorney General; J. Ivey Humphrey, Assistant Attorney General; M. J. Hough, Assistant Attorney General; Blease & Griffith, Counsel for Defendants.

(Answer verified.)

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING THREE-JUDGE COURT—Filed November 13, 1936

On August 11, 1936 the complainants above named filed their Bill in this Court seeking a Permanent Injunction against the defendants. At that time threatened enforcement of the State Statute which the complainants contend is unconstitutional was not imminent. But, before the case could be called up for trial on its merits, the state agencies threatened to enforce the alleged unconstitutional Statute. The complainants then made motion for a Temporary Restraining Order, which this Court in its Memorandum Opinion of October 31, 1936, construed as being in substance a motion for Interlocutory Injunction. It appearing that by reason of this application for Interlocutory Injunction, the hearing should be had before a specially constituted Court of Three Judges as provided for by the terms of Section 380, Title 28 U. S. C. A., Section 266 United States Judicial Code, now, therefore, it is

Ordered and Adjudged that the Honorable John J. Parker, United States Circuit Judge, and the Honorable Elliott Northcott, United States Circuit Judge be, and they are hereby called to the assistance of the undersigned District Judge to hear and determine the application for Interlocutory Injunction and other matters arising in the above-entitled suit in Equity. That the Court as thus constituted be the Court to hear and determine the matters involved in this suit.

J. Lyles Glenn, United States District Judge.

November 12, 1936.

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF INTERSTATE COMMERCE COMMISSION TO INTERVENE AS A PLAINTIFF—Filed November 17, 1936

To the Honorable Judges of the Above Named Court:

Now comes the Interstate Commerce Commission and petitions the court for leave to intervene in the above-

entitled cause as a party plaintiff and prays that upon granting of such leave this petition be permitted to stand as its bill in intervention, and as grounds for its intervention it respectfully shows:

1. That it is an administrative tribunal duly constituted and organized under the laws of the United States with power to sue and be sued.

2. That under the pleadings and proceedings heretofore had in the cause there are placed in litigation questions: (1) as to whether Congress by the enactment of "The Motor Carrier Act, 1935" (Act of August 9, 1935, 49 Stat. L. 543) has purported to so enter the field of regulation of interstate transportation by motor carriers as to exclude the power of the State of South Carolina lawfully to enact and enforce a statute approved April 28, 1933 (38 Stat. 340), so far as the same restricts as to weight, height, size, safety and qualifications of drivers, the use of motor vehicles operating in interstate commerce on the highways [fol. 45] of the state, and (2) if such Federal legislation purports to so enter the field of regulation of interstate transportation by motor carriers, whether such legislation is constitutionally valid.

3. That your petitioner is interested in the matters in litigation by reason of the fact that it is the agency of the Federal government charged with primary responsibility for the administration and enforcement of the provisions of the said Motor Carrier Act, 1935, and that as such it should be permitted to appear as a party plaintiff in support and defense of the powers lawfully committed to it, which are challenged in the pleadings herein filed in behalf of the defendants.

4. That the plaintiff adopts the allegations of the bill of complaint contained in that part of sub-section 9 of Section III from the beginning thereof up to the semi-colon preceding the last line on page 10 of the bill of complaint, and such parts of sub-section 9 thereafter as allege that the defendants have undertaken to enforce and, unless restrained, will continue to enforce the provisions of the said statute of South Carolina.

5. That the enforcement of such provisions of the South Carolina statute, unless restrained, will interfere with, and

prevent the exercise by your petitioner of an exclusive function of the Federal Government lawfully committed to it by a statute of the United States.

6. That this application for intervention is made with the consent of the plaintiffs in this cause.

7. That the petitioner joins in the prayer for relief as set out in the bill of complaint herein.

Interstate Commerce Commission, by Edward M. Reidy, Assistant Chief Counsel. Thomas M. Ross, Attorney. Daniel W. Knowlton, Chief Counsel, of Counsel.

(Petition verified.)

[fol. 46] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS COMPLAINT—Filed November 24, 1936

Now come the defendants and move the Court to dismiss the bill of complaint and paragraph 9 of Section III thereof upon the following grounds:

1. The bill of complaint and paragraph 9 of Section III thereof fail to state a cause of action in Equity entitling the plaintiffs to the relief prayed.

2. The bill of complaint and paragraph 9 of Section III thereof should be stricken as a matter of law, in that they state as a cause of action that Sections 3, 4, 5, 6 and 7 of the South Carolina Act approved April 28, 1933, regulating and limiting the size and weight of motor trucks and semi-trailers on South Carolina highways, have been entirely and completely superseded by the Act of Congress known as "Motor Carrier Act, 1935", whereas said Act of Congress shows upon its face that Congress has not regulated the size and weight of such motor carriers.

John M. Daniel, Attorney General; J. Ivey Humphrey, Assistant Attorney General; M. J. Hough, Assistant Attorney General; Blease & Griffith, Counsel for Defendants.

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF RECEIVERS OF SEABOARD AIR LINE RAILWAY TO INTERVENE AS DEFENDANTS—Filed November 24, 1936

To the Honorable Judges of the Above-Named Court:

Now come Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties and assets of Seaboard Air Line Railway Company, and petition the Court for leave to intervene in the above-entitled cause as parties defendant and pray that upon the granting of such leave this petition be permitted to stand as their bill of intervention, and as grounds for their intervention they respectfully show:

1. That petitioners are citizens and residents of the State of Virginia and are the duly qualified and acting Receivers of the properties and assets of Seaboard Air Line Railway [fol. 48] Company, a corporation of Virginia and other states. By orders dated December 23, 1930, the District Courts of the United States for the Eastern District of Virginia and the Southern District of Florida appointed Legh R. Powell, Jr., and Ethelbert W. Smith as Receivers of the properties and assets of Seaboard Air Line Railway Company. Ethelbert W. Smith resigned as Receiver, effective December 31, 1932, and by orders of this last mentioned date, entered by the two aforesaid Courts, Henry W. Anderson was appointed Receiver in his place. Both the primary and ancillary receivership proceedings in which the Receivers were appointed are still pending in the said Courts, the primary proceedings being in the Virginia Court and the ancillary proceedings being in the Florida Court. In compliance with Section 56 of the Judicial Code of the United States certified copies of the bills and orders of the appointment of said Receivers have been filed in the Clerk's Office of this honorable Court and in the Courts of each District of the Circuit in which any portion of the property of Seaboard Air Line Railway Company is situated.

2. That the petitioners, as such Receivers, are engaged in interstate commerce in South Carolina and other states and operate lines of railroad in that state and other states subject to the Act to Regulate Commerce.

3. That the plaintiffs are competing carriers of freight and passengers and operate motor vehicles over the public highways of the State of South Carolina.

4. That the South Carolina statute assailed in the plaintiffs' bill was enacted to regulate motor vehicles traversing [fol. 49] the highways of South Carolina, including those engaged in interstate commerce, and particularly to prescribe the maximum weights and sizes of such motor vehicles operating over the South Carolina highways.

5. That the petitioners have the lawful right to insist that all motor vehicles, including those engaged in interstate commerce, operating over the public highways of South Carolina, operate in compliance with the South Carolina laws, and particularly those prescribing the maximum weights and sizes, and that the petitioners have the further lawful right to enjoin the non-compliance with such statutory requirements.

6. Petitioners aver that if motor vehicles, and particularly those of the plaintiffs, be permitted to operate upon, along and over the public highways of South Carolina in defiance of the requirements of the South Carolina statute, including those provisions prescribing maximum weights and sizes, your petitioners will be wrongfully and unlawfully subjected to unfair competition in that such larger and heavier motor vehicles of the plaintiffs will have the capacity to carry, and doubtless will carry, greater quantities of freight and a larger number of passengers in contravention and impairment of the franchise rights of your petitioners as common carriers by rail in South Carolina, and thereby wrongfully and unlawfully deprive your petitioners of vast amounts of revenue to which they are entitled and would otherwise receive.

[fol. 50] 7. Petitioners further say that if the plaintiffs be permitted to operate over the public highways of South Carolina motor vehicles of the sizes and weights which the plaintiffs are asserting in this suit they have the right to operate the inevitable result will be the very rapid deterioration of the public highways and the bridges constituting links in such highways—in many instances amounting to virtual destruction of such highways and bridges, and in consequence thereof your petitioners, as large taxpayers in the State of South Carolina, will be assessed with and be

required to pay large sums in taxes in excess of the amounts they would be required to pay if the unlawful operations of the plaintiffs be not permitted.

8. That the plaintiffs herein are wrongfully asserting that the South Carolina statute involved in these proceedings has been superseded by an Act of Congress of August 9, 1935, known as "The Motor Carrier Act, 1935", whereas the truth is that the said Act of Congress neither purports to supersede, nor does it have the effect of superseding, the South Carolina statute involved in this suit in so far as weights and sizes of motor vehicles are concerned, but the said South Carolina Act is now in full force and effect with respect to such weights and sizes, anything in the said Act of Congress notwithstanding.

Wherefore your petitioners say that they have a vital legal interest in this litigation and they therefore pray that [fol. 51] they be permitted to intervene in this suit and be made parties defendant thereto and that they be granted the same relief for which the defendants have asked in their pleadings heretofore filed and for such other and further relief as the Court may deem proper.

Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the Properties and Assets of Seaboard Air Line Railway Company, by J. B. S. Lyles, Attorney.

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF ATLANTIC COAST LINE RAILROAD COMPANY AND CHARLESTON AND WESTERN CAROLINA RAILWAY COMPANY TO INTERVENE AS DEFENDANTS—Filed November 25, 1936

To the Honorable Judges of the Above-Named Court:

Now come Atlantic Coast Line Railroad Company and Charleston & Western Carolina Railway Company, and petition the Court for leave to intervene in the above entitled cause as parties defendant and pray that upon the granting of such leave this petition be permitted to stand as their bill of intervention, and as grounds for their intervention they respectfully show:

1. That the petitioner Atlantic Coast Line Railroad Company is now, and was at the times hereinafter mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Virginia, owning properties and operating as a common carrier by railroad in the State of Virginia, in the State of South Carolina and other states, and being engaged in interstate commerce in South Carolina [fol. 53] and other states and subject to the Act to regulate commerce.

2. That the petitioner Charleston & Western Carolina Railway Company is now, and was at the times hereinafter mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of South Carolina, owning properties and operating as a common carrier by railroad in the States of South Carolina and Georgia, and being engaged in interstate commerce in said states.

3. That the plaintiffs are competing carriers of freight and passengers and operate motor vehicles over the public highways of the State of South Carolina.

4. That the South Carolina statute assailed in the plaintiffs' bill was enacted to regulate motor vehicles traversing the highways of South Carolina, including those engaged in interstate commerce, and particularly to prescribe the maximum weights and sizes of such motor vehicles operating over the South Carolina highways.

5. That the petitioners have the lawful right to insist that all motor vehicles, including those engaged in interstate commerce, operating over the public highways of South Carolina, operate in compliance with the South Carolina laws, and particularly those prescribing the maximum weights and sizes, and that the petitioners have the further lawful right to enjoin the non-compliance with such statutory requirements.

6. Petitioners aver that if motor vehicles, and particularly those of the plaintiffs, be permitted to operate upon, along and over the public highways of South Carolina in defiance of the requirements of the South Carolina statute, including those provisions prescribing maximum weights and sizes, your petitioners will be wrongfully and unlawfully subjected to unfair competition in that such larger and heavier [fol. 54] motor vehicles of the plaintiffs will have the

capacity to carry, and doubtless will carry, greater quantities of freight and a larger number of passengers in contravention and impairment of the franchise rights of your petitioners as common carriers by rail in South Carolina, and thereby wrongfully and unlawfully deprive your petitioners of vast amounts of revenue to which they are entitled and would otherwise receive.

7. Petitioners further say that if the plaintiffs be permitted to operate over the public highways of South Carolina motor vehicles of the sizes and weights which the plaintiffs are asserting in this suit they have the right to operate the inevitable result will be the very rapid deterioration of the public highways and the bridges constituting links in such highways—in many instances amounting to virtual destruction of such highways and bridges, and in consequence thereof, your petitioners, as large taxpayers in the State of South Carolina, will be assessed with and be required to pay large sums in taxes in excess of the amounts they would be required to pay if the unlawful operations of the plaintiffs be not permitted.

8. That the plaintiffs herein are wrongfully asserting that the South Carolina statute involved in these proceedings has been superseded by an Act of Congress of August 9, 1935, known as "The Motor Carrier Act, 1935", whereas the truth is that the said Act of Congress neither purports to supersede, nor does it have the effect of superseding, the South Carolina statute involved in this suit in so far as weights and sizes of motor vehicles are concerned, but the said South Carolina Act is now in full force and effect with respect to such weights and sizes, anything in the said Act of Congress notwithstanding.

[fol. 55] Wherefore, your petitioners represent that they have a vital legal interest in this litigation and they therefore pray that they be permitted to intervene in this suit and be made parties defendant thereto and that they be granted the same relief for which the defendants have asked in their pleadings heretofore filed and for such other and further relief as the Court may deem proper.

Atlantic Coast Line Railroad Company and Charleston & Western Carolina Railway Company, by Thos. W. Davis, Douglas McKay, M. G. McDonald, Attorneys.

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING INTERSTATE COMMERCE COMMISSION TO INTERVENE—Filed November 30, 1936

Upon consideration of the Motion and Petition of Interstate Commerce Commission for leave to intervene as a party plaintiff in this cause.

It is Ordered That Interstate Commerce Commission be and hereby is permitted to intervene as a party plaintiff and to appear and otherwise participate at the proceedings.

It is Further Ordered That its petition for intervention stand as its Bill of Intervention in the cause, and that Answers of the several defendants heretofore filed stand as their Answers to such Bill of Intervention.

John J. Parker, U. S. Circuit Judge. Elliott Northcott, U. S. Circuit Judge. J. Lyles Glenn, U. S. District Judge.

November 30th, 1936.

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF MARLBORO PRODUCE ASSOCIATION TO INTERVENE AS A PLAINTIFF—Filed December 1, 1936

To the Honorable Judges of the Above-Named Court:

Now comes Marlboro Produce Association and petitions the Court for leave to intervene in the above entitled cause as a party plaintiff and prays that upon granting of such leave this petition be permitted to stand as its Bill of Intervention, and as grounds for its intervention it respectfully shows:

1. That it is a voluntary association of farmers engaging in cooperatively and with the assistance of the County of Marlboro, in marketing for its individual members farm products raised in the County of Marlboro, State of South Carolina, Northern markets through Inter State Commerce.

That at an expense of approximately fifteen hundred dollars paid through taxation by Marlboro County and an ap-

proximate like expense paid by the United States Government, through its Public Works Administration, there has been built near Bennettsville, the County Seat of said County and State, a large market building where the individual farmers of said county bring for transportation to markets in other States their farm produce; that this Association brought into the County only this year considerable sums of money through its cooperative efforts for the sale of farm products to other states, and is rapidly growing in business and financial assistance to numerous growers of the County.

[fol. 58] 2. That under the pleadings and proceedings heretofore had in the case there are placed in litigation questions: (1) as to whether Congress by the enactment of "The Motor Carrier Act, 1935" (Act of August 9, 1935, 49 Stat. L. 543) has purported to so enter the field of regulation of interstate transportation by motor carriers as to exclude the power of the State of South Carolina lawfully to enact and enforce a statute approved April 28, 1935 (38 Stat. 340), so far as the same restricts as to weight, height, size, safety and qualifications of drivers, the use of motor vehicles operating in interstate commerce on the highways of the state, and (2) if such Federal legislation purports to so enter the field of regulation of interstate transportation by motor carriers, whether such legislation is constitutionally valid.

3. That your petitioner is interested in the matter in litigation by reason of the fact that it is an Agency for large numbers of farmers and the sale of whose products through this agency is primarily dependent upon motor transportation which will be practically ruined and its growth prevented, should the Act of the legislature mentioned drafted in the Plaintiffs' Bill of Complaint herein be permitted to stand.

4. That the plaintiff adopts the allegation of the Bill of Complaint contained in that part of sub-section 9 of Section III from the beginning thereof up to the semi-colon preceding the last line on page 10 of the bill of complaint, and such parts of sub-section 9 thereafter as allege that the defendants have undertaken to enforce and, unless restrained, will continue to enforce the provisions of the said statute of South Carolina.

5. That this application for intervention is made with the consent of the plaintiffs in this cause.

6. That the petitioner joins in the prayer for relief as set out in the bill of complaint herein.

Marlboro Produce Association, by Tison & Miller, attorney and chief counsel.

(Petition verified.)

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF A. J. MATTHESON, INC., TO INTERVENE AS PLAINTIFF—Filed December 1, 1936

To the Honorable Judges of the Above-Named Court:

Now comes A. J. Mattheson, Inc., and petitions the court for leave to intervene in the above *tne*itled cause as a party plaintiff and prays that upon granting of such leave this petition be permitted to stand as its Bill of Intervension, and as grounds for its intervention it respectfully shows:

1. That it is a corporation chartered and existing under and by the laws of the State of South Carolina, engaged in buying through channels of interstate commerce gasolene, kerosene, and oils, which products it then sells exclusively to dealers who in turn retail said products to trucks and motor vehicles engaged in intra and inter state business.

That approximately 65% of your petitioner's business consists of resales by its dealers to trucks enga*t*ed in interstate business, the weight and size of which trucks when loaded as customary for the trade exceeds the width and size as specified in Act #259 of the General Assembly *if* South Carolina for the year 1933; as, also, are the trucks delivering the products above named for distribution.

2. That at an expense of many thousands of dollars your petitioner has bought property, erected buildings, and equipped the same with modern equipment through the past number of years for the furnishing of the above named products to its dealers to be sold in interstate business, and its business is so built around the modern custom and [fol. 60] necessities of motor transportation by trucks that

would exceed the weight and size as specified in the Act above stated, as to cause the enforcement of said Act to practically ruin its business and to put a number of people out of employment now engaged by and through the activities of this intervening petitioner.

2. That under the pleadings and proceedings heretofore had in the cause there are placed in litigation questions: (1) as to whether Congress by the enactment of "The Motor Carrier Act, 1935" (Act of August 9, 1935, 49 Stat. 543) has purported to so enter the field of regulation of interstate transportation by motor carriers as to exclude the power of the State of South Carolina lawfully to enact and enforce a statute approved April 28, 1935 (38 Stat. 340), so far as the same restricts as to weight, height, size, safety and qualifications of drivers, the use of motor vehicles operating in interstate commerce on the highways of the state, and (2) if such Federal legislation purports to so enter the field of regulation of interstate transportation by motor carriers, whether such legislation is constitutionally valid.

3. That your petitioner is interested in the matter in litigation by reason of the facts before stated, and, that its business is primarily dependent upon motor transportation through the State of South Carolina, which will be practically prevented as to motor trucks hauling freight, should the Act of the legislature before mentioned be held lawful.

4. That the plaintiff adopts the allegation of the Bill of Complaint contained in that part of sub-section 9 of Section III from the beginning thereof up to the semi-colon preceding the last line on page 10 of the bill of complaint, and such parts of sub-section 9 thereafter as allege that the defendants have undertaken to enforce and, unless restrained, will continue to enforce the provisions of the said statute of South Carolina.

5. That this application for intervention is made with the consent of the plaintiffs in this cause.

6. That the petitioner joins in the prayer for relief as set out in the bill of complaint herein.

A. J. Motheson, Inc., by Tison & Miller, Attorney and Chief Counsel.

(Petition verified.)

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING RECEIVERS OF SEABOARD AIR LINE RAILWAY, ATLANTIC COAST LINE RAILROAD COMPANY, AND CHARLESTON AND WESTERN CAROLINA RAILWAY COMPANY TO INTERVENE AND ADOPT DEFENDANTS' ANSWER—Filed December 2, 1936

It is Ordered That the motions for intervention by the Receivers of Seaboard Air Line Railway Company, Atlantic Coast Line Railroad Company and Charleston & Western Carolina Railway Company be allowed as of November 30, 1936, and that said interveners be permitted to adopt as their pleadings in the suit the motions to dismiss and the answer of the original defendants.

John J. Parker, Senior Circuit Judge Presiding.

December 2, 1936.

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING MARLBORO PRODUCE ASSOCIATION AND A. J. MATTHESON, INC., TO INTERVENE AND ADOPT PLAINTIFFS' COMPLAINT—Filed December 3, 1936

Upon consideration of the motion and petition of Marlboro Produce Association and A. J. Matheson, Inc., for leave to intervene as parties plaintiff in this cause;

It is Ordered That Marlboro Produce Association and A. J. Matheson, Inc., be and each hereby is permitted to intervene as a party plaintiff and to appear and otherwise participate at the proceedings.

It is Further Ordered that petition for intervention of each stands as its Bill of Intervention in the ca*su*e, and that answers of the several defendants heretofore filed stand as their answers to such Bill of Intervention.

John J. Parker, U. S. Circuit Judge. Elliott Northcott, U. S. Circuit Judge. J. Lyles Glenn, U. S. District Judge.

December 2, 1936.

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed January 20, 1937

On Final Hearing.

(Argued November 30, 1936. Decided —— —, ——.)

Before Parker and Northcott, Circuit Judges, and Glenn, District Judge.

S. King Funkhouser, J. Ninian Beall (S. King Funkhouser, J. Ninian Beall and Frank Coleman on brief) for plaintiffs; John M. Daniel, J. Ivey Humphrey, M. J. Hough, Eugene S. Blease and Steve C. Griffith for Defendants; Thomas W. Davis and Douglas McKay for Atlantic Coast Line Railway Company, Intervenor; J. B. S. Lyles for Seaboard Air Line Railway, Intervenor; M. G. McDonald for C. & W. C. Railway Company, Intervenor; E. M. Reidy and Thomas M. Ross for Interstate Commerce Commission, Intervenor; and John E. Benton, as amicus curiæ.

[fol. 64] PARKER, Circuit Judge:

This is a suit to enjoin the enforcement against trucks which are being operated in interstate commerce of the provisions of Sections 3, 4, 5, 6, and 7, relating to size and weight, of Act No. 259 of the General Assembly of South Carolina, approved April 28, 1933, 38 Stats. 340. The plaintiffs are either corporations engaged in operating truck lines in interstate commerce or persons or corporations engaged in shipping produce or merchandise by truck in interstate commerce. The defendants are the various officials of the State of South Carolina who are charged with the duty of enforcing the act. Intervention has been allowed on the part of one shipper, who was not a party to the original bill, and of certain railroad companies, who are interested in seeing the act enforced, on the ground that enforcement thereof will free them of competition based on violation of law. The Interstate Commerce Commission also has been allowed to intervene.

The bill as originally filed did not ask for interlocutory injunction, and a motion to dismiss was heard by the district

judge and was allowed as to the allegations of the bill which merely alleged violation of the due process and equal protection clauses of the 14th Amendment and generally that the provision of the act constituted a burden on interstate commerce, but was disallowed as to allegations that the act constituted a regulation of interstate commerce with respect to matters covered by the motor carriers act of 1935. The plaintiffs thereupon asked for an interlocutory injunction forbidding the enforcement of the act pending a final hearing, and the judge granted a temporary restraining order and convened a court of three judges pursuant to [fol. 65] Section 266 of the Judicial Code (U. S. C. A. 380). At the hearing before this court of three judges, it was decided to reconsider all the questions raised by the bill and answer and give judgment thereon in order that all matters involved in the litigation might be disposed of promptly and heard on one appeal. None of the parties objected to this course, but on the contrary expressed a desire that action be taken which would expedite the final decision of the cause. In our opinion, there could be no valid objection to this course, as the court of three judges could unquestionably permit an amendment of the bill before it, and could permit the plaintiffs to reintroduce, by such amendment, such portions of the bill as had been stricken on the motion to dismiss; and this, in effect, was what was done. It was thereupon agreed that upon the evidence to be presented the cause would be submitted for final decree by the court, and not merely in support of the application for interlocutory injunction; and the court has heard the parties fully, the evidence being directed to whether the size and weight provisions of the statute complained of constitute an unreasonable burden upon interstate commerce.

The statute in effect in South Carolina prior to the passage of the act complained of was Act No. 685, Laws of 1930 (36 Stats. 1192). It prescribed a gross weight for single vehicles of 25,000 pounds, with a maximum axle load of 10,000 pounds, and a maximum weight of any combination of vehicles of 40,000 pounds. The act of 1933 limited the gross weight of any vehicle to 20,000 pounds and provided that any "tractor (or motor propelled truck), together with the semi-trailer" should "be considered one unit", so that a limitation of 20,000 pounds was put on the tractor-semi-[fol. 66] trailer unit, as to which a maximum weight of 40,-

000 pounds had been allowed under the preceding law. Both the 1930 Act and the Act of 1933 contain provisions limiting the width of trucks to 90 inches. The bill attacks these three provisions of the Act, viz: (1) the one limiting the gross weight of single trucks to 20,000 pounds; (2) the one providing that a tractor-semi-trailer shall be considered a single unit for the purpose of determining weight and thereby limiting the weight of such combination to 20,000 pounds; and (3) the one limiting width to 90 inches. The attack is made on three grounds: (1) that the provisions of the act in question are in violation of the 14th Amendment in that "they constitute an unreasonable, arbitrary and capricious interference with the rights of plaintiffs to use the highways in a reasonable manner and for a lawful purpose"; (2) that they have been superseded by the federal Motor Carriers Act of 1935; and (3) that they constitute an unreasonable burden upon interstate commerce.

Little need be said as to the first ground of attack, i. e. that the statute is violative of the 14th Amendment. This is sufficiently dealt with by the Supreme Court of South Carolina in the case of State v. John P. Nutt Co., — S. C. —, 185 S. E. 25, Cert. denied — U. S. —; and there is no occasion to add anything to what is there said as to this aspect of the case. We agree with the conclusion there reached on this point.

And we are not impressed with the second ground of attack, i. e. that the provisions of the statute have been superseded as a result of the enactment of the Motor Carriers Act of 1935. It is not necessary to inquire into the power of Congress to regulate the size and weight of vehicles used in interstate commerce on the roads of the several states or into the limitations upon that power; for we think it perfectly clear that in the Motor Carriers Act Congress did not [fol. 67] attempt to exercise such power, but, on the contrary, expressly refrained from exercising it. Section 225 of that Act provides (49 U. S. C. A. 325):

"The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of

all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter."

Reliance is placed upon Section 202a (49 U. S. C. A. 302a) declaring the purpose of the act, and particularly upon Section 204a (1) (2) and (3) (49 U. S. C. A. 304a) (1), (2) and (3), defining the powers of the Commission, which are as follows:

"202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this chapter.

"204. (a) Powers and duties generally. It shall be the duty of the Commission:

"(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(2) To regulate contract carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to uni- [fol. 68] form systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment."

It is argued that authority in the Commission to control size and weight of motor vehicles is to be found in the provisions of Section 204, subsections a(1) and a(2), authorizing the Commission to establish reasonable requirements with respect to "safety of operation and equipment" in the case of common and contract carriers, and in the provision of subsection a(3) authorizing "standards of equipment" to be prescribed for private carriers. The presumption is hardly to be indulged that Congress intended to include size and weight in "safety of operation and equipment" or "standards of equipment", as to which the Commission was given full power of regulation, when by Section 225, size and weight were specifically dealt with and the Commission was authorized merely to investigate as to these and report on the need of regulation. The rule of statutory interpretation is well settled that "general language of a statutory provision, although broad enough to include it, will not be held to apply a matter specifically dealt with in another part of the same enactment * * *. Specific terms prevail over the general in the same or another statute which might otherwise be controlling." Ginsberg & Son v. Popkin, 285 U. S. 204, 208; Kepner v. United States, 195 U. S. 100, 125; United States v. Chase, 135 U. S. 255, 260. In the case last cited the rule is thus stated:

[fol. 69] "It is an old and familiar rule that, 'where there is, in the same statute, a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.' Pretty v. Solly, 26 Beavan, 610, per Romilly, M. R.; State v. Com'rs of Railroad Taxation, 37 N. J. Law, 228. This rule applies wherever an act contains general provisions and also special ones upon a subject,

which, standing alone, the general provisions would include. Endlich on the Interpretation of Statutes, 560."

Indeed, it would be only by a strained construction of language that the provision authorizing the commission to establish requirements with respect to safety of equipment or standards of equipment could be held to confer power to regulate size and weight of vehicles. Safety of equipment and standards of equipment as applied to vehicles moving in interstate commerce are expressions which naturally have reference to safety with respect to commerce or persons engaged therein over which Congress has undoubted jurisdiction, whereas size and weight are matters which relate chiefly to the safety and preservation of highways, as to which jurisdiction resides primarily in the several states. And it is worthy of note that the regulation of size and weight is treated by road authorities quite generally as a matter altogether different from the regulation of equipment. Thus, in the proposed Uniform Act Regulating Traffic and Highways, as redrafted in 1934 by the National Conference on Street and Highway Safety, of which the Secretary of Commerce was Chairman, in cooperation with the National Conference of Commissioners on Uniform State Laws, published by the Bureau of Public Roads of the Department of Agriculture, equipment is dealt with in an entirely separate chapter from size, weight and load. Chapter 15 of the proposed act deals with equipment and regulates such matters as lights, brakes, horns, mufflers, mirrors, wind-[fol. 70] shields, safety glass, inspection of equipment, etc. Chapter 16 deals with width, height and length of vehicles, use of trailers, wheel and axle loads, gross loads etc. The Commission itself has construed the act as not imposing upon it the duty of regulating size and weight; for it has caused its Bureau of Motor Carriers to draft proposed safety regulations to be prescribed by it under the sections of the act which we have quoted, and these proposed safety regulations have no reference to size or weight of vehicles but are addressed to such matters as "lighting devices and reflectors," "safety glass," "brakes" and "Miscellaneous parts and accessories."

If there were any doubt as to the meaning of the act in this respect, and we are not to be understood as implying that we think that there is, the history of the legisla-

tion would conclusively demonstrate that it was not the intention of Congress to give to the Commission the power to regulate size and weight. The act was the legislative result of studies made by the Coordinator of Transportation under Congressional authority. In his report to the 73d Congress, 2d session (Senate Document No. 152), the Coordinator called attention in detail to state legislation regulating size and weight (pp. 206, 207), referred to the feeling that varying traffic, topographic and financial conditions in the different states warranted diversity of weight limitations (pp. 213-214), and with respect to the provision of the bill said (p. 45):

"Section 325 of the proposed bill authorizes the Commission to investigate and report to Congress upon the need for Federal regulation of the sizes and weights of all motor vehicles operating in interstate and foreign commerce, and of the qualifications and maximum hours of service of employees, this investigation to cover private as well as for-hire carriers. The Rayburn bill contains no provision respecting these matters except that it provides for regu- [fol. 71] lation of the qualifications and hours of service of the employees of common and contract carriers. While the inquiry made by the coordinator's staff indicates a possible need for these forms of Federal regulation, the subject is one which may appropriately be postponed for future consideration."

In the hearing before the Committee on Interstate Commerce of the Senate, Coodinator Eastman said (at p. 92 of hearing on S-1629, 74th Congress):

"In answer to one of your questions I started to say something about the regulations with respect to the sizes and weights of vehicles. It is true that by drastic and unreasonable regulations of that character one State might interfere with interstate commerce and prevent the reasonable operation of vehicles in interstate commerce. We do not undertake in this bill to cover that situation, except to provide for a thorough investigation of it by the Commission, with recommendations to Congress, because there is involved there not only a question of fact as to what the regulation should be but also as to how far the Federal Government has power to interfere with the exercise of the

police power by the States with respect to the use of their highways."

The act as originally introduced dealt with qualifications and maximum hours of service of employees, as well as with size and weight, only in section 225. It was amended during its passage, however, so as to give the Commission authority to regulate "qualifications and maximum hours of service of employees," these words being inserted in subsections 1 and 2 of section 204a and an additional subsection as to private carriers (being subsection 3 of 204a) being added. The fact that the section prescribing the powers of the Commission were thus amended to include a part of what was already covered by Section 225, while the remainder of what was covered by that section, i. e. size and weight, were not included in the amendment, raises a strong presumption that it was not the intention of Congress that the Commission should be given regulatory power over these. The report of the Senate Committee to which the brief of the Commission refers, in saying "Such an investigation is still authorized (Sec. 225), but if the Commission determines after investigation that there is [fol. 72] need for such regulation, it may impose reasonable requirements without further legislation", has reference to the investigation as to need for regulation of qualifications and maximum hours of service of employees, and not to the investigation authorized as to need of regulation of size and weight of vehicles.

The Commission makes an argument based upon the rejection by the Senate of an amendment offered by Senator Duffy which provided in part "* * * That the laws enacted in any state and regulations thereunder that relate to the maintenance, protection, safety or use of the highways therein, which do not discriminate against motor vehicles used in interstate commerce, shall not be deemed to be a burden on or an obstruction or impediment to interstate commerce, and the power to enact such laws and promulgate such regulations thereunder is hereby expressly recognized and confirmed to the respective states." The answer to this is that the effect of the incorporation of the language quoted in the statute would have been to sanction state regulations of size and weight even though these might amount to an unreasonable interference with inter-

state commerce and be void for that reason in the absence of Congressional approval.

To sum up on this feature of the case, we do not think that there is anything in the language or in the history of the act which shows an intention on the part of Congress to regulate the size and weight of vehicles; and it is unreasonable to think that Congress would intend, by vague general language, to clothe the Commission with power to regulate a matter of such difficulty in which detailed regulations had already been prescribed by all of the 48 states, and thereby strike down all state regulations affecting the matter and leave the subject unregulated until such time [fol. 73] as the Commission might act. Our conclusion as to the proper interpretation of the Act is supported by the following recent decisions. L. & L. Freight Lines et al. vs. Railroad Commission of Florida (D. C. Fla.) — Fed. Supp. —, Lowe v. Stoutamire, — Fla. —, 166 Sou. 310; Railroad Com. v. Southwestern Greyhound Lines (Tex. Civ. App.), 92 S. W. (2d) 296. In the case first cited, Judge Strum well said:

"It is significant, and worthy of particular note, that the regulation of 'weights' of such motor vehicles,—obviously a most important element of regulation,—was not included amongst the matters specifically enumerated in Sec. 204 (a)(1). The Act contains no express or specific regulation, nor authority to regulate, motor carriers as to size or weights. If such authority is to be found in the Act it must be spelled out either from the general language 'to regulate common carriers by motor vehicle,' or by interpretation of the terms 'safety of operation and equipment.'

"The argument that such authority is to be found in the quoted phrases is refuted by the specific provisions of Sec. 225 of the Act (49 U. S. C. A. 325) that 'the Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weights of motor vehicles and combinations of motor vehicles * * *'. It should be noted that this section does not provide that the Commission shall determine by investigation what the sizes and weights of motor vehicles should be, and thereupon to adopt regulations to put the same into effect. The authority is merely to 'investigate and report on' the 'need' for Federal regulation of sizes and weights,—a wholly pro-

spective matter, clearly indicating an absence of intent to presently regulate in that respect. If Congress intended to presently regulate in respect of sizes and weights, but desired the Commission to first determine by investigation what the regulations should be and thereafter put the same into effect, more apt language to that end would have, no doubt, been used. Sec. 204 of the Act specifically enumerates practically every aspect of regulation, except as to sizes and weights. The language of Sec. 225 of the Act makes it quite clear that the omission of sizes and weights was no mere oversight, but was deliberate. When that omission is viewed in connection with the language of Section 225 of the Act authorizing the Commission to investigate and 'report on' the 'need' for Federal regulation of sizes and weights,—not to determine what such regulations shall be, nor to put any such regulation in effect, but merely to 'report,'—the conclusion is inescapable that Congress intended to withhold regulation in that respect until some future time.''

We come, then, to the third ground of attack upon the [fol. 74] statutory regulations complained of, viz., that they constitute an unreasonable burden upon interstate commerce; and we think that the contention of plaintiffs as to this must be sustained in so far as applied to the operation of trucks upon the standard concrete highways of the state and those highways which constitute the great arteries of interstate commerce, even though short stretches of them are not of standard construction, i. e. federal highways 1, 15-A, 17, 21, 25, 29 and 52. We think it an unreasonable burden upon interstate commerce to apply the 20,000 pound gross load limitation, or the statutory rule requiring that the tractor-semi-trailer combination be considered as one vehicle for the purpose of applying the gross load limitation, or the 90 inch width limitation to trucks which do not exceed 96 inches in width, using the standard concrete highways of the state. As the great arteries of interstate commerce above referred to 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 as these arteries of interstate commerce are constructed almost entirely of standard concrete paving, we think it an unreasonable burden upon the interstate commerce moving over them to enforce the restriction above mentioned, and thereby virtually close

the roads of the state to a large part of such commerce, merely because there are short sections of such highways which have not as yet been constructed of standard paving. As there are a few bridges on these highways which were not built to support the heavy trucks of modern traffic, and a few which are too narrow, we think that the enforcement of the act should not be held unreasonable as to such bridges, provided they are properly marked with warning signs forbidding trucks of excessive weight or size to enter upon them. The facts upon which these conclusions are based are as follows:

[fol. 75] Within the past decade there has been a great development of interstate commerce by truck, and a corresponding change and development of industry in the southeastern part of the United States based upon truck transportation. The market gardening industry, the textile industry, the fertilizer industry and many others have changed in large part their method of doing business as a result of the facilities afforded them by the use of trucks in interstate commerce. This traffic has developed transportation units of great efficiency designed to carry a maximum load with a minimum of burden or strain to the roads over which they pass. Chief among these is the tractor-semi-trailer, in which the power unit is detachable from the load carrying unit, and in connection with the latter imposes no greater strain upon the highway than two trucks of corresponding weight, one following behind the other. Multiplication of axles and wheels distributes the weight of the load, and further protection is obtained from the use of low pressure pneumatic tires, so that with this modern equipment it is possible to move a heavily loaded truck over the highway with no greater injury to the modern standard pavement than would result from the movement over it of an ordinary passenger car. A large part of this interstate traffic, with all that it means to the life of the people of the southeastern part of the United States, will be virtually barred from the highways of South Carolina, and a barrier will be erected not merely against the commerce of the state but also as against the commerce of sister states, if these restrictions are enforced; and the reasonableness of the restrictions must be viewed in the light of such a consequence.

The evidence establishes that South Carolina has the best highway system to be found in the southeastern part

of the United States. There are within the state 60,000 [fol. 76] miles of roads of all kinds, of which 5,948 miles are embraced in the state highway system. Of these, 2,417 miles are of standard pavement; and the arteries of interstate commerce to which we have referred are of this character with the exception of a few short lengths, as for instance 6 or 7 miles in highway No. 1 near Cheraw, out of a total length of the highway of 140 miles or more. This standard paving is not materially different from modern pavement used in most of the other states of the Union, is 18 or 20 feet in width, 7½ or 8 inches thick at the edges and 6 or 6½ inches thick at the center. It is capable of sustaining without injury a wheel load of 8,000 or 9,000 pounds and an axle load of from 16,000 to 18,000 pounds.

Where standard paving is involved, it is the axle or wheel load which is of importance in limitation of weight, and not the gross weight of the truck; for, no matter what the total weight of the vehicle, there is no additional stress on the road if the wheel or axle load is not excessive and there is a space of 40 inches between axles. For this reason, there is no reason for limiting gross load on such roads to 20,000 pounds and likewise no reason for considering the tractor-semi-trailer combination as one vehicle for the purpose of applying the weight limitation. Only five states of the Union limit the gross weight of vehicles to 20,000 pounds, viz., South Carolina, Tennessee, Alabama, Mississippi and Texas.

It is argued that on the roads which are paved with standard pavement there are some bridges which were constructed for a maximum ten ton load; but it appears that these bridges were constructed to bear a series of ten ton trucks going in opposite directions across the bridge (and [fol. 77] the tractor-semi-trailer combination imposes no more stress than one truck following another); that they have been strengthened to bear the increasingly heavy traffic, and that the heavy trucks of interstate commerce have been using them at least since 1930 when the law permitted a gross weight of 40,000 pounds in a truck trailer combination. As a result of the injunction in the Nutt case these bridges, as well as the standard pavement roads, have been used by the traffic which would be excluded by the act of 1933 without substantial injury. It is true, however, that some of these bridges were not constructed to bear the

heavy loads of modern traffic; and as to such bridges the load limitation of the statute cannot be held unreasonable, and our injunctive order will not protect plaintiffs in the use of such bridges where they have been properly marked with notices forbidding their use by trucks not complying with the statutory requirements.

It is likewise argued that even where the roads are of standard construction, this construction has not been used in some of the town and city streets which are a part of the roads; and that the load limitation of the statute is a reasonable one for the protection of these streets. There is no showing, however, that there has been substantial damage to any streets as a result of the heavy traffic which has been passing over them for the past five years, and no reasonable ground to apprehend such damage in the future. And, even if this were not true, a regulation which would in effect drive a vitally important part of interstate commerce from 2,400 miles of road capable of sustaining it, because there are a few weak streets at various places in the system, is a patently unreasonable regulation. A system of highways of 2,400 miles is a substantial system. When it has been designed for the accommodation of traf- [fol. 78] fic of the character carried on by the interstate motor carriers, it is unreasonable to withhold the entire system from the use of such traffic because of a few weak links, which, if injured by the traffic, can be repaired at comparatively slight expense.

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

It must be remembered in this connection that this splendid system of highways was constructed to bear the traffic developed by modern conditions; and, because it was

realized that such a system would furnish highways for interstate commerce which would facilitate the growth and development of the nation, the federal government has supplied to the state of South Carolina funds for their construction amounting to $29,000,000, which has been used for that purpose. While the fact that the federal government has aided in the construction of the highways does not, of course, detract from the power of the state to regulate and control them (Morris v. Duby, 274 U. S. 135, 143) 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 [fol. 79] 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 purpose of this aid in the development of interstate commerce was referred to by the Supreme Court in Nashville etc. R. Co. v. Walters, 294 U. S. 405, 417. In that case the court said of the highways of Tennessee, what is true of these federal aid highways of South Carolina:

"The State highways of Tennessee (as distinguished from county and city roads and turnpikes) have their origin in the Federal-aid highways legislation. The aim of that legislation is 'a connected system of roads for the whole nation'; 'to provide complete and economical highway transport throughout the Nation'; to furnish 'a new means of transportation, no less important to the country as a whole than that offered by the railroads'; to establish 'lines of motor traffic in interstate commerce.' The immediate interest of the Federal Government is, in part, the national defense as well as the transportation of the mails. The relief of the unemployment incident to the business depression has been the main incentive for highway construction since April 4, 1930—the period in which the highway here in question was undertaken and completed.

"To achieve its purposes, the Federal Government has made large contributions to the cost of the Federal-aid highway system. In each year, it has made to each State grants in money, proportioned according to various factors, to be expended in defraying up to one-half the cost of constructing therein the designated highways. In addition, it has, through the War Department, allotted to the several States their pro rata shares of surplus war equip-

ment and supplies valued at more than $224,000,000. It has at all times given to the several States the benefit of its economic and physical research; and other aid by its experts and administrators. It has, since the depression, given to the several States emergency grants to be expended in highway construction for the relief of unemployment. In the fiscal years ending June 30, 1931, 1932 and 1933, during which this highway was authorized and completed, Tennessee received from the Federal Government, for the highway system, in cash, $11,063,325; and at the close of that period practically the entire expense of building Federal-aid roads in the State was being borne by the Federal Government.

"The Secretary of Agriculture, acting through the Federal Bureau of Public Roads, has determined in large measure, not only the location of the Federal-aid highways in the several States, but also their character and their incidents. Early legislation provided that: 'The Secre- [fol. 80] tary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of construction.' The Act of 1921 required each State to select and submit to the Secretary, for approval as the object of future Federal-aid expenditures, 'a system of highways not to exceed 7 per centum of the total mileage of such state'; the system was to 'be divided into two classes, one of which shall be known as primary or interstate highways, and the other which shall connect or correlate therewith and be known as secondary or intercounty highways.' Congress transferred to the Secretary the powers and duties in relation to highways and highway transport originally conferred upon the Council of National Defense. The War Plans Division of the General Staff and Corps of Engineers of the War Department promptly cooperated with the Bureau of Public Roads 'in a study the purpose of which is the selection of those highways which are important from a military standpoint.'

"Upon the secretary devolves the duty of prescribing needful rules and regulations, including such recommendations as he might deem necessary for 'insuring the safety of traffic on the highways.' "

And as bearing upon the reasonableness of regulations which would thus burden and hamper interstate commerce

by truck, and in effect drive much of it from the roads of the state, we must consider 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. In this connection we find that the proposed Uniform Act Regulating Traffic on Highways to which we have heretofore referred, published by the Bureau of Roads of the United States Department of Agriculture in 1934, and drafted by the National Conference on Street and Highway Safety in the Department of Commerce, provides a width of 8 feet for motor vehicles, a wheel load of 8,000 and an axle load of 16,000 pounds with high pressure pneumatic tires and a wheel load of 9,000 and an axle load of 18,000 pounds with low pressure tires. The following organizations cooperated in the conference in which this proposed uniform act was drafted, viz.: Bureau of Public Roads, U. S. Department of Agriculture; American Association of Motor Vehicle Administrators; American Automobile Association; American Mutual Al- [fol. 81] liance; American Railway Association; American Transit Association; Chamber of Commerce of the United States; National Automobile Chamber of Commerce; National Bureau of Casualty and Surety Underwriters; and National Safety Council. Practically the same recommendations with respect to size and weight and identically the same as to the matters here under consideration, were made by the American Association of State Highway Officials in convention at Washington Nov. 17, 1932; and these have been approved by the following groups: American Automobile Association; American Farm Bureau Federation; American Motorists Association; American Petroleum Institute; Automobile Manufacturers Association; Detroit Board of Commerce; National Association of Motor Bus Operators; National Grange; National Highway Users Conference; National Industrial Traffic League; National Transportation Committee; and Rubber Manufacturers Association.

The American Association of State Highway Officials in its publication "Who shall use the highways and how", in addition to making the foregoing recommendation as to size and axle weights, says: "Highway stresses are ruled by *wheel loads* and not by *gross loads*", and "so far as road surfaces are concerned, the limitation of axle or

wheel loads gives full protection, let gross loads be what they may". For protection of bridges it recommends that gross weight be fixed by the formula W * C (L plus 40), where W represents total gross weight, L the distance in feet between the first and last axles of a vehicle or combination of vehicles, and C a co-efficient to be determined by the individual states. For this co-efficient a minimum of 700 is recommended. Under this recommendation the minimum gross weight limit could hardly be less than 35,000 pounds.

[fol. 82] The law applicable to the situation, is we think, reasonably clear. There can be no doubt as to the power of the state to prescribe reasonable regulations limiting the size and weight of vehicles upon its highways, both for the sake of preserving the highways themselves and for the protection of the public using them. There is a broad range of legislative discretion with respect to such matters, and legislation is not to be condemned merely because the courts may not agree as to its wisdom. Sproles v. Binford, 286 U. S. 374, 388; Morris v. Duby, 274 U. S. 135. But as indicated by the court in the case last cited (274 U. S. at 145), such regulation must not be so arbitrary and unreasonable as to defeat the useful purposes for which Congress has made its large contribution toward the building of the highways. In other words, the states in the exercise of their inherent police power may regulate the use of the highways for the protection of the highways themselves and the safety of the public using them, and certainly in the absence of legislation by Congress may make such regulation applicable to interstate as well as intrastate traffic; but they may not adopt arbitrary regulations, not reasonably necessary for the protection of the highways or of the public, which will directly burden interstate commerce, even though such regulations may not discriminate as between commerce which is interstate and that which is not. As was well said by Mr. Justice Strong in Railroad Co. v. Huson, 95 U. S. 465, 473-474: "The police power of a State cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and under color of it objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes [fol. 83] comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

Under our dual governmental system the control of the highways is committed to the states, whereas the control of interstate commerce passing over those highways is committed to the federal government; and since the decision in Gibbons v. Ogden, 9 Wheat. 1, it has been settled that the states may not in their control of the highways burden or interfere with the free flow of interstate commerce, the regulation of which has been intrusted to Congress. This would not be doubted if the highway in question were a navigable river, but the principle is the same whatever the character of the highway over which the interstate commerce moves. Thus, the federal power extends over artificial waterways constructed by the states (Ex Parte Boyer, 109 U. S. 629, 632), and over a railroad handling cars moving in interstate commerce, although the railroad has been constructed and is being operated by one of the states (U. S. v. State of California, 297 U. S. 175, 56 S. Ct. 421). And when a state builds a road as a highway of commerce, it cannot burden the flow over it of commerce interstate in character. Buck v. Kuykendall, 267 U. S. 307. As said by Mr. Justice Brewer in In re Dobs, 158 U. S. 564, 590:

"Up to a recent date commerce, both interstate and international, was mainly by water, and it is not strange that both the legislation of Congress and the cases in the courts have been principally concerned therewith. The fact that in recent years interstate commerce has come mainly to be carried on by railroads and over artificial highways has in no manner narrowed the scope of the constitutional provision, or abridged the power of Congress over such commerce. On the contrary, the same fulness of control exists in the one case as in the other, and the same power to remove obstructions from the one as from the other.

[fol. 84] "Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation. The law of the common carrier is the same today as when transportation on land was by coach and wagon, and on water by canal boat and sailing vessel, yet in its actual operation it touches and regulates transportation by modes then unknown, the railroad train and the steamship. Just so is it with the grant to the national government of power over interstate commerce. The consti-

tution has not changed. The power is the same. But it operates today upon modes of interstate commerce unknown to the fathers, and it will operate with equal force upon any new modes of such commerce which the future may develop."

We have given careful consideration to what was said in Morris v. Duby and Sproles v. Binford, supra, and were at first inclined to think that these decisions were conclusive of the case before us. Upon more mature consideration, we do not think this is correct. It is true that in Morris v. Duby a state statute prescribing a maximum load weight of 16,500 pounds was upheld, and in Sproles v. Binford one prescribing a net load of 7,000 pounds; but in neither of these cases was there any such showing of the unreasonableness of the limitation and of the direct burden upon interstate commerce when applied to a system of standard concrete roads as is contained in the record before us. The same is true of State v. Nutt, supra. In Sproles v. Binford the court commented on the fact (p. 385) that the roads capable of carrying a greater load than the maximum permitted by the statute did not form a regularly connected system and were scattered throughout the state and that the operations of complainant were conducted over all types of highways and bridges. Here we have a connected system of standard highways of the finest character; and there is no reasonable relation between the limitations complained of and the preservation or safety of such highways. In the light of experience and of scientific knowledge, there is no ground for reasonable difference of opinion as to the gross load limitation of 20,000 pounds not being necessary for the [fol. 85] protection of such roads themselves, and there is even less justification for the requirement that the tractor-semi-trailer combination be counted one unit for the purpose of computing gross load. So far as safety is concerned, the evidence shows clearly that there is less danger to traffic from the standard trucks of interstate commerce than from smaller trucks carrying a load for which they are not designed; and certainly there is not enough advantage in a 90 over a 96 inch width to justify the exclusion from an 18 or 20 foot highway of trucks of a width permitted by all other states of the Union. It is true that the enforcement of the provisions of the statute would probably reduce traffic on

the highways to the extent that it would greatly reduce the amount of long distance hauling by truck, but it would do this by placing a direct burden on the interstate commerce now using such highways; and as the highways were constructed to carry such commerce and there is no evidence that the traffic has become so dense as to be a menace to the safety of persons using them, there is no justification for burdening interstate commerce to achieve such a result.

There is another angle from which the reasonableness of police regulations burdening interstate commerce in this way must be judged. Not only has Congress aided in the construction of the roads so that they may become highways of such commerce, but in the enactment of the motor carriers' act, it has recognized truck traffic as a legitimate part of that commerce essential to the welfare of the public and subject to regulation for that reason. As said of Federal aid legislation in Bush Co. v. Maloy, 267 U. S. 317, 324, this legislation regulating motor carriers is of significance be- [fol. 86] cause it makes clear the purpose of Congress that state highways shall be open to commerce of that character. Congress has not attempted to regulate size and weight and there are great practical difficulties in the way of such regulation by Congress. It is of great importance, therefore, that regulation of this matter by the states be held within reasonable bounds, and that they be not permitted, under guise of exercising the police power, to exclude from their highways by unreasonable regulations the interstate commerce which Congress is regulating in the public interest and for the carrying of which it has aided in the construction of roads that form parts of a great national system of highways.

As to highways of the state, other than those which have been paved with standard concrete or standard concrete and asphalt paving, we cannot say that the provisions of the act are unreasonable; and there is no basis upon which an injunction should issue enjoining the enforcement of the act so far as they are concerned. As to them the principles laid down in Morris v. Duby and Sproles v. Binford are applicable. The same is true of bridges which have not been constructed for carrying the heavy trucks of modern traffic, even though they may be located on standard highways. If there were a great many of these, their presence would justify the application of the act to the entire system of highways, but the evidence shows that they are compara-

tively few in number; and interstate commerce, or at least a large part of it, could be so routed as to avoid them entirely. We think, however, that where it is the intention of the defendant to enforce the provisions of the act with respect to any bridge on the roads constituting the arteries of interstate commerce to which we have referred, or on [fol. 87] other roads paved with standard concrete paving, notices to that effect should be posted on both sides of the bridge, of sufficient size and character to give ample warning that the use of the bridge is forbidden to trucks with a gross weight in excess of ten tons or of a width exceeding 90 inches. As the bridges in question are probably capable of carrying the traffic as they have been carrying it for the past five years, we feel justified in enjoining the enforcement of the act as to them unless notice is posted as herein indicated. And in order that the use of bridges may not be unreasonably denied to plaintiffs, and that no hardship may result from the enforcement of our injunctive order with respect to contingencies which may arise and which we are not able now to foresee, we will retain jurisdiction of the cause to the end that the injunctive order may be modified as occasion for such modification may arise.

We are not to be understood as holding that the federal courts possess any regulatory power over the states in the control of the roads. So long as that control is exercised so as not to interfere unreasonably with interstate commerce, the courts have no power to interfere. Any regulation limiting size and weight, having reasonable relation to the preservation of the highways or the safety of persons using them, must be upheld; and we do not doubt the power of the states, in the reasonable exercise of the police power, to bar certain types of vehicles entirely from their roads, or entirely to forbid the use of trucks on certain of the roads provided other roads are available for the use of traffic of this character. But we do not think that the state may erect a Chinese wall around itself by adopting regulations the effect of which would be to bar a large part of interstate [fol. 88] traffic from all of its highways when such regulations have no reasonable relation to their safety or preservation. A gross load limit of 20,000 pounds, as we have seen, has no reasonable relation to either safety or preservation of the standard highway, the provision for counting the tractor-semi-trailer combination as one unit for applying the gross load limitation has even less to commend it, and

the 90 inch width limitation, while doubtless reasonable when viewed in vacuo, cannot be defended in view of the fact that all other states permit the standard width of 96 inches and the only practical effect of the 90 inch limitation is to close the roads to a large part of interstate traffic. It must not be forgotten that the roads, in the final analysis, belong to the people. They are held by the states in trust for the people, who are entitled to make a reasonable use of them. Use for the purposes of interstate transportation is a reasonable use, the control of which the people have vested in the federal government; the states may not unreasonably interfere with such use; and an interference, not necessary to the safety or protection of the roads, which burdens interstate commerce and excludes a large part of it from using the roads, must be condemned as unreasonable. The highways of interstate commerce must not be unreasonably obstructed by the states, whether they be natural highways such as rivers, or whether they be artificial highways which the people themselves have constructed and dedicated to the purposes of commerce.

We have considered the argument that the agricultural interests of the state are served by the trucks which come to the fields for the delivery of fertilizer and the collection of vegetables for market, and we realize that this involves the use of roads other than the standard concrete highways; [fol. 89] but we cannot say that the statute is unreasonable as applied to such roads. The argument that the number of heavy trucks using such roads is few and the damage to them from such occasional use is inconsequential, is a matter for the consideration of the state legislature. Only with respect to the highways specifically mentioned and those federal aid highways of standard concrete or standard concrete and asphalt construction can we pronounce the provisions of the act unreasonable; and only as to them will its enforcement be enjoined as an unreasonable burden on interstate commerce.

Decree Accordingly.

[fol. 90] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 20, 1937

In the above entitled case, the Court finds the facts as follows:

1. That the plaintiffs in this suit are individuals, partnerships, and corporations having their residences in the States of South Carolina, North Carolina and Georgia, and that the defendants are officers either of the State of South Carolina or of a county or municipality thereof and as such are charged with the duty of enforcing the South Carolina law known as Act No. 259 of 1933, Regulating and Limiting the Use of Public Highways in South Carolina by Motor Trucks.

2. That the plaintiffs Barnwell Brothers, Incorporated; Poole Transportation, Incorporated; Horton Motor Lines, Incorporated; National Convoy and Trucking Company; Carolina Transfer and Storage Company; Dewey D. Maner, and Akers and Hudson Motor Lines, Incorporated, are common and contract carriers engaged in the transportation of property in interstate commerce by motor truck throughout the Eastern and Southeastern portion of the United States. That the plaintiffs Merchants Fertilizer Company; Planters Fertilizer and Phosphate Com- [fol. 91] pany; South Carolina Produce Association, and William C. Geraty Company are engaged in extensive operations requiring the use and employment of motor transportation in interstate commerce.

3. That the amount in controversy in this suit, as to each of the plaintiffs, exclusive of interest and costs, exceeds the sum and value of three thousand dollars.

4. That the intervening railway companies have been allowed to intervene because they are engaged in interstate commerce in the state of South Carolina and are affected by the competition of the truck companies which they contend is based in part upon an unlawful use of the roads.

5. That the Interstate Commerce Commission has been permitted to intervene because of its contention that the regulation of size and width of motor vehicles has been intrusted to it by the Motor Carriers Act of 1935 and that the South Carolina statute regulating size and weight of motor vehicles has been superseded thereby.

6. That the enforcement of the provisions of Act No. 259 of the General Assembly of South Carolina, approved April 28, 1933, 38 Stats. 340, limiting the gross weight of trucks using the highways of that state to 20,000 pounds, pro-

viding that a tractor-semi-trailer combination shall be treated as one vehicle in applying the gross load limitation, and limiting the width of trucks to 90 inches, will greatly burden interstate commerce by trucks using the roads of said state.

7. That the interstate motor transportation industry has grown and developed in the past five years to be an established industry. That standard equipment operated by motor carriers in interstate commerce consists of trucks [fol. 92] and tractor-semi-trailers, and that 85 per cent to 90 per cent of this equipment is 96 inches in width and weighs more than 20,000 pounds gross; that enforcement of the South Carolina law would result in the obstruction of the flow of interstate commerce into, out of, and across the State of South Carolina because it would necessitate the transferring of commodities to and from trucks of the size and weight prescribed by said law, with a consequent increase in the cost of interstate transportation and a discrimination against South Carolina shippers and others shipping into and across South Carolina, and would render it practically impossible for a large part of interstate commerce now conducted by truck to use the roads of that state.

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

9. That the development of motor truck transportation has been of great benefit to the textile industry because it has permitted manufacturers to supply customers with commodities in smaller quantities at more frequent intervals, without increased cost, and the customers' demand for this service necessitates the use of motor trucks. That the standard motor truck supplying this service are 96 inches in width and when properly loaded weigh more than 20,000 pounds gross. That enforcement of the South Carolina law would cause delay in transit and increase the cost of interstate transportation of textiles into, out of, and across

the State of South Carolina and would result in discrimina-
[fol. 93] tion against South Carolina textile mills in favor of competitors in other states.

10. That the continued operation and development of large-scale truck farming and the shipping of vegetables out of South Carolina in interstate commerce is dependent upon the peculiar service rendered by motor trucks in the transportation of produce from roadside farms to large and distant markets quickly and economically. That truck farmers and vegetable growers depend, for interstate transportation of their produce, on motor trucks operated not by the farmers themselves but by transportation companies whose trucks move about the country with the seasons. That these trucks, and particularly the refrigerator trucks upon which the farmers depend for shipment of perishables, exceed the size and weight limitations prescribed by the law of South Carolina. That enforcement of the said law would discriminate against South Carolina truck farmers and vegetable growers in favor of their competitors in other states and would injure if not destroy this industry in South Carolina.

11. That a large amount of fertilizer is shipped out of South Carolina in interstate commerce by motor truck and delivered to farmers at the field for immediate use; that this service cannot be rendered by other transportation agencies; that the product has a low value in proportion to weight, and enforcement of the South Carolina law would increase the cost of fertilizer to consumers and jeopardize the fertilizer industry in South Carolina.

12. That interstate movement of household furniture and effects by motor truck has developed with the advent of good roads; that railroads do not offer adequate service and do not compete with trucks in this business; that because of the weight and bulk of furniture it is necessary that loads exceed the size and weight limitations prescribed by the law of South Carolina; that enforcement of the
[fol. 94] South Carolina law would increase the cost and curtail the efficiency of this service to the public.

13. That the business of shipping lumber in interstate commerce from mills in South Carolina has developed with the advent of good roads and motor trucks; that motor transportation enables the mills of South Carolina to meet

the demand of customers for delivery of lumber at the point of use; that if the South Carolina law is enforced the interstate movement of this commodity by truck will practically cease and South Carolina lumber mills will be forced to ship by rail at increased cost of transportation and serious curtailment of service both in time and convenience to the consuming public.

14. That with the advent of good roads and motor truck transportation the furniture manufacturers have changed their method of doing business and have commenced shipping large quantities of furniture in interstate commerce by motor truck; that this method of transportation is now important because customers demand quick shipments in small lots and this service cannot be supplied by railroads; that the transportation of this commodity necessitates the use of trucks 96 inches in width and weighing more than 20,000 pounds gross; that enforcement of the South Carolina law under consideration would interfere with the traffic and would result in discrimination against manufacturers shipping furniture out of and across South Carolina in favor of their competitors.

15. That the port of Charleston, S. C., handles a large volume of inbound and outbound traffic moving in interstate and foreign commerce; that in recent years the percentage of this interstate and foreign traffic moving to and from the port of Charleston in motor trucks has steadily [fol. 95] increased, and at the present time the records of three of the important inter-coastal steamship lines operating in and out of Charleston reflect, respectively, 24 per cent, 58 per cent, and 40 per cent of all tonnage moving by truck; that shippers and consignees rely upon and demand the service now offered by motor trucks because of advantageous rates and because motor trucks offer transportation facilities which cannot be duplicated by other transportation agencies; that motor trucks now operating in and out of Charleston and carrying cargoes in interstate commerce to and from the port are of the standard type, 96 inches in width and weighing more than 20,000 pounds gross; that many of the commodities moving in interstate commerce by motor truck to and from the port of Charleston cannot be profitably transported in trucks within the weight and size limitations prescribed by the law of South Carolina; that enforcement of the South

Carolina law would result in the diversion of large cargoes, normally consigned to the port of Charleston, to other competing ports in other states along the Atlantic seaboard.

16. That flour is one of the major commodities moving into the port of Charleston and that a large part of it is transported in interstate commerce by motor truck; that truck transportation of this commodity is necessary because speed of delivery is essential to prevent deterioration and meet the demand of customers and also because numerous small communities are dependent on shipments in smaller quantities than can be profitably shipped by rail; that the average pay load of a motor vehicle hauling flour is 20,000 pounds, making a gross load of about 30,000 pounds; that enforcement of the law under consideration will increase the cost of transportation.

[fol. 96] 17. That there are approximately 60,000 miles of roads of all kinds in the State of South Carolina; that 5,948 miles of these are embraced in the state highway system; and that 2,417 miles thereof are of standard pavement, not materially different from pavement of which other federal aid highways *is* constructed. All except about 100 miles of the standard pavement highways are 18 or 20 feet in width, 7½ or 8 inches thick at the edges and 6 or 6½ inches thick at the center. All such pavement is capable of sustaining without injury a wheel load of 8,000 to 9,000 pounds or an axle load of 16,000 to 18,000 pounds, depending upon whether the wheels are equipped with high pressure or low pressure pneumatic tires.

18. That the said standard paved roads form a well connected system of highways which have been improved with federal funds as a part of a national system; that they comprise the best system of highways in the southeastern part of the United States, and are capable of carrying the commerce which has been developed by modern truck transportation; that federal highways numbered 1, 15-A, 17, 21, 25, 29 and 52 comprise the great arteries of interstate commerce through the state of South Carolina, are of standard concrete paving as above described, with the exception of a few short stretches, a few miles in length which are not of sufficient importance to justify the denial of the use of these arteries of commerce for the purpose for which they were constructed.

19. That the bridges now being designed and constructed in the state of South Carolina conform to the specifications prescribed by the Bureau of Roads of the Department of Agriculture and are capable of carrying loads of 16,000 pounds per axle, and that those that were not so designed [fol. 97] in the past and are now considered weak have been strengthened to meet the demands of present day traffic; that there are a few old bridges on the main arterial highways above mentioned and also on the other roads paved with standard concrete paving which were not designed for carrying trucks of greater weight than 20,000 pounds and a few which are too narrow to permit the use of trucks 96 inches in width, and as to these the provisions of the law cannot be deemed unreasonable; but that, as these bridges are few in number and it would be unreasonable to exclude interstate commerce from the entire highway system on their account, such of them as are considered by the State Highway Department to be unsafe for use by trucks of greater width than 90 inches or greater weight than 20,000 pounds should be so marked so as to afford ample warning that the use of the bridge is forbidden to trucks of that size and weight.

20. That the usual vehicle used by motor transportation companies in interstate commerce is a tractor-semi-trailer combination, 96 inches wide and carrying a pay load of 10 tons or 20,000 pounds and the size and weight of such vehicles are determining factors in the fixing of rates for interstate transportation by motor truck. That the effect on the highways and bridges of the state of South Carolina of a tractor-semi-trailer combination is not different from the effect produced by two vehicles of equal weight, one following the other; and that the provision requiring that the tractor-semi-trailer combination be considered as one unit for the application of the weight limitation is unreasonable.

21. That the rigid type highways of the state of South Carolina are typical of the design of the highways of that type in a great majority of the states in the United States today, and that they will permit axle loads of 16,000 to [fol. 98] 18,000 pounds to be hauled thereon without damage to said highways. That they have been subjected to the traffic of heavy trucks with gross weights in excess of 20,000 pounds and other vehicles since 1930 and are now being subjected to such traffic and there is no evidence of

deterioration thereof as result of such traffic except in isolated instances due to unusual conditions.

22. That gross weight of vehicles is not a factor to be considered in the preservation of concrete highways, but wheel or axle weight; that vehicles engaged in interstate commerce are so designed and the pressure of their weight is so distributed by their wheels and axles that heavy gross loads can be carried over concrete roads without damage to the concrete surface; and that a gross weight limitation of 20,000 pounds is unreasonable as a means of preserving the highway.

23. That the gross load limitation has no reasonable relationship to the safety of the public using the highways; that the modern type vehicles engaged in interstate commerce are safer on the highways than the overloaded light trucks which would result from enforcement of the gross load limitations, because they make possible a better distribution of weight and have better braking equipment.

24. That the width limitation of 90 inches is unreasonable when applied to the standard concrete highways of the state and the arteries of interstate commerce heretofore mentioned, in view of the fact that all other states in the Union permit a width of 96 inches, this is the standard width of trucks engaged in interstate commerce, and the enforcement of the 90 inch limitation would exclude from the highways a large portion of the equipment now used in [fol. 99] interstate commerce without material advantage to the safety or preservation of the highways.

25. That only four other states in the entire Union prescribe a gross weight limit as low as 20,000 pounds; and such a limit is contrary to the recommendation of the American Association of State Highway Officials; that the National Conference on Street and Highway Safety in the U. S. Department of Commerce has recommended for adoption a uniform act limiting size and weight, in which weight is limited with respect to wheel and axle loads and width is limited to 96 inches; that gross weight is of importance in a modern highway system only in connection with the use of bridges, and modern bridges are so constructed that a gross weight limitation of 20,000 pounds is unreasonable with respect to them.

26. That the provisions of the statute limiting gross weight of vehicles to 20,000 pounds, providing that the tractor-semi-trailer combination shall be considered as one unit for applying this limitation, and limiting the width of vehicles to 90 inches, are unreasonable restrictions when applied to the highways heretofore mentioned which constitute the great arteries of interstate commerce of the state and the other standard concrete highways constituting a part of the state highway system; and that as applied to said highways they constitute an unreasonable restriction and burden on interstate commerce; but that they are not unreasonable as applied to other roads of the state.

27. That the enforcement of the said provisions of the act against the plaintiffs while they are engaged in interstate commerce would in large measure destroy their interstate business, would subject them to ruinous penalties if they [fol. 100] should attempt to carry on said business, and would otherwise inflict upon them great and irreparable injury.

Conclusions of Law

The Court reaches the following conclusions of law:

1. That the said provisions of Act No. 259 of 1933 of the General Assembly of South Carolina are an unreasonable burden upon interstate commerce when applied to trucks operating upon highways 1, 15-A, 17, 21, 25, 29 and 52 and the other standard concrete highways which form a part of the state highway system, except as to bridges not designed for supporting heavy traffic as set forth in the foregoing findings of fact.

2. That the said provisions of the act cannot be condemned as an unreasonable burden upon interstate commerce when applied to the other roads and highways of the state.

3. That Congress has not assumed to control size and weight of vehicles by the Motor Carriers Act of 1935.

4. That the provisions of the Act 259 of South Carolina of 1933 are not violative of the due process or equal protection clauses of the 14th Amendment.

5. That plaintiffs are entitled to injunctive relief restraining defendants from enforcing against plaintiffs, while plaintiffs are engaged in interstate commerce on the arteries

of interstate commerce heretofore described and the other standard concrete highways of the state of South Carolina, the provisions aforesaid of Act 259 of South Carolina of 1933 limiting gross weight of vehicles to 20,000 pounds, providing that tractor-semi-trailer combinations shall be counted as one unit in applying gross weight limitations, and limiting width to 90 inches.

[fol. 101] John J. Parker, U. S. Circuit Judge, Fourth Circuit. Elliott Northcott, U. S. Circuit Judge, Fourth Circuit. J. Lyles Glenn, U. S. District Judge, Eastern and Western Districts of South Carolina.

[fol. 102] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

BARNWELL BROS., INC., a North Carolina Corporation, et al., Plaintiffs,

VS.

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT, SOUTH CAROLINA PUBLIC SERVICE COMMISSION, et al., Defendants

DECREE—Filed January 20, 1937

This cause coming on for final hearing and being heard by the undersigned special court of three judges constituted pursuant to section 266 of the Judicial Code, and the Court having made findings of fact and announced its conclusions of law as appears in the written Findings of Fact and Conclusions of Law filed herewith; now, therefore, for the reasons set forth in the written opinion herewith filed, it is ordered, adjudged and decreed as follows:

(1) That the defendants, their agents and servants, be and they hereby are, restrained and enjoined from enforcing against the plaintiffs while they are engaged in interstate commerce on the highways of the State of South Carolina numbered 1, 15-A, 17, 21, 25, 29, and 52, or on such portions of other federal aid highways as may be of standard concrete or concrete and asphalt construction, any provision of Act No. 259 of the General Assembly of South Carolina limiting the gross weight of trucks on highways to 20,000

pounds, or providing that a tractor-semi-trailer combination shall be considered a single unit for the purpose of determining weight and thereby limiting the gross weight of such combination to 20,000 pounds, or limiting the width of [fol. 103] vehicles to 90 inches, if the vehicle does not exceed 96 inches in width.

(2) That the provisions of this injunctive order shall not extend to bridges on the highways mentioned in the preceding paragraph where such bridges have not been constructed with sufficient strength to support the heavy trucks of modern traffic or are too narrow to accommodate such traffic safely, provided that the State Highway Department shall erect at each end of any such bridge a proper notice of sufficient size and character to give ample warning that the use of the bridge is forbidden by trucks exceeding the weight or width limit, and further provided that the proper authorities shall take the necessary steps to enforce the law against the use of such bridges by such trucks.

(3) That the application to enjoin the enforcement of the act with respect to the other roads and bridges of the state be and same is hereby denied.

(4) That plaintiffs recover of defendants their costs in this suit to be taxed by the Clerk.

(5) That jurisdiction of this cause be retained for the purpose of making any such change or modification with respect to paragraphs one or two hereof as may hereafter appear to be proper in the premises.

Done at Charlotte, North Carolina, this the 20th day of January, 1937.

John J. Parker, U. S. Circuit Judge, Fourth Circuit. Elliott Northcott, U. S. Circuit Judge, Fourth Circuit. J. Lyles Glenn, U. S. District Judge, Eastern and Western Districts of South Carolina.

[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TERM—Filed January 20, 1937

The Court having this day delivered its opinion in the cause and submitted to counsel for the respective parties

its findings of fact and conclusions of law, together with the decree, all of which it proposes to file; and

It appearing that counsel have not had sufficient time to consider the same and file any objections or exceptions thereto, as they may be advised, before the Court recesses;

It is Ordered That this term of this Court be extended for sixty days, so as to continue the jurisdiction of this Court over the cause and all matters relating thereto, including any reconsideration or modification of said findings of fact, conclusions of law, and decree to be entered thereon, and that the time within which counsel for any party may file any objections or exceptions to the same, or take any other steps properly incident to any appeal to the Supreme Court of the United States, is hereby likewise extended for sixty [fol. 105] days, except as otherwise provided by the applicable statute.

John J. Parker, United States Circuit Judge. Elliott Northcott, United States Circuit Judge. J. Lyles Glenn, United States District Judge.

January 20, 1937.

[fol. 106] In United States District Court

[Title omitted]

Order Extending Term—Filed February 13, 1937

Upon consideration of the attached petition and upon motion of Steve C. Griffith, Esq., and J. B. S. Lyles, Esq., Solicitors for all the defendants, and it appearing to the Court that good cause for this extension has been shown,

It is Ordered That defendants in the above entitled suit, petitioners herein, be and they are hereby granted an extension of thirty days—that is, to and including March 16, 1937, within which to file their præcipe and statement of evidence, as required by Rule 88 of this Court.

J. Lyles Glenn, United States District Judge for the Eastern District of South Carolina.

February 9th, 1937.

[fol. 107] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed February 25, 1937

Come now all of the defendants (including intervenors) above named, and, with their petition for appeal contemporaneously filed herewith submit the following assignment [fol. 108] of errors; on which they will rely on their appeal to the Supreme Court of the United States from the final decree entered on the 20th day of January, 1937, by said District Court in the above entitled cause.

(With Respect to the Motion to Dismiss)

1. The District Court erred in denying defendants' motion to dismiss the bill.

2. The District Court should have held, on defendants' motion to dismiss the bill, that the facts alleged in the bill, taken in connection with facts judicially known to the Court, failed to establish that the contested weight and width limitations of the South Carolina statute were unreasonable and did not bear a direct and substantial relation to the preservation of the highways and to the safety of other travelers making a normal use thereof, and should have held that they affected interstate commerce only incidentally, and should have dismissed the bill.

(With Respect to Findings of Fact)

3. The District Court erred in its finding of fact numbered 17, wherein it found, with reference to the 2417 miles of standard pavement roads in South Carolina, that "All such pavement is capable of sustaining without injury a wheel load of 8,000 to 9,000 pounds or an axle load of 16,000 to 18,000 pounds, depending upon whether the wheels are equipped with high pressure or low pressure pneumatic tires.", in that such finding is not justified by the evidence.

4. The District Court erred in its finding of fact numbered 18, wherein it found, with reference to the standard paved roads of South Carolina, that they "are capable of carrying the commerce which has been developed by modern truck transportation; that federal highways numbered

1, 15-A, 17, 21, 25, 29 and 52 comprise the great arteries of interstate commerce through the state of South Carolina, are of standard concrete paving as above described, with [fol. 109] the exception of a few short stretches, a few miles in length which are not of sufficient importance to justify the denial of the use of these arteries of commerce for the purpose for which they were constructed.'', in that (1) such finding is not justified by the evidence, and (2) there is no substantial or specific evidence to show that the weak sections of roads excepted in this finding are either few in number or only a few miles each in length.

5. The District Court erred in its finding of fact numbered 19, wherein it found, with reference to bridges on the highway system of South Carolina, ''that there are a few old bridges on the main arterial highways above mentioned and also on the other roads paved with standard concrete paving which were not designed for carrying trucks of greater weight than 20,000 pounds and a few which are too narrow to permit the use of trucks 96 inches in width, and as to these the provisions of the law cannot be deemed unreasonable; but that, as these bridges are few in number and it would be unreasonable to exclude interstate commerce from the entire highway system on their account, such of them as are considered by the State Highway Department to be unsafe for use by trucks of greater width than 90 inches or greater weight than 20,000 pounds should be so marked so as to afford ample warning that the use of the bridge is forbidden to trucks of that size and weight.'', in that (1) the evidence fails to establish that the old bridges, not designed for carrying trucks of greater weight than 20,000 pounds and too narrow to permit the use of trucks 96 inches in width, were few in number; and (2) the evidence does not justify the Court in assuming the prerogative of imposing conditions upon which the sovereign State may enforce an admittedly valid statute.

6. The District Court erred in its finding of fact numbered 20, wherein it found ''That the effect on the highways and bridges of the state of South Carolina of a tractor-[fol. 110] semi-trailer combination is not different from the effect produced by two vehicles of equal weight, one following the other; and that the provision requiring that the tractor-semi-trailer combination be considered as one unit

for the application of the weight limitation is unreasonable.", in that such finding is not justified by the evidence.

7. The District Court erred in its finding of fact numbered 21, wherein it found "That the rigid type highways of the state of South Carolina are typical of the design of the highways of that type in a great majority of the states in the United States today, and that they will permit axle loads of 16,000 to 18,000 pounds to be hauled thereon without damage to said highways. That they have been subjected to the traffic of heavy trucks with gross weights in excess of 20,000 pounds and other vehicles since 1930 and are now being subjected to such traffic and there is no evidence of deterioration thereof as a result of such traffic except in isolated instances due to unusual conditions.", in that (1) such finding is not justified by the evidence, and (2) there is no material or definite evidence in the record that such highways have been subjected to the traffic of heavy trucks with gross weights in excess of 20,000 pounds and other vehicles since 1930; and (3) there is a failure of evidence to prove that there was no substantial deterioration of such highways as the result of such excessively heavy traffic.

8. The District Court erred in its finding of fact numbered 22, wherein it found "That gross weight of vehicles is not a factor to be considered in the preservation of concrete highways, but wheel or axle weight; that vehicles engaged in interstate commerce are so designed and the pressure of their weight is so distributed by their wheels and axles that heavy gross loads can be carried over concrete roads without damage to the concrete surface; and that a gross weight limitation of 20,000 pounds is unreasonable as a means of preserving the highways.", in that [fol. 111] (1) such finding is not justified by the evidence, and (2) a gross weight limit is reasonable and easy of enforcement.

9. The District Court erred in its finding of fact numbered 23, wherein it found "That the gross load limitation has no reasonable relationship to the safety of the public using the highways; that the modern type vehicles engaged in interstate commerce are safer on the highways than the overloaded light trucks which would result from enforcement of the gross load limitations, because they make

possible a better distribution of weight and have better braking equipment.", in that (1) such finding is not justified by the evidence, and (2) the Court wrongfully assumes, as a premise of its finding, that light trucks will be overloaded in violation of the law.

10. The District Court erred in its finding of fact numbered 24, wherein it found "That the width limitation of 90 inches is unreasonable when applied to the standard concrete highways of the state and the arteries of interstate commerce heretofore mentioned, in view of the fact that all other states in the Union permit a width of 96 inches, this is the standard width of trucks engaged in interstate commerce, and the enforcement of the 90 inch limitation would exclude from the highways a large portion of the equipment now used in interstate commerce without material advantage to the safety or preservation of the highways.", in that the finding is not justified by the evidence.

11. The District Court erred in its finding of fact numbered 26, wherein it found that the weight and width limits imposed by the statute " * * * are unreasonable restrictions when applied to the highways heretofore mentioned which constitute the great arteries of interstate commerce of the state and the other standard concrete highways constituting a part of the state highway system; and that as applied to said highways they constitute an unreasonable restriction and burden on interstate commerce; * * *", in that such finding is not justified by the evidence.

[fol. 112] 12. The District Court erred in its finding of fact numbered 27, wherein it found "That the enforcement of the said provisions of the act against the plaintiffs while they are engaged in interstate commerce would in large measure destroy their interstate business, would subject them to ruinous penalties if they should attempt to carry on said business, and would otherwise inflict upon them great and irreparable injury", in that such finding is not justified by the evidence.

(With Respect to Findings of Fact in Opinion)

13. The District Court erred in finding as a fact in its Opinion (typed page 13), with reference to the effect of heavy traffic on the streets of towns and cities of the State,

that "There is no showing, however, that there has been substantial damage to any streets as a result of the heavy traffic which has been passing over them for the past five years, and no reasonable ground to apprehend such damage in the future", in that (1) such finding is not justified by the evidence, (2) there is no substantial or definite evidence negativing substantial damage to such streets, and (3) the Court shifts the burden of proof from plaintiffs to defendants.

14. The District Court erred in finding as a fact in its Opinion (typed page 21) "Here we have a connected system of standard highways of the finest character; and there is no reasonable relation between the limitations complained of and the preservation or safety of such highways. In the light of experience and of scientific knowledge, there is no ground for reasonable difference of opinion as to the gross load limitation of 20,000 pounds not being necessary for the protection of such roads themselves, and there is even less justification for the requirement that the tractor-semi-trailer combination be counted one unit for the purpose of computing gross load. So far as safety is concerned, the evidence shows clearly that there is less danger to traffic from the standard trucks of interstate com- [fol. 113] merce than from smaller trucks carrying a load for which they are not designed; and certainly there is not enough advantage in a 90 over a 96 inch width to justify the exclusion from an 18 or 20 foot highway of trucks of a width permitted by all other states of the Union", in that (1) such finding is not justified by the evidence, and (2) is contrary to the light of experience and scientific knowledge in such respect; and (3) the Court assumes that smaller trucks will be overloaded in violation of law.

(With Respect to Facts That Should Have Been Found)

15. The District Court should have found as a fact that the contested weight and width limitations of the South Carolina statute were reasonable and bore a direct and substantial relation to the preservation of the highways and to the safety of other travelers making a normal use thereof, and that they affected interstate commerce only incidentally.

16. The District Court should have found as a fact that there was a substantial and material difference of opinion

and judgment on the factual question whether the contested weight and width limitations of the South Carolina statute were reasonable and bore a direct and substantial relation to the preservation of the highways and the safety of other travelers making a normal use thereof, and affected interstate commerce only incidentally.

17. The District Court should have found as a fact that the contested weight and width limitations of the South Carolina statute were not an unreasonable burden on interstate commerce, and affected it only incidentally.

18. The District Court should have found as a fact that the highway system of South Carolina was constructed by the State, as its own property, with its own funds, excepting only those obtained from federal aid, and was intended, designed and constructed only for passenger automobiles and light traffic in trucks, and that the enormous increase in heavy truck traffic, which has since developed, and the use of the highways for substantial and heavy traffic in [fol. 114] heavy trucks, has and will materially damage them.

(With Respect to Conclusions of Law)

19. The District Court erred in its conclusion of law numbered 1, that the weight and width limitations of the South Carolina statute are an unreasonable burden on interstate commerce when applied to trucks operating on the designated and standard concrete highways of South Carolina, in that the evidence and facts judicially known show such limitations to be a valid exercise of the police power of the State as to such designated and standard concrete highways, and that they affect interstate commerce only incidentally.

20. The District Court erred in its conclusion of law numbered 5, to the effect that plaintiffs are entitled to injunctive relief restraining defendants from enforcing the weight and width limitations of the statute while plaintiffs are engaged in interstate commerce upon the designated highways and standard concrete highways of South Carolina, in that (1) the evidence and facts judicially known show such limitations to be a valid exercise of the police power of the State as to such designated and standard concrete highways, affecting interstate commerce only inci-

dentally, and (2) the Court should have limited the injunctive relief to trucks not exceeding the weight limits which the Court itself found to be reasonable and proper maximum weight limits.

21. The District Court should have concluded that the contested weight and width limitations of the South Carolina statute were a valid exercise of the police power of South Carolina and not an unreasonable burden on interstate commerce as to plaintiffs.

22. The District Court having concluded (conclusion of law numbered 4) that the weight and width limitations of the South Carolina statute are not violative of the due [fol. 115] process and equal protection clauses of the Fourteenth Amendment, erred in concluding (conclusion of law numbered 1) that the same limitations, in the same circumstances, are violative of the commerce clause of the Federal Constitution, in that the latter conclusion is repugnant to and inconsistent with the former.

23. In its consideration of the evidence and facts within judicial knowledge, the District Court throughout the case misapplied the rule that plaintiffs bore the burden of proving that the contested weight and width limitations of the South Carolina statute were unreasonable and arbitrary and had no direct or substantial relation to the preservation of the highways or the safety of others making a normal use thereof, and cast upon the defendants the burden of proving the negative of such propositions.

(With Respect to Decree)

24. The District Court erred in enjoining defendants (Decree, section 1) from enforcing against plaintiffs while engaged in interstate commerce on the highways of the State of South Carolina numbered 1, 15-A, 17, 21, 25, 29 and 52, or on such portions of other federal aid highways as may be of standard concrete or concrete and asphalt construction, the contested weight and width limitations of the South Carolina statute, in that they are a valid exercise of the police power of South Carolina, affecting interstate commerce only incidentally, and are not an unreasonable burden on such commerce.

25. The District Court erred in enjoining defendants (Decree, section 1) from enforcing against plaintiffs while

engaged in interstate commerce on the highways of the State of South Carolina numbered 1, 15-A, 17, 21, 25, 29 and 52, or on such portions of other federal aid highways as may be of standard concrete or concrete and asphalt construction, the contested weight and width limitations of the South Carolina statute, without limiting the protection of the injunction to trucks with a wheel load not exceeding [fol. 116] 8,000 to 9,000 pounds, or an axle load not exceeding 16,000 to 18,000 pounds, depending upon whether the wheels are equipped with high pressure or low pressure pneumatic tires, in accordance with its finding of fact numbered 17.

26. The District Court, having found as a fact in its Opinion (typed page 12), with reference to the development of modern transportation units, that "* * * with this modern equipment it is possible to move a heavily loaded truck over the highway with no greater injury to the modern standard pavement than would result from the movement over it of an ordinary passenger car.", erred in not limiting the protection of its injunction to modern equipment of such a character and having such non-injurious effect on the standard pavement.

27. The District Court erred in substituting its judgment as to the weight and width limits of trucks necessary to preserve and promote safety on highways numbered 1, 15-A, 17, 21, 25, 29 and 52, and on such portions of other federal aid highways as may be of standard concrete or concrete and asphalt construction, for the judgment of the Legislature of South Carolina in this respect, when the evidence showed a dispute among fairminded men as to necessary and proper weight and width limits, thereby usurping the prerogative of the State of South Carolina.

28. The District Court erred (Decree, section 2) in conditioning the right of the State of South Carolina to enforce its statute (admittedly valid) as to bridges too weak and too narrow, upon the erection of signs at such bridges, and the enforcement of the valid law with reference thereto, thereby usurping the prerogative of the sovereign State of South Carolina.

29. The District Court erred in its Decree (section 1) in that the effect of the injunction granted is that the sovereign State of South Carolina must classify the highways of the

State Highway System for the purpose of enforcing its valid police regulations, first, as between federal aid high-[fols. 117-127] ways and non-federal aid highways; second, as between specified highways extending as units across the State and other highways of the State Highway System; and, third, as between sections of highways paved with standard pavement and other sections of the same highways of different construction.

30. The District Court erred in not holding that the State of South Carolina built its highways with its own money, except for some funds received from federal aid, that it owns them and has the right to use them, and has the absolute right to fix the limits on weight and width of vehicles which may be operated thereon; and that the District Court was without authority to supplant the judgment of the General Assembly of South Carolina as to the proper weight and width limits of vehicles using such highways.

Prayer for Reversal

For which errors the defendants pray that the said decree of the District Court of the United States for the Eastern District of South Carolina, dated and filed January 20, 1937, be reversed, that the injunction granted against defendants be vacated, that the bill of complaint be dismissed, and for costs.

John M. Daniel, Attorney General; J. Ivey Humphrey, Assistant Attorney General; M. J. Hough, Assistant Attorney General; Eugene S. Blease and Steve C. Griffith, Solicitors for Original Defendants. Thomas W. Davis, Douglas McKay, M. G. McDonald and J. B. S. Lyles, Solicitors for Intervening Defendants.

February 4, 1937.

[fol. 128] IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of the Evidence and Proceedings Before the Court—Filed February 25, 1937

The specially constituted District Court, composed of Hon. John J. Parker, United States Circuit Judge, Hon. Elliott Northcott, United States Circuit Judge, and Hon.