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INTERSTATE COMMERCE - TAXATION OF MOTOR VEHICLES IN INTERSTATE TRANSPORTATION FOR SALE

INTERSTATE COMMERCE — TAXATION OF MOTOR VEHICLES IN INTERSTATE TRANSPORTATION FOR SALE — A New Mexico statute exacts a flat permit fee for the privilege of transporting motor vehicles, on their own wheels, over the highways of the state, for purpose of sale within or without the state. *Held*, this does not impose an unconstitutional burden on interstate commerce nor does it discriminate against a citizen of another state engaged in transporting automobiles on their own wheels, in processions or caravans, for sale outside of New Mexico. *Morf v. Bingaman*, (U. S. 1936) 56 S. Ct. 756.

A state may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge for the use of public highways within the

state.[1] Such taxes measured by ton-mile, by passenger-mile, by passenger-seat-mile, by height, by weight, by mileage, by horse power, by capacity, by seating capacity, and by passengers carried have been upheld,[2] as have been flat permit fees.[3] However, since such a tax is a direct burden on interstate commerce, it must affirmatively appear that the fee is levied only as compensation for highway use.[4] In the instant case the flat rate was not directly proportioned to the use, and part of the fees collected was not devoted directly to highway maintenance, but the Court held that the method of collection here, that is, collection at ports of entry, showed that the fee was for the privilege of using the highways. Appellant contended that the statute violated the Fourteenth Amendment, but since the statute applied to cars sold both within and without the state, there was clearly no discrimination on this basis. Since the stipulated facts in the instant case established that transportation of automobiles in caravans is a distinct class of business, and that cars coupled together are likely to skid, the determination that there is greater wear and tear on the roads by this class of traffic should be supported, especially since the Court should not substitute its own judgment for that of the legislature unless the statute is clearly unreasonable.[5] Also, for the purpose of taxation, it is enough that the classification is reasonably founded upon some permissible policy of taxation [6] as long as such classification is based on some real distinction to satisfy the constitutional guarantee of equality.[7] But is there discrimination by this statute between those who drive their cars to market *singly* and others who drive them for other purposes? True, the appellant, not being in the latter class, could not complain on this basis.[8] But if this question is presented, the Court certainly cannot justify such classification on the basis that a single car driven for sale wears the highways more than a car driven for any other purpose. The Court suggested that appellant's drivers were casually engaged, with little regard for safe driving, and so should be licensed for the protection of others. On this basis, the classifica-

[1] Interstate Transit v. Lindsey, 283 U. S. 183, 51 S. Ct. 380 (1931); Hendrick v. Maryland, 235 U. S. 610, 35 S. Ct. 140 (1914); Kane v. New Jersey, 242 U. S. 160, 37 S. Ct. 30 (1916); Clark v. Poor, 274 U. S. 554, 47 S. Ct. 702 (1927); Morris v. Duby, 274 U. S. 135, 47 S. Ct. 548 (1927).

[2] For citation of cases on these points, see notes 28 to 34 inclusive, 31 COL. L. REV. 1025 (1931).

[3] Aero Mayflower Transit Co. v. Georgia Public Service Comm., 295 U. S. 285, 55 S. Ct. 709 (1935); Clark v. Poor, 274 U. S. 554, 47 S. Ct. 702 (1927); American Transit Co. v. Philadelphia, (D. C. Pa. 1927) 18 F. (2d) 991.

[4] Sprout v. South Bend, 277 U. S. 163, 48 S. Ct. 502 (1928).

[5] Fletcher v. Peck, 6 Cranch (10 U. S.) 87, 3 L. Ed. 162 (1810); Adkins v. Children's Hospital, 261 U. S. 525, 43 S. Ct. 394 (1923).

[6] Watson v. State Comptroller, 254 U. S. 122, 41 S. Ct. 43 (1920); Pacific Express Co. v. Seibert, 142 U. S. 339, 12 S. Ct. 250 (1892); Clement Nat. Bank v. Vermont, 231 U. S. 120, 34 S. Ct. 31 (1913).

[7] American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 21 S. Ct. 43 (1900); Santa Clara County v. Southern Pac. R. R., (C. C. Cal. 1883) 18 F. 385.

[8] Roberts & Schaefer Co. v. Emmerson, 271 U. S. 50, 46 S. Ct. 375 (1926); People of New York ex rel. Hatch v. Reardon, 204 U. S. 152, 27 S. Ct. 188 (1907); Collins v. Texas, 223 U. S. 288, 32 S.Ct. 286 (1912); Dillingham v. McLaughlin, 264 U. S. 370, 44 S. Ct. 362 (1924).

tion of a single car for sale might be justified, except that it is impossible to say that *all* drivers of single cars for sale would be casually engaged.[9] On this point it seems that the statute would be discriminatory, but as far as the present decision goes, it is undoubtedly correct.

N. E.

[9] People v. Elerding, 254 Ill. 579 at 587, 98 N. E. 982 (1912): "It must be considered from its application to all employers and employees and not to any individual employer or employee."