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Constitutional Law--Commerce Clause--Supersedure of State Regulation by the Federal Motor Carrier Act

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CASE COMMENTS

CONSTITUTIONAL LAW—COMMERCE CLAUSE—SUPERSEDURE OF STATE REGULATION BY THE FEDERAL MOTOR CARRIER ACT.—Petitioner, manufacturer in Tennessee of asphalt roofing products, transported to Arkansas customers by contract carriers, sought to enjoin in an Arkansas court the application to the carriers of an Arkansas act requiring the obtaining of a permit by any "contract carrier by motor vehicle" in Arkansas. Ark. Acts 1941, No. 367, §§ 5, 11. The Arkansas court reversed a decree granting an injunction, see *Fry Roofing Co. v. Wood,* 219 Ark. 553, 244 S.W.2d 147 (1952), ruling in favor of the state public service commission on the question whether it might insist on the procurement of a local permit as to carriers situated as were petitioner's haulers and operating without any permit from the Interstate Commerce Commission, and rejecting petitioner's contention that the state requirement was within an area of regulation occupied and preempted by the federal Motor Carrier Act. 49 STAT. 543 (1935), 49 U.S.C. § 301 *et seq.* (1946). On certiorari, *held,* affirmed. The Arkansas public service commission could validly enforce the permit requirement, "in the absence of any attempt to attach any burdensome conditions to the grant of such a permit." *Fry Roofing Co. v. Wood,* 73 Sup. Ct. 204 (1952) (5-4 decision).

Mr. Justice Douglas, dissenting, appears to accede to petitioner's claim that the state act was *ipso facto* invalid in requiring

a "Certificate of Necessity and Convenience", as trenching on a matter where uniformity is required, citing *Buck v. Kuykendall,* 267 U.S. 307 (1925). *Bradley v. Public Utilities Comm'n of Ohio,* 289 U.S. 92 (1933), in which denial of such a certificate on the ground of traffic congestion was sustained, is opposed to any such blanket proposition; and the state public service commission disclaimed discretion to withhold a permit to the carriers in question on any ground relating to the supply of transportation services such as *Buck v. Kuykendall, supra,* involved. The more difficult problem remaining is that of supersedure, of discovering the effect of the Motor Carrier Act upon the state regulation. The federal act gives the I.C.C. complete authority over contract carriers, making it mandatory, *inter alia,* for them to obtain a permit from the I.C.C. Mr. Justice Douglas concludes that "Congress has preempted the field, precluding both inconsistent and overlapping state regulations."

State courts have interpreted the Motor Carrier Act is not entirely preempting the field, recognizing that the I.C.C. was given exclusive jurisdiction to classify carriers, to consider their applications for permits, to regulate the same, etc.; but holding that this delegation of authority to it did not supersede state statutes requiring the procurement of a certificate of registration as a part of the police regulations for the promotion of public safety, and that state and federal law could be cooperatively applied in the absence of conflict. *State v. Florida R.R. Comm'n,* 123 Fla. 345, 166 So. 841 (1936); *Lowe v. Stoutamire,* 123 Fla. 135, 166 So. 310 (1936); *Southwestern Greyhound Lines v. R.R. Comm'n of Texas,* 128 Tex. 560, 99 S.W.2d 263, 109 A.L.R. 1235 (1936). *Cf. L. & L. Freight Lines v. Douglas,* 124 Fla. 696, 169 So. 370 (1936). The Motor Carrier Act did not supersede a statute requiring the state commissioner to consider traffic conditions in reviewing an application for a permit by an interstate carrier. Ex parte *Truelock,* 139 Tex. Cr. R. 365, 140 S.W.2d 167 (1940); *Railroad Comm'n v. Loving,* 128 S.W.2d 845 (Tex. Civ. App. 1939). *Contra: Dunlap v. Dixie Greyhound Lines,* 178 Tenn. 532, 160 S.W.2d 413 (1942).

The United States Supreme Court Court, too, refused to apply the Act as an entire ouster of the states from control over the affected carriers. *Maurer v. Hamilton,* 309 U.S. 598 (1940), construed § 225 of the federal act which empowered the I.C.C. to "Investigate and report on the need for Federal regulation" as to

size-weight limitations on motor vehicles, in the light of the statutory context and history, as reserving to the states the authority to regulate the "sizes and weight" of motor vehicles and sustained a Pennsylvania statute prohibiting the carrying of one vehicle over the cab of another, in its application to an interstate common carrier. A New Hampshire statute prescribing maximum hours of service of employees of contract carriers on the state highways was held valid and not superseded by the Motor Carrier Act prior to the effective date of an I.C.C. regulation, even though the Act expressly authorized the I.C.C. to "establish . . . maximum hours of service and employment." *H. P. Welch Co. v. New Hampshire,* 306 U.S. 79 (1939). The state held its statutory requirements unenforceable after the effective date of the I.C.C. regulation. *H. P. Welch Co. v. New Hampshire,* 91 N.H. 328, 18 A.2d 836 (1941).

Neither the majority nor the dissent evidences a disposition to recede from the holdings in either *H. P. Welch Co. v. New Hampshire, supra,* or *Maurer v. Hamilton, supra;* the disagreement is as to the interpretation of *Columbia Terminals Co. v. Lambert,* 309 U.S. 620 (1940), analogous to the present case, in that it also involved the enforceability of a state permit requirement as to interstate carriers, where the Court dismissed the petitioner's complaint, agreeing with the lower court's constitutional holding, see *Columbia Terminals Co. v. Lambert,* 30 F. Supp. 28 (E.D. Mo. 1939), that the Missouri statute was valid and not superseded where the I.C.C. had not undertaken the regulation of the carriers in question. Mr. Justice Black in his majority opinion placed primary reliance on the above case to support the proposition that "a state can regulate so long as no undue burden is imposed on interstate commerce, and that a mere requirement for a permit is not such a burden." Mr. Justice Douglas regarded the case as inapplicable because the I.C.C. had ruled the particular operations therein were not covered by the Motor Carrier Act. However, the Supreme Court dismissed the case on the merits, and the majority's interpretation seems to be correct; for, if the dissent's position had been followed, it would have been more appropriately dismissed for lack of jurisdiction.

Moreover, the choice of supporting cases for citation in the memorandum opinion of *Columbia Terminals Co. v. Lambert, supra,* is suggestive. *Eichholz v. Public Service Comm'n,* 306 U.S. 268 (1939), is indeed reconcilable with the position that the critical

problem is whether or not the carrier has an I.C.C. permit, for state authority to revoke a local permit to do interstate commerce was there not to be superseded as to a carrier whose application for a permit was pending before the I.C.C., the carrier having carried on intrastate commerce evasively without the necessary local permit. *H. P. Welch Co. v. New Hampshire, supra,* however, involved a carrier clearly within the coverage of the Motor Carrier Act. Citation of the two cases in conjunction, in deciding *Columbia Terminals Co. v. Lambert, supra,* indicates a Supreme Court understanding in line with the interpretation Mr. Justice Black attributes to that case.

In view of the result reached in *Columbia Terminals Co. v. Lambert, supra,* and of the previous holdings cited, the majority view appears correct and consistent with prior authority; for the permit requirement was no more than a device for the orderly administration of the state's highways. However, the I.C.C. has now issued regulations dealing with the lessor-driver relation, which have been approved, see *American Trucking Ass'ns v. United States,* 73 Sup. Ct. 307 (1953); so there still may be uncertainty as to the precise limits of the state's regulatory powers over contract carriers within the ambit of the regulated relationship.

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CONTRACTS—INSURANCE—INTERPRETATION OF WORD "WAR".—*P*'s deceased husband was insured by *D* under an insurance contract which included a provision for double idemnity if death resulted solely from accidental means. This clause further provided, however, that the company should not be liable for the additional death benefit if death resulted by reason of "military, air or naval service in time of war" and that this provision for double indemnity would immediately *terminate* if the insured should at any time, "voluntarily or involuntarily, engage in military, air or naval service in time of war." The insured, called to service, was killed accidentally while enroute to camp for training some three months after commencement of the Korean action. *D* attempted to invoke the termination clause. *Held,* that the word "war" is ambiguous in that it does not distinguish between declared and undeclared war and the policy will be construed most strongly against the insurer. Therefore, the termination clause was inoperative. *Harding v.*