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Constitutional Law--Financial Responsibility Statute--Right of State to Revoke Automobile Operator's License

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wealthy may avoid having their deaths bring about the enrichment of several coffers will be to confine their activities to one state.

H. A. W., JR.

CONSTITUTIONAL LAW — FINANCIAL RESPONSIBILITY STATUTE — RIGHT OF STATE TO REVOKE AUTOMOBILE OPERATOR'S LICENSE FOR NONPAYMENT OF JUDGMENT RENDERED IN ANOTHER STATE. — A judgment for damages was taken against the plaintiff in New York resulting from his operation of an automobile in that state. Under the West Virginia financial responsibility statute¹ the plaintiff's license to operate a motor vehicle in West Virginia was suspended by the State Road Commissioner for his failure for thirty days to satisfy this judgment. The plaintiff sued to have the order of suspension set aside, claiming that the statute was fathered by insurance companies, is discriminatory, denies the plaintiff due process of law, and is accordingly unconstitutional. *Held*, that the statute is a valid exercise of the state police power and is therefore constitutional. *Nulter v. State Road Commission of West Virginia*.²

One judge dissented on the theory that the statute constituted an unreasonable extension of a state's police power beyond its territorial limits.³ However, in basing the suspension of the license on a liability incurred in New York, West Virginia did not extend the police power of the former into this state,⁴ but merely determined by a reasonable exercise of its own police power that, because of the plaintiff's conduct and financial irresponsibility as illustrated by the unsatisfied New York judgment, he was unqualified to operate a motor vehicle in West Virginia.⁵

¹ W. Va. Acts 1935, c. 61, § 3: "In the event of the failure of any person, within thirty days thereafter, to satisfy any judgment, which shall have become final . . . in this state or in any other state or the District of Columbia, or in any district court of the United States, or by a court of competent jurisdiction in . . . the Dominion of Canada, for damages . . . in excess of fifty dollars, resulting from the ownership, maintenance, use or operation hereafter of a motor vehicle, the learner's permit, operator's and/or chauffeur's license, every certificate of registration and the registration plates of such person shall be forthwith suspended by the commissioner . . ."

² 193 S. E. 549 (W. Va. 1937).

³ *Nulter v. State Road Comm.*, dissenting opinion, 194 S. E. 270 (W. Va. 1937).

⁴ The theory of the dissent seems to be that this was an extension of New York police power into West Virginia. On the same principle it may be argued that West Virginia police power was extended into New York.

⁵ *Re Probasco*, 269 Mich. 453, 257 N. W. 861 (1934). Revocation of an operator's license for a conviction for drunken driving was not a penalty or punishment, but the conviction showed the unfitness of the offender to operate an automobile on the public highways.

There have been numerous recent cases declaring valid *financial responsibility* statutes similar to the one in question except that they do not expressly include judgments from other states. The California case cited in the opinion⁶ states that the operation of motor vehicles is not a natural and unrestrained right, but a privilege subject to reasonable regulation under the police power in the interest of public safety and welfare.⁷ The New Jersey court holds that the financial responsibility law imposes a penalty for negligent driving, and the resulting penalty for failure to pay a judgment is merely incidental.⁸ A Pennsylvania decision makes the flat statement that the enforcement of these regulations by revocation or suspension of the privilege of operating an automobile is not the taking of property without due process of law,⁹ and this holding is adhered to in other jurisdictions.¹⁰

The general rule appears to be that a license to operate an automobile is a bare privilege.¹¹ There is, however, a Virginia decision which argues to the contrary.¹² There the court stated that the use of the public highways, including the operation of an automobile thereon, is a common right which one has under his right to life, liberty, and property, and it is not a mere privilege. Regarding the theory of plenary regulation of automobile operation the court said that this doctrine has been pronounced most often in cases involving licenses or permits to sell intoxicating liquors, or to do other things which because of their character are, or tend to be injurious, but that it has no application to permits issued for the purpose of regulating the use of private automobiles in the usual and ordinary way.¹³

In a recent decision the Idaho supreme court considered the

⁶ *Watson v. State Division of Motor Vehicles*, 212 Cal. 279, 298 Pac. 481 (1931).

⁷ See also *Sheehan v. Division of Motor Vehicles*, 140 Cal. App. 200, 35 P. (2d) 359 (1934).

⁸ *Garford Trucking, Inc. v. Hoffman*, 114 N. J. L. 522, 177 Atl. 882 (1935).

⁹ *Commonwealth v. Funk*, 323 Pa. 390, 186 Atl. 65 (1936).

¹⁰ *State v. Price*, 63 P. (2d) 653, 108 A. L. R. 1156 (Ariz. 1937); *Munz v. Harnett*, 6 F. Supp. 158 (S. D. N. Y. 1933); *In re Opinion of the Justices*, 251 Mass. 617, 147 N. E. 680 (1925); *La Plante v. State Board of Public Roads*, 47 R. I. 258, 131 Atl. 641 (1926); *People v. Cohen*, 128 Misc. 29, 217 N. Y. S. 726 (1926); Note (1937) 108 A. L. R. 1162, 1165.

¹¹ 42 C. J. 659, Motor Vehicles § 75; 42 C. J. 722, Motor Vehicles § 182.

¹² *Thompson v. Smith*, 155 Va. 367, 154 S. E. 579 (1930), 71 A. L. R. 604 (1931).

¹³ Revocation of the operator's license in this case was invalidated finally, not as a denial of property without due process, but on a wrongful delegation of power basis. *Thompson v. Smith* has not been followed as to the proposi-

constitutionality of a statute which authorized the suspension of an operator's license if the operator had been involved in an accident resulting in death, injury, or serious property damage.¹⁴ This statute was held unconstitutional as authorizing a taking of property without due process of law, two justices dissenting on the ground that the operation of an automobile was not a right but a privilege.¹⁵

There is no decision of the United States Supreme Court in regard to the constitutionality of these *financial responsibility* statutes; nor has that court expressly declared itself upon the question of whether the operation of a motor vehicle is merely a privilege or a liberty or property right, though certain cases are sometimes cited for that proposition.¹⁶

It therefore seems probable that in a case where the exercise by a state of its police power is deemed unreasonable in its highway regulations, the license to operate a motor vehicle may be given the protection of the due process clause of the Federal Constitution.

J. H. H.

CONSTITUTIONAL LAW — STATE'S RIGHT TO CRIMINAL APPEAL.

—Palko was tried for first degree murder, and found guilty of second degree murder. Thereafter the state of Connecticut appealed, with the permission of the trial judge under a state statute¹ and the case was reversed. On the second trial the defendant Palko was found guilty of first degree murder and sentenced to death.² He objected to the second trial on the ground that it placed him twice in jeopardy for the same offense, thus violating the Fourteenth Amendment of the Constitution of the United States, and appealed to the Supreme Court on the same ground. *Held*, that the execution of the sentence would not deprive Palko of life with-

tion that the operation of an automobile is a right, and it has been cited for that proposition only in the dissent in *Re Probasco*, 269 Mich. 453, 257 N. W. 861 (1934).

¹⁴ *State v. Kouni*, 76 P. (2d) 917 (Idaho 1938).

¹⁵ *Chicago v. Banker*, 112 Ill. App. 94 (1904).

¹⁶ *Hess v. Pavloski*, 274 U. S. 352, 47 S. Ct. 632, 71 L. Ed. 1091 (1927); *Hendrick v. Maryland*, 235 U. S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915); *Doyle v. Insurance Co.*, 94 U. S. 535, 24 L. Ed. 148 (1876).

¹ CONN. GEN. STAT. (1930) § 6494. See also *Snyder v. Massachusetts*, 297 U. S. 97, 54 S. Ct. 330, 78 L. Ed. 674, 90 A. L. R. 575 (1936), on the state's right to regulate criminal procedure.

² *State v. Palko*, 121 Conn. 660, 186 Atl. 657 (1936); *Palko v. State*, 122 Conn. 529, 191 Atl. 320 (1937).