

NEW JERSEY
Court of Errors and Appeals.

Supplemental Case.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,	}	On Certiorari.
<i>Defendant,</i>		
<i>vs.</i>		
HARRY UNWIN,		
<i>Prosecutor.</i>		

WRIT OF CERTIORARI.

(Returnable February Term, 1906.)

(Filed February 16, 1906.)

NEW JERSEY, ss.—The State of New Jersey to John A. 10
Blair, Judge of our Inferior Court of Com-
[L. s.] mon Pleas in and for the county of Hudson,
Greeting;

We being willing, for certain reasons, to be certified
of a certain judgment by you lately made and rendered,
on an appeal brought to our said Court of Common
Pleas in and for the said county of Hudson, by one

2 COURT OF ERRORS AND APPEALS.

Harry Unwin, from a conviction had before Frank J. Higgins, Esquire, Judge of the First Criminal Court of Jersey City, Hudson county aforesaid, upon a complaint that said Harry Unwin had violated certain provisions of an act of the Legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An act defining motor vehicles and providing for the registration of the same and uniform rules regulating the use and speed thereof, approved March twenty-third, nineteen hundred
10 and three,' approved May twenty-sixth, nineteen hundred and five" (*P. L. 1905, p. 484*), do hereby command you that you send, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on or before the twentieth day of February, instant, as well the said judgment aforesaid as the judgment, orders and proceedings made and given by the said Frank J. Higgins, Esquire, with all things touching and concerning the same, as fully and entirely as they remain in our said Court of Common Pleas, by whatsoever names the
20 parties may be called therein, together with this, our writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our said Supreme Court, at Trenton, this fourteenth day of February, nineteen hundred and six.

WM. RIKER, JR.,

Clerk.

FRANK H. HALL,

Attorney of Prosecutor.

30 Allowed February 16th, 1906.

JONATHAN DIXON,

Justice Supreme Court.

I hereby consent to the allowance of the within writ without recognizance.

February 14th, 1906.

EDWARD D. DUFFIELD,

Asst. Atty.-Gen'l of State of New Jersey.

RETURN.

*To the Honorable the Justices of the Supreme Court of
Judicature of the State of New Jersey:*

In obedience to the command of this writ to me directed, I, John A. Blair, Judge of the Inferior Court of Common Pleas, of the county of Hudson within named, do send, under my seal, to you, the Honorable Justices of the Supreme Court of Judicature of New Jersey, the judgment lately made and rendered in our said Court of Common Pleas on an appeal of one Harry Unwin from a conviction had before Frank J. Higgins, Esquire, Judge of the First Criminal Court of Jersey City, upon a complaint that said Harry Unwin had violated certain provisions of an act entitled "A supplement to an act entitled 'An act defining motor vehicles and providing for the registration of the same and uniform rules regulating the use and speed thereof, approved March twenty-third, one thousand nine hundred and three,' approved May twenty-sixth, one thousand nine hundred and five," as set forth in the complaint made before said Judge, as the said complaint, judgment and all orders and proceedings made and given in said cause by the said Frank J. Higgins, Esquire, Judge of the First Criminal Court of Jersey City, in said county of Hudson, together with all things touching and concerning the same, as fully and entirely as they remain before me, as appears in the schedule hereto annexed, as I am commanded.

In witness whereof I have hereunto set my hand and seal this sixteenth day of February, nineteen hundred and six.

JOHN A. BLAIR, *Judge.* [L. S.]

4 COURT OF ERRORS AND APPEALS.

FIRST CRIMINAL COURT OF JERSEY CITY.

STATE OF NEW JERSEY,	}	Record.
<i>Plaintiff,</i>		
<i>against</i>		
HARRY UNWIN,		
<i>Defendant.</i>		

The plaintiff was charged with violating the automobile law of the State of New Jersey, as set forth in the following complaint:

- 10 "Thomas Hawkins, a patrolman of Jersey City Police Department, Jersey City, being duly sworn, complains that on the sixth day of June, A. D., 1905, at Jersey City aforesaid, Harry Unwin did operate, drive and caused to be propelled a certain automobile of which he was the owner in and along Exchange Place, a public highway of said city, without having previously filed in the office of the Secretary of State a duly verified declaration, setting forth that he was competent to drive said automobile, and a written statement containing his
- 20 name, address, a description of the character of said automobile, the name of the maker, the manufacturer's number and the horsepower thereof, and without having previously paid to said Secretary of State the registration fee of \$1.00 as required by the provisions of an act of the Legislature of the State of New Jersey entitled 'A supplement to an act entitled "An act defining motor vehicles and providing for the registration of the same and uniform rules, regulating the use and speed thereof, approved May 23, 1903."' Approved
- 30 May 26, 1905.

"That in further violation of said act, when your deponent requested it, said Unwin did not state to your deponent the number under which said automobile was registered, under said act; but thereupon said Unwin

informed deponent that said automobile was not registered as is required by the aforesaid act.

"Wherefore, this complainant prays that the said offender may be dealt with according to law.

"Subscribed and sworn to before me this 6th day of June, 1905.

"THOMAS X. HAWKINS.

"FRANK J. HIGGINS,

"Judge I Criminal Ct. of Jersey City."

The defendant was represented by his attorney, 10 Charles Thaddeus Terry, Esq., of 167 Broadway, New York City, N. Y.

Mr. Terry moved to dismiss the complaint upon the following grounds:

The statute under which the defendant was arrested is unconstitutional and void for the following reasons:

A. It is legislation against a class, singling out automobilists as victims and imposing unwarranted burdens upon them not imposed upon other users of the highways. 20

B. The statute imposes an unwarranted double tax on automobiles of residents and non-residents.

C. The defendant's automobile was properly registered under the New York law.

D. The statute is an unwarranted exercise of the police power of the legislature. Any legislation to be justified by the police power must be reasonable and must be exercised for the benefit of all classes of the public. This statute is both unreasonable and unnecessary and discriminates between different users of the highways and also between different automobilists, *i. e.* 30 between different individuals of the same class.

The motion to dismiss the complaint was denied and an exception taken.

The trial proceeded and the defendant testified as follows:

6 COURT OF ERRORS AND APPEALS.

"I am not a resident of New Jersey, but reside at 521 West 111th street, Manhattan, New York City. At the time of my arrest I was only temporarily in the State of New Jersey, using its highways merely for the purpose of passing through the State. The car which I was operating belongs to me, and has been properly registered in compliance with Section 2 of the New York Motor Vehicle act, known as Chapter 538 of the Laws of 1904 of the State of New York,
10 which section reads in part as follows:

Section 2, subdivision 1—*Filing Statement*:

" 'Every person hereinafter acquiring a motor vehicle shall, for every vehicle owned by him, file in the office of the Secretary of State, a statement of his name and address, with a brief description of the vehicle to be registered, including the name of the maker, factory number, style of vehicle and motor power, on a blank to be prepared and furnished by the Secretary of State for that purpose; the filing fee shall be \$2.'

20 " 'Subdivision 2—*Registration and Record*:

" 'The Secretary of State shall thereupon file such statement in his office, register such motor vehicle in a book or index to be kept for that purpose and assign it a distinctive number.'

" 'Subdivision 3—*Registration Seal*:

30 " 'The Secretary of State shall forthwith, on such registration and without further fee, issue and deliver to the owner of such motor vehicle a seal of aluminum, or other suitable metal, which shall be circular in form, approximately two inches in diameter and have stamped thereon the words "Registered Motor Vehicle No. —, New York Vehicle Law," with the registration number inserted therein, which seal shall thereafter, at all times, be conspicuously displayed on the motor vehicle to which such number has been assigned.'

" 'Subdivision 5—*Display of Registration Number*:

" 'Every motor vehicle shall also, at all times, have the number assigned to it by the Secretary of State

displayed on the back of such vehicle in such manner as to be plainly visible; the numbers to be Arabic numerals, black on white ground, each not less than three inches in height and each stroke to be of a width not less than one-half an inch, and also as a part of such number the initial letters of the State in black on white ground, such letters to be not less than one inch in height.'

"Subdivision 8—*Unregistered Vehicle not to be Operated:*

"No motor vehicle shall be used or operated upon 10 the public highways after thirty days after this act takes effect, unless the owner shall have complied in all respects with this section, except that any person purchasing a motor vehicle from a manufacturer, dealer or other person after this act goes into effect shall be allowed to operate such motor vehicle upon the public highways for a period of five days after the purchase and delivery thereof, provided that during such period such motor vehicle shall bear the registration number and seal of the previous owner under which it was operated, or might have been operated.'

20

"Subdivision 9.

"The provisions of this section shall not apply to motor vehicles owned by non-residents of this State, provided the owners thereof have complied with any law requiring the registration of owners of motor vehicles in force in the State, territory or federal district of their residence, and the registration number showing the initial of such State, territory or federal district shall be displayed on such vehicle substantially as in this section provided.'

30

"I have complied in all respects with the aforesaid New York statute and the number which the Secretary of said State assigned to my vehicle, and which number was at the time of my arrest properly displayed on my vehicle is No. '15229 N. Y.'

"My machine was not registered in the office of the Secretary of State of New Jersey. I have filed no cer-

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tificate with him and had no New Jersey registration number attached to my machine."

The motion to dismiss the complaint was thereupon renewed and denied, and an exception taken. The defendant was found guilty and fined \$10.

FRANK J. HIGGINS,

Judge.

FIRST CRIMINAL COURT OF JERSEY CITY.

10 PEOPLE OF THE STATE OF NEW JERSEY,
Plaintiff,
against
HARRY UNWIN,
Defendant. } Notice of Appeal.

(Filed June 19, 1905.)

Please take notice that I have appealed to the Court of Common Pleas of Hudson county from a judgment rendered in this cause on the sixth day of June, 1905, in favor of the State of New Jersey and against me.

HARRY UNWIN,

Defendant.

20

By CHARLES THADDEUS TERRY,
Attorney for Defendant.

*Office and Post Office Address, 167 Broadway,
Manhattan, N. Y. City.*

To FRANK J. HIGGINS,

Judge of First Criminal Court of Jersey City.

FIRST CRIMINAL COURT OF JERSEY CITY.

30 THE STATE,
Plaintiff,
against
HARRY UNWIN,
Defendant. } Undertaking on Appeal.

(Filed June 19, 1905.)

WHEREAS judgment was rendered in the above-entitled cause on the sixth day of June, nineteen hundred

and five, by Hon. Frank J. Higgins against Harry Unwin, imposing a fine of \$10;

AND WHEREAS said Harry Unwin has appealed from said judgment to the Court of Common Pleas for the county of Hudson,

Now, therefore, We, Harry Unwin, of 521 West 111th street, N. Y. City, N. Y., and Frank H. Hall, of 115 Bentley avenue, Jersey City, N. J., do acknowledge ourselves to be indebted to Edward E. Hewitt, Overseer of the Poor of Jersey City, N. J., in the sum of \$20, to 10 be levied on our goods, chattels, lands and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that if the above-named Harry Unwin shall personally appear before the Court of Common Pleas of the county of Hudson on the first day of the term thereof next to be held in and for said county to answer the complaint in said cause against him, and shall prosecute said appeal and stand to and abide the judgment of the Court and not depart the Court without leave, then this recog- 20 nizance to be void, otherwise to be and remain in full force and virtue.

Witness my hand and seal the nineteenth day of June, nineteen hundred and five.

HARRY UNWIN, [L. S.]

FRANK H. HALL. [L. S.]

Taken and acknowledged before me, and the surety approved by me this nineteenth day of June, nineteen hundred and five.

FRANK J. HIGGINS,

Judge of the First Criminal Court of Jersey City.

HUDSON COUNTY COMMON PLEAS.

On appeal from First Criminal Court of Jersey City.

THE STATE,	}	Order for Judgment.
vs.		
HARRY UNWIN,		
Defendant.		

The defendant herein having been heretofore, on the sixth day of June, nineteen hundred and five, found guilty of violating the provisions of an act of the Legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An act defining motor vehicles and providing for the registration of the same and uniform rules regulating the use and speed thereof,' approved March twenty-third, one thousand nine hundred and three," approved May twenty-sixth, one thousand nine hundred and five (*P. L. 1905, page 484*), in that he did operate, drive and cause to be propelled a certain automobile, of which he was the owner, in and along Exchange Place, a public highway in the city of Jersey City, in this State, without having previously filed in the office of the Secretary of State, a duly verified declaration setting forth that he was competent to drive said automobile, and a written statement containing his name, address, a description of the character of said automobile, the name of the maker, the manufacturer's number, and the rated horse-power thereof, and without having previously paid to said Secretary of State the registration fee as required by the act aforesaid, upon a complaint duly made by one Thomas Hawkins, a police officer of said city, by Frank J. Higgins, Esquire, Judge of the First Criminal Court of Jersey City, in said county, by whom said defendant was sentenced to pay a fine of ten dollars.

And said defendant having taken an appeal to this Court as provided in said act, and the said appeal com-

ing on to be heard in the presence of Frank H. Hall, Esquire, and Charles Thaddeus Terry, Esquire, attorneys for the said defendant, and of Edward D. Duffield, Esquire, attorney for the State of New Jersey, and both parties having waived a trial by jury, and I, having read the complaint and proceeding had before the Judge of said First Criminal Court of Jersey City, and having heard the parties, do hereby affirm the judgment of the said Judge, and find the said defendant guilty of violating the said statute as charged in said complaint and re- 10
sentence him to pay the said fine of ten dollars forthwith.

Dated February 13th, 1906.

JOHN A. BLAIR, *Judge*.

NEW JERSEY SUPREME COURT.

HARRY UNWIN,
Prosecutor,

vs.

JOHN A. BLAIR, JUDGE OF THE IN-
FERIOR COURT OF COMMON PLEAS
IN THE COUNTY OF HUDSON.

} On Certiorari.

20

REASONS.

(*Filed February 24, 1906.*)

Harry Unwin, the said prosecutor, comes and prays that the judgment of the Inferior Court of Common Pleas in and for the county of Hudson, rendered against him on an appeal from a conviction had before Frank J. Higgins, Esquire, Judge of the First Criminal Court of Jersey City, in said county upon complaint that he, said Harry Unwin, had violated certain provisions of an act of the Legislature of the State of New Jersey, en- 30
titled "A supplement to an act entitled 'An act defin-

ing motor vehicles and providing for the registration of the same and uniform rules regulating the use and speed thereof, approved March twenty-third, one thousand nine hundred and three," approved May twenty-sixth, one thousand nine hundred and five (*P. L. 1905, page 484, &c.*), in the manner set forth in said complaint, may be reversed and set aside for the following reasons:

1. The said act of the Legislature, the provisions of
10 which are claimed to have been violated by the prosecutor, is unconstitutional in that the same is in contravention of the provisions of Article IV, section 2, of the Constitution of the United States of America.
2. The said act is unconstitutional in that the provisions thereof are in contravention of the provisions of section 1 of the 14th Amendment to the Constitution of the United States of America.
3. The said act is unconstitutional in that the provisions thereof are in contravention of the provisions of
20 the Constitution of the State of New Jersey.
4. The proceedings had before the said police magistrate and the Inferior Court of Common Pleas are in various respects erroneous and irregular.

FRANK H. HALL,

Atty. of Prosecutor.

CHARLES T. TERRY,

Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,	}	On Certiorari.
<i>Defendant in Error,</i>		
<i>vs.</i>		
HARRY UNWIN,		
<i>Plaintiff in Error.</i>		

ASSIGNMENT OF ERRORS.

(Filed October 26, 1906.)

Afterwards, to wit, on the 23rd day of August, 1906, in the Court of Errors and Appeals, in the last resort 10
in all causes of the State of New Jersey, comes the said Harry Unwin, by Frank H. Hall, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained therein, and also in giving the judgment aforesaid there is manifest error in this, to wit: that by the record aforesaid it appears that the judgment in the form aforesaid was given for the said State of New Jersey against the said Harry Unwin, whereas by the law of the land judgment ought to have been given for the said Harry Unwin. 20

There is also error in this, to wit: that by the judgment aforesaid of the Supreme Court the judgment of the Court of Common Pleas of Hudson County, New Jersey, brought up before the Supreme Court by the writ of certiorari issued in this cause was affirmed, whereas by the law of the land said judgment should have been set aside.

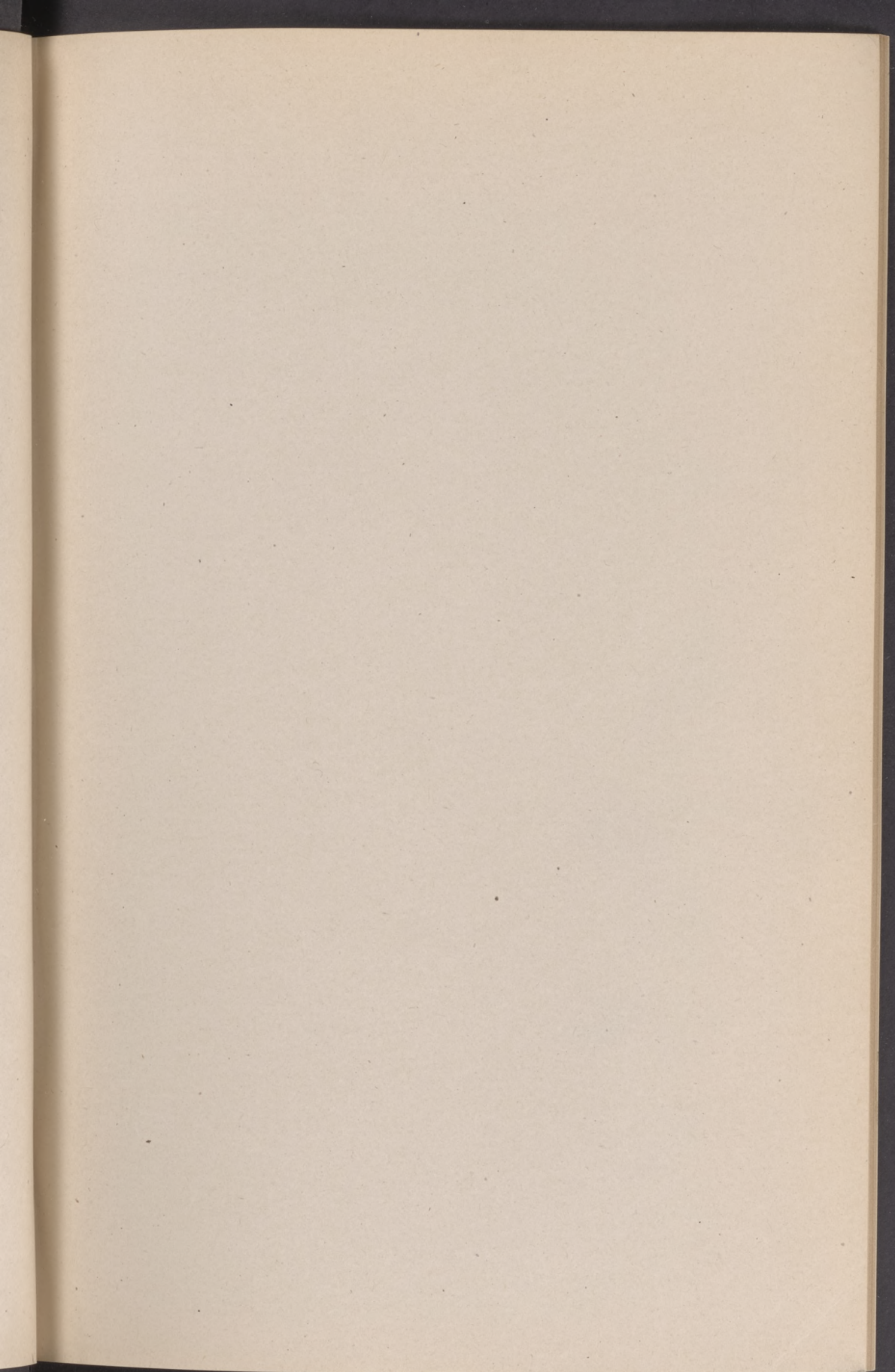
There is also error in this, to wit: that the said Supreme Court, by its judgment aforesaid, dismissed the said writ of certiorari, whereas the same should 30
have been sustained; and the said Harry Unwin prays that the judgment aforesaid may be reversed, annulled

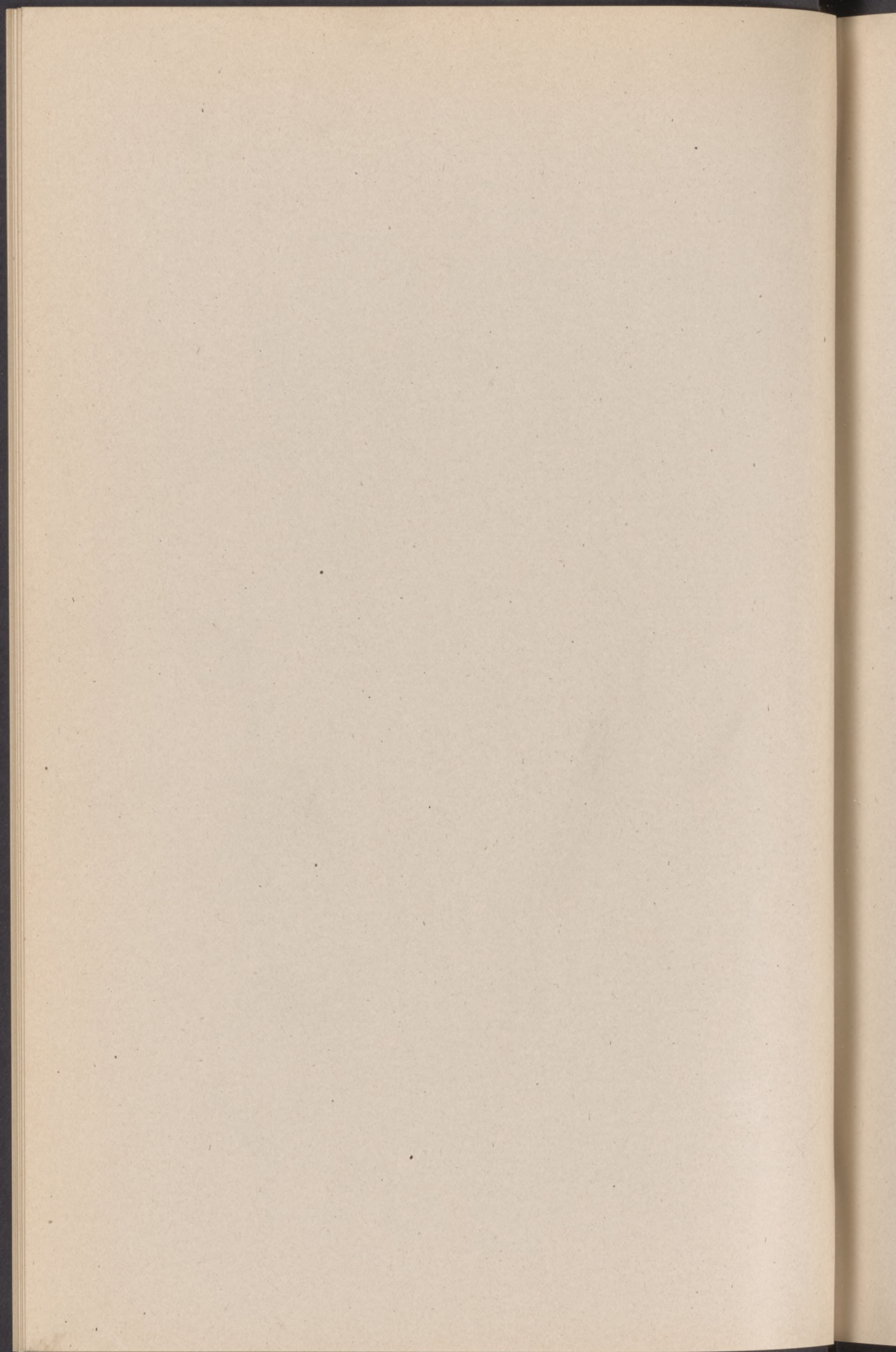
and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

FRANK H. HALL,
*Attorney for and
of Counsel with the
Defendant in Error.*

Service of a copy of the within assignments of error is hereby acknowledged this Sept. 21st, 1906, and con-
10 sent that the same be filed as if in time.

EDWARD D. DUFFIELD,
Atty. for Deft. in Error.





New Jersey Supreme Court.

STATE OF NEW JERSEY, Defendant in Certiorari and Appellee, vs. HARRY UNWIN, Prosecutor in Certiorari and Appellant.	} On Error.
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Brief on Behalf of the State.

The sole question involved in this case is the constitutionality of Chapter 250 of the Public Laws of 1905, commonly known as the "Scovel Automobile Act."

The prosecutor, Unwin, was convicted before the First Criminal Court of Jersey City of violating the provisions of said act. The specific charge being that he had driven an automobile on a public highway in Jersey City without having previously filed in the office of the Secretary of State a duly-verified declaration setting forth that he was competent to drive said automobile, and a written statement containing his name, address and other items required by said act, and without having previously paid to the Secretary of State the registry fee of one dollar, required thereby. Further, that when requested by a patrolman of the Police Department of said city he refused to state the number

under which the automobile was registered under said act.

It appeared that the prosecutor was a resident of the State of New York, and that his automobile had been registered in that State in compliance with the statutes thereof, but that he had not conformed with the provisions of the law of this State, above referred to. Upon appeal, the Court of Common Pleas of Hudson county confirmed the conviction in the police court. A Writ of Certiorari to review the judgment resulted in an affirmance thereof. (*Unwin vs. State*, 64 *Atl. Rep.* 193.)

From this last judgment a Writ of Error brings the conviction before this court. The single question here presented is whether the provisions of the Act of 1905, above referred to, are constitutional. The attack made upon the constitutionality of the act is a fundamental one. It goes not to the form, but to the substance. The right of the State to impose upon the users of automobiles, or motor vehicles, any different or other regulations than those which are imposed upon other vehicles using the public highway is denied. The broad grounds upon which it is sought to reverse this conviction gives to the case its importance.

Subsequent legislation has changed the provisions of the act under which the conviction was obtained, but if the position taken herein by the defendant is correct all such legislation is inefficacious, and the Legislature is powerless to regulate the use of the public highways of the State by automobilists, or to provide for the safety of its citizens lawfully using the same.

The question, therefore, raised is one of the utmost importance to all citizens of the State, and especially to those who are called upon to make use of its public highways. We shall contend that the Legislature, in the enactment of this law, were acting within a legitimate exercise of the police power with which the State is invested, and that in so doing violated neither the provisions of our State Constitution, nor the provision

of the United States Constitution, providing that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." (*U. S. Constitution, Article IV., Section 2*), nor the provisions of the Fourteenth Amendment to the Federal Constitution, prohibiting a State from making or enforcing any law "which shall abridge the privileges or immunities of citizens of the United States. * * * nor deny to any person within its jurisdiction the equal protection of the laws."

I.

The law in question is a legitimate exercise of the police power with which the State is invested.

It would seem that it could scarcely be questioned that the regulation of the public highways of the State is a legitimate exercise of the police power. Not only has this been recognized in our own State in the numerous cases referred to by the learned justice who delivered the opinion for the Supreme Court, but a similar rule has been followed in all other jurisdictions. (See *Amer. & Eng. Ency. of Law, Vol. 22, p. 929*. A number of cases therein cited.) The right to regulate the speed with which vehicles may be propelled through the public streets and highways has been repeatedly affirmed.

In *Morse vs. Sweenie*, 15 Ill. App., p. 486, a city ordinance regulating the speed with which vehicles might be driven through the streets was held valid and binding upon the Fire Department, as well as upon drivers of ordinary vehicles.

In *Nealis vs. Hayward*, 48 Ind., p. 19, an ordinance of an incorporated town in Indiana, prohibiting riding or driving in the streets faster than an ordinary trot, was held valid.

In *Scudder vs. Hinshaw*, 134 Ind., p. 56, it was held to be the duty of town authorities to regulate travel

upon the streets so as to make their use at all times safe for those who have occasion to go upon them, and that they had power to make reasonable regulations as to fast driving.

See, also, *Commonwealth vs. Adams*, 142 Mass. 323; *Commonwealth vs. Worcester*, 3 Pick. 462; *People vs. Little*, 86 Mich. 125.

Other familiar examples of the exercise of the power of regulating the use of highways for the promotion of the safety of those lawfully using the same are found in the learned opinion filed in the Supreme Court in this cause, as well as in the notes to the references above given in the *Amer. & Eng. Ency. of Law* (Vol. 22, p. 929).

Possibly a case covering as fully the point now under consideration as any that could be found is that of *Commonwealth vs. Stodder*, 2 Cushing, p. 562, at p. 570.

In this case the Supreme Court of Massachusetts were considering the validity of an ordinance enacted by the Mayor and Aldermen of the city of Boston, regulating the use of omnibuses and stage coaches while passing over and upon the public streets of Boston. The Court, in affirming the power to enact the ordinance in question, said:

"Regulations of this nature are regulations as to the use of omnibuses and stage coaches while passing over the public streets of the city, and are within the legitimate powers of the mayor and aldermen. The public safety and convenience of travelers may require regulations of this character. *If new and unusual modes of transporting persons over the public streets are introduced, which, from the methods made use of for propelling the carriage, or the size of the vehicle, or the number of horses attached thereto, will obviously endanger the public safety, or so engross the whole width of the street as virtually to exclude all other vehicles, or greatly to obstruct them in their passing thereon, it would*

certainly *be reasonable and proper and within the legitimate powers of the mayor and aldermen, under the statute already cited, and the powers conferred by the city charter, to regulate the route of the streets over which such carriages were to run, and the rate of speed.*

"We perceive nothing objectionable in an ordinance, by the mayor and aldermen, providing for the safety and convenience of the public generally, by prescribing, by a general by-law or ordinance, certain streets, or portions of streets, to be used for travel by vehicles, exposing by their manner of use the lives and limbs of the public generally, who may have occasion to use the public streets, if such vehicles are permitted to use the public streets indiscriminately; and such regulations and restrictions might be warranted even to effect the minor object, that of preventing the greatly obstructing and free and convenient use of the streets for general purposes, by interdicting carriages of unusual size, or drawn by an unusual number of animals, *or those of such character as would greatly interfere with the public convenience and safety.* To take a strong case: Suppose the proprietor of the omnibuses from Roxbury should deem it expedient *to propel his carriages by steam power*, passing through Washington street, at a rapid rate, would it not be a lawful and proper regulation for the mayor and aldermen *to prohibit the using of Washington street by vehicles propelled by steam power?* We can not doubt that it would be. * * *

We cannot doubt that a by-law, reasonably regulating the use of the public streets of the city as to carriages of an unusually large size, or as to those which from the mode of using them would greatly incommode, if not endanger, those having occasion to use such public streets, would be valid and legal."

It is somewhat singular that fifty years before automobiles were thought of language so apt to a statute regulating their use should have been enunciated by such a distinguished Court. The illustration which the Court describes "as a strong case," namely, of running a powerful machine through a crowded street, has become a common occurrence. Nevertheless, we cannot but believe that the language used in the consideration of this then unthinkable occurrence of a steam carriage in a crowded street is still applicable, namely, that its regulation is both "proper" and "lawful."

Admitting, therefore, that the Legislature has the power to enact the statute in question, let us consider whether or not the law is

1. *Necessary.*
2. *Reasonable.*
3. *Uniform in its operation.*

I. THE LAW IS NECESSARY.

It should be noted that there is no attempt by the Legislature, in this law, to prohibit automobilists from the use of the public highways, or to restrict that use further than is required in order to provide for the safety of others lawfully using the same. Some regulation of the use of the highways by automobilists is surely necessary if the interests of others using the highways are to be protected. We scarcely think that our opponent will seriously contend that automobilists should be given the right to run their machines upon the public highways at such rate of speed as they may desire untrammelled by restriction or restraint. Surely, some restraint is not only necessary, but highly imperative. Not only must the automobilist be subjected to necessary rules and regulations in the management of his machine, but some method must be devised by which he may be readily identified. Otherwise, an injury inflicted by him upon pedestrians and others lawfully using the public highways must of necessity go unpunished.

Our opponent has strenuously urged that the law in question is inefficacious. His appeal, if it have any basis in fact, should be addressed to the Legislature, and not to the Court. The position which we take is not that the law in question satisfactorily accomplishes the proper regulation of automobilists using the public highways, but that the Legislature is acting within its powers in regulating and restricting automobilists in their use of the public highways. The vital point is that the act in question is a regulation imposed upon the users of automobiles in the interests of public safety, and the attack which is made against the act must stand or fall on the power of the Legislature to regulate in any manner whatsoever the users of automobiles who take their machines upon the public highways. The contention that there is a right to the use of the public highway, unrestricted and unlimited and without regard to the safety of others lawfully using the same, made by our opponents, cannot be substantiated as sound in law.

In a recent authoritative work upon the police power of the State (*Freund on Police Power*, Sec. 8), the author lays down the following principles, which seem peculiarly applicable to the matter under consideration:

"Custom and a sense of propriety demand of the individual that he subordinate and adapt the exercise of his rights to manifest social interest and requirements, and the disregard of this obligation appears as a wrong. * * * *The maxim of this power is that every individual must submit to such restraints in the exercise of his liberty, or of his rights of property, as may be required to remove or reduce the danger of the abuse of these rights on the part of those who are unskillful, careless or unscrupulous.*"

It seems unnecessary to elaborate further to demonstrate that the necessity exists for a regulation of automobiles on the public highways in order "to remove or reduce the danger of the abuse of these rights on the part of those who are *unskillful, careless, or unscrupulous*."

2. THE ACT IS REASONABLE.

The purpose of the act is to provide proper restrictions in the use of automobiles on the public highways, and to afford a method for the identification of those using the same, in order that they may be punished if the act be violated, or that they may be held responsible for any injury which may be suffered through the negligence of those using the same. The provisions of the act are simple, and the requirements are not onerous.

One desiring to use a motor vehicle is required to procure from the Secretary of State a license therefor, which license is to contain a number which is to be displayed on the machine when the same is driven upon the public highways. Upon the issuance of the license the owner's name and the character of the machine are registered with the Secretary of State, and a registry fee of one dollar for each vehicle is required to be paid to the State.

A somewhat different requirement is imposed upon manufacturers and dealers in automobiles, by which they are permitted to secure a single number for all the automobiles owned and controlled by them until sold, let or hired, or loaned for a period of more than five successive days. The fee required of manufacturers is ten dollars, and in the display of their registry number they are to add thereto the letter "M" in equal size. Other sections of the act impose regulations in regard to the carrying of lamps, the rate of speed, stopping and remaining stationary at the request of a person driving or riding a horse, and provisions for penalties for the violation of the act and the method of recovery thereof. The provisions of the act may be, roughly speaking, divided into two parts—first, the requirement for the procuring of a license, and second, the regulations in regard to the use of the machine when on the highway. Both of these requirements are reasonable. The issuance of a license and the display of the registry number is clearly for the purpose of identification.

The constitutionality of a similar law having been

attacked in the State of New York, the Appellate Division of the Supreme Court of that State, in affirming the validity of the law, used the following appropriate language: (*People vs. McWilliams*, 86 N. Y. Supp., p. 357, at p. 359):

"The purpose of the legislation is manifest. The Legislature appreciated the danger to pedestrians, and to people lawfully using the highway with vehicles drawn by animals, from automobiles and motor vehicles. Many of these vehicles are capable of attaining a speed of more than a mile a minute and weigh several tons. This speed averages approximately the speed of the different classes of railroad trains operated by steam power. It was essential to the safety of the traveling public that the speed of such vehicles should be regulated and limited. It is necessary that the vehicle may be readily identified, to deter the operator from violating the law and the rights of others, and to enforce the laws regulating the speed, and to hold the operator responsible in cases of accident. The Legislature deemed that the best method of identification, both as to the vehicle and the owner or operator, would be by a number on a tag conspicuously attached to the vehicle. In case of any violation of law, this affords means of identification, for from the number the name of the owner may be readily ascertained, and through him the operator."

See, also, *People vs. Schneider*, Mich. Sup. Ct., 69 L. R. A., p. 345.

In *Commonwealth vs. Boyd*, 188 Mass., p. 79; 74 N. E. Rep., p. 253, it was held that a statute of the State of Massachusetts requiring automobiles to be registered, and that each have displayed thereon in Arabic numerals, not less than four inches long, its registered number and mark, and exacting a registration fee of two dollars for each automobile, was constitutional. The Court said:

"There could be no question as to the right of the Legislature, in the exercise of the police power, to regulate the driving of automobiles and motor cycles on the public ways of the commonwealth; that they are capable of being driven and are apt to be driven at a high rate of speed, and when not properly driven are so dangerous as to make some regulation necessary for the safety of other persons on the public highway."

In this connection it has been suggested that the law is unreasonable in that the machine receives the registry number, and that being registered, may be driven by anyone. The damage may, therefore, be done by someone, who is not the owner, and the only method of identification relates to the owner and not the user. The answer is simple, namely, that the owner, if he places in the hands of an unskillful driver a dangerous machine, and sends it upon the highway, is clearly responsible for any damage resulting therefrom. He is, therefore, the person whom it is most desirable to locate. That an owner would be liable under these circumstances is, it seems to us, clear. The principle has been established by numerous decisions from the early case of *Dixon vs. Bell*, 5 M. & S. 198, down to the present time. In that case a man sent his maid-servant to fetch a gun which he had left loaded, with a message to have the priming taken out first. This was done and the gun given to the girl. She, thinking presumably that the gun would not go off, pointed in sport at a child and drew the trigger. The gun went off and the child was seriously injured. The owner was held liable, notwithstanding the Court found that he had used care, perhaps as much care as would be commonly thought enough. The Court holding that where one entrusts to another a dangerous instrument, and the one to whom it is entrusted is unskillful or careless in the use thereof, he who entrusts the dangerous instrument to one unskillful or negligent is responsible therefor.

The right of the State to require identification of cer-

tain users of the public highway to promote order, or as an aid to other regulations, is well settled. *Freund on Police Power, Section 41*, recognizes this principle in the following language:

"Certain forms of notice and publicity directly promote public order and convenience, and may be, therefore, required without ulterior purpose; so the affixing of street numbers to houses. Such a regulation is unquestioned, except where it involves a disproportionate expense. As a rule, notices and signs serve as aids to other regulations, so where, as in the case in many European cities, numbers are required for bicycles, in order to hold the owner to a stricter observance of the rules regarding their use. *It is a matter of common experience that violations of the law are committed secretly, rather than openly, and the facility of concealment encourages illegality.. Much is, therefore, gained by obtaining publicity and by providing some means of information by which violations can be readily detected.*"

The regulation as to speed and other requirements providing for the protection of other users of the highway, are also reasonable. We have discussed this subject at such length upon the point that the act is necessary, that it seems needless to repeat here.

If the Legislature may restrict the operation of steam railroads through and across streets at a comparatively slow rate (*Cahagan vs. Railroad Company, 1 Allen 187*), or may provide for the limiting the rate of speed of trolley cars (*Cape May Railroad Co. vs. Cape May, 59 N. J. L. 393*), or may prohibit a fire engine from moving through the street at higher than a limited rate of speed (*Morse vs. Sweenie, 54 Ill. App. 486*), or may prevent an ambulance from being driven faster than six miles an hour (*People vs. Little, 86 Mich. 125*), it must surely have the power to limit the speed of automobiles.

It cannot require argument to demonstrate that a

power which may require railroads transporting a large number of people who are interested in arriving at their destination speedily to run at a given rate and which may prevent firemen from speedily reaching the scene of the fire, or a physician from hastening to the aid of the injured, may also, in order to provide for the safety of other inhabitants of the State, prohibit the pleasure seeker from driving his automobile at a rate so high as to bring danger and injury to others lawfully upon the highway.

3. THE ACT IS UNIFORM IN ITS OPERATION.

The requirement that the legislature in the exercise of the police power shall not discriminate in favor of any member of a class where all are similarly situated is conceded. Where, however, there is a difference in situation, a class may be sub-divided and different rules apply to such subdivisions.

It seems to be conceded by our opponents that the Legislature may in the exercise of its discretion, enact laws regulating the use of the highway and may impose certain restrictions and limitations upon its use, providing that such regulations and restrictions apply uniformly to all users of the highway. If this position is correct, it logically follows that in order to regulate automobiles, the same restrictions and regulations must be imposed upon pedestrians, vehicles drawn by animals, or propelled in any other way, as are our automobiles.

We respectfully submit that this contention has no foundation in law. Difference in situation requires difference in regulation, and as we have said, the Legislature may from a general class create sub-classes, and apply to such sub-classes different rules and regulations than those applied to others. In other words, if, in order to provide for the safety of all users of the highway, it is necessary to impose certain restrictions upon pedestrians, certain other restrictions upon the users of vehicles drawn by animals, and yet other restrictions upon motor vehicles, the Legislature may lawfully make

such varied restrictions and regulations. It seems almost farcical to argue that there is a difference clear and distinct between an engine weighing tons and capable of a speed of nearly one hundred miles per hour, and a horse and carriage. It seems trivial to be obliged to contend that the distinction between these two users of the public highway is a real and not a fancied one. These propositions can scarcely be argued against without reducing the argument to an absurdity. It may be true that certain horses can go almost as fast as certain automobiles. It may be true that certain horses are, when on the highway, as great a danger as certain automobiles, but I do not think that any one can seriously contend that automobiles as a class do not furnish a greater danger to other users of the highway than do horse driven vehicles, or that the difference between horse driven vehicles and motor vehicles is not a real one, and one warranting the imposition of different rules and regulations in regard to the use which each may make of the highway.

This alleged discrimination as furnishing a basis for contending that the law is unconstitutional, was directly passed upon by the Illinois Supreme Court, in the case of *Chirtsy vs. Elliott*, 216 Ill., p. 31, and the Court there held that a law limiting the speed and providing for the license and other features similar to the act in question was not an unjust discrimination, but was a valid and proper exercise of the police power.

It would seem, unquestioned, therefore, that different regulations may be imposed upon the members of these two classes. It is suggested, however, that conceding that automobiles constitute a class which may properly be the subject of regulation, nevertheless the law in question is not uniform in its application, because it differentiates between "the owners of automobiles" and the "manufacturers and dealers in automobiles," and applies different regulations to these two different members the class of the automobile users.

It should be noted, however, that this difference which

the law provides between the owners and the manufacturers and dealers is found only in the question of licensing. The regulations for the use of the highway in regard to the lamps, to the rate of speed, to the care required to guard against accidents with others, the prohibition against racing, making speed tests, or exceeding the speed allowed by law, apply equally to owners and manufacturers. In other words, where the class of automobile users come in contact with the other users of the highway the law is uniform in its operation upon all.

A distinction, however, is made in regard to the licensing of these two classes, and the reason therefor should be clear. The object of the act in requiring a display of numbers is, as we have said, identification. It should be noted that the manufacturer's license does not permit the use of the machine by any one except the owner for a period of more than five days. It is, therefore, clear that there would be no difficulty in identifying from the number of the manufacturer's license the user of the machine.

It may be argued, however, that the owner and manufacturer pay a different sum for their license, and that, therefore, a discrimination is made in favor of the manufacturer as against the owner. We submit that the owners and manufacturers are not similarly situated, and that, therefore, the test of uniformity does not apply. See *Hayes vs. Missouri*, 120 U. S., p. 68. The manufacturer and the owner are in a different position in many respects. The manufacturer or dealer, in exhibiting his automobile, will certainly be under an inducement to use great care, in order to promote the sale thereof. The owner is under no such inducement. A vehicle operated by a manufacturer or dealer will presumably be operated in the vicinity of his place of business; even the use of five days will not permit a very extensive departure from the dealer's or manufacturer's place of business, so that with the number of the manufacturer attached to the machine an easy means for

identification is afforded. An owner, however, may be a thousand miles from home, and it is, therefore, imperative that he should have some particular number, in order to identify his machine.

In *People vs. McWilliams*, 86 N. Y. Supp., p. 357, the New York statute was attacked because of an alleged discrimination between owners and dealers. In that statute the dealers were exempted from the act. The law held, however, that the dealer and owner were not similarly situated and the law was not invalid. The Court in this case discusses at length the difference between the situation of the owner and the manufacturer, and clearly shows the distinction which exists between these two classes.

II.

The law in question does not violate the provisions of Article IV., Section 2, of the Federal Constitution, conferring on the citizens of each State the privileges and immunities of the citizens of the several States.

The law in question does not differentiate between the citizens of this State and the citizens of any other State. All are equally compelled to obey its requirements. It, therefore, seems needless to argue further on this point.

III.

The law in question does not violate the provisions of the Fourteenth Amendment to the Federal Constitution.

If the law in question is a legitimate exercise of the police power the amendment in question cannot be called into play to prevent the enforcement of its provisions. In the numerous cases cited by the learned justice of the Supreme Court, in rendering judgment in this case, the Federal Courts have settled beyond controversy that the only question which can be raised under

this provision of the Federal Constitution is whether the legislation is within the police power with which the State is vested, and if it is a valid exercise of such power the Federal Court will not interfere under the provisions of the amendment referred to.

See *People vs. McWilliams*, 86 N. Y. Supp. 357.

It is suggested that the imposition of a fee for the issuance of the license required by the act deprives the automobilists of the "equal protection of the laws" guaranteed by this Amendment to the Federal Constitution, in that a double tax is imposed on property owned by them.

If the fee in question be not a tax, of course, this entire argument falls. We think it evident that in imposing the fee in question, the Legislature is exercising its licensing power, and not its taxing power. It is not done for the purpose of raising revenue, but for the purpose of regulation. The right to require a license fee under these circumstances has been repeatedly settled in this State. The cases holding, that such license may be imposed, are enumerated in the opinion of the Court below. In addition to these cases, we desire to call the Court's attention to the decision of *State vs. Corson*, 38 Vr. 178. The Supreme Court discusses in a very elaborate opinion by Chief Justice Gummere, the question of police power. That case involved the constitutionality of an act requiring persons taking oysters to secure a license from the State, and pay a fee therefor. It was held that this statute was constitutional. The Court says, page 189:

"The objection that the statute violates the provision of the State Constitution, which requires that 'property shall be assessed for taxes under general laws, and by uniform rules,' was not pressed at the argument. No tax upon property is provided for by it in any of its sections. The only imposition of a tax to be found in any part of it is the license fee (if that can be called a tax), required to be paid by boats which en-

gage in the business which the statute regulates. Such a tax is not affected by the constitutional provision invoked."

See, also, *Bowser vs. Thompson*, 103 Kentucky 279, and 45 S. W., p. 73.

In *Tenney vs. Lenz*, 16 Wis., p. 589, (star), 566, the Supreme Court of Wisconsin held that a law regulating and licensing the keeping of dogs, and requiring a registration thereof, was an exercise of the police power of the State, and not of its taxing power, and it is constitutional. And the broad principle was there laid down that the Legislature might, in regulating any matter that is a proper subject of the police power of the State, impose such sums for licenses, as would operate as a partial restriction upon the business, or upon the keeping of the particular kinds of property regulated. The Court, in rendering its opinion, said:

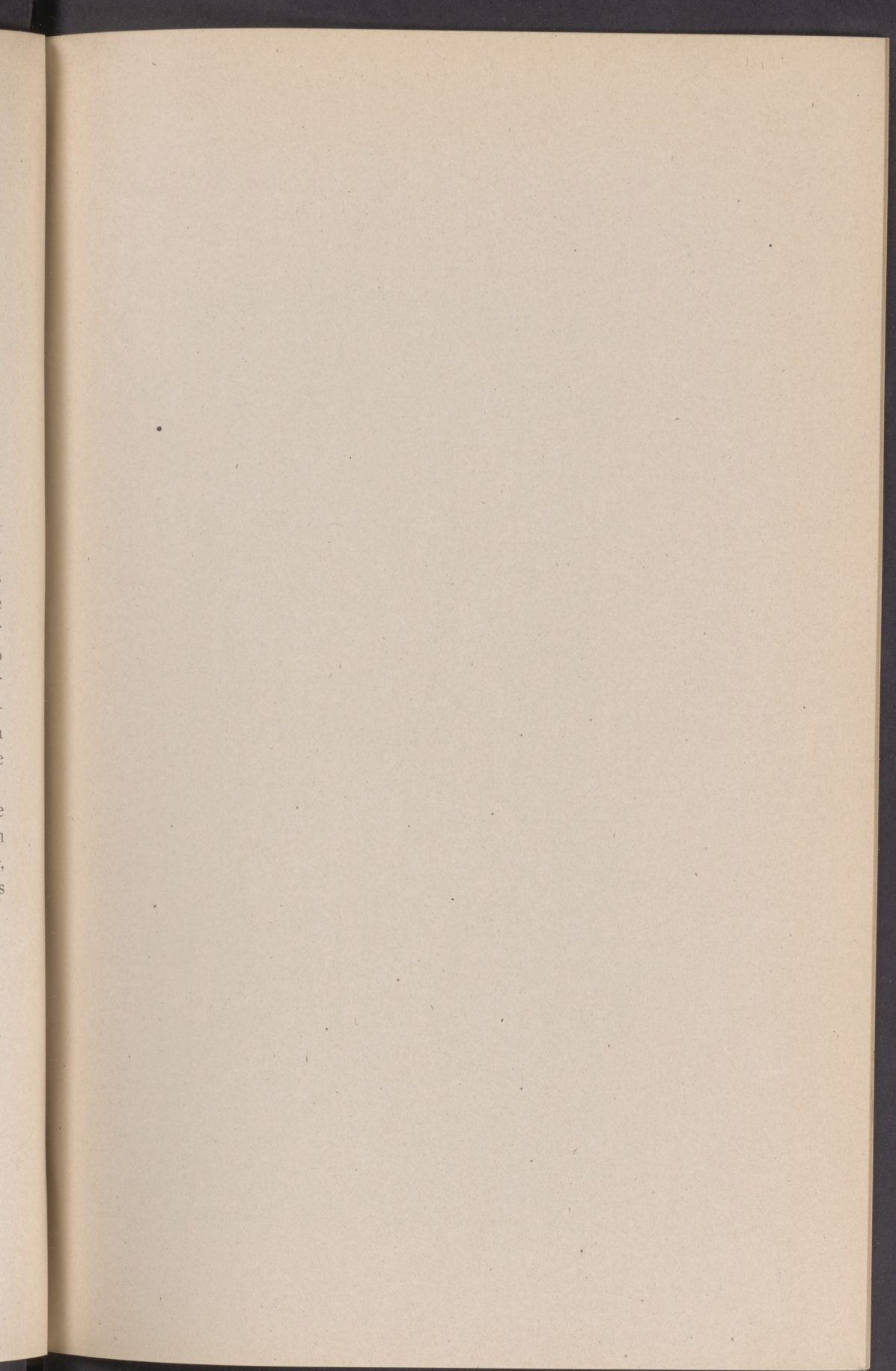
"Dogs, though possessing many excellent qualities, are liable, by running mad and destroying sheep, to do great mischief. Hence, it is strictly a legitimate exercise of the police power, 'to regulate and license the keeping of dogs,' as was done by the act referred to. This being so, we cannot assent to the position taken by the appellant, that if the sum required for a license exceeds the expense of issuing it, the act transcends the licensing power, and imposes a tax. By such a theory the police power would be shorn of all its efficiency. The exercise of that power is based upon the idea that the business licensed, or kind of property regulated, is liable to work mischief, and therefore needs restraints which shall operate as a protection to the public. * * * We have no doubt, therefore, that the Legislature may, in regulating any matter that is a proper subject of the police power, impose such sums for licenses as will operate as partial restrictions upon the business, or upon the keeping of the particular kinds of property regulated."

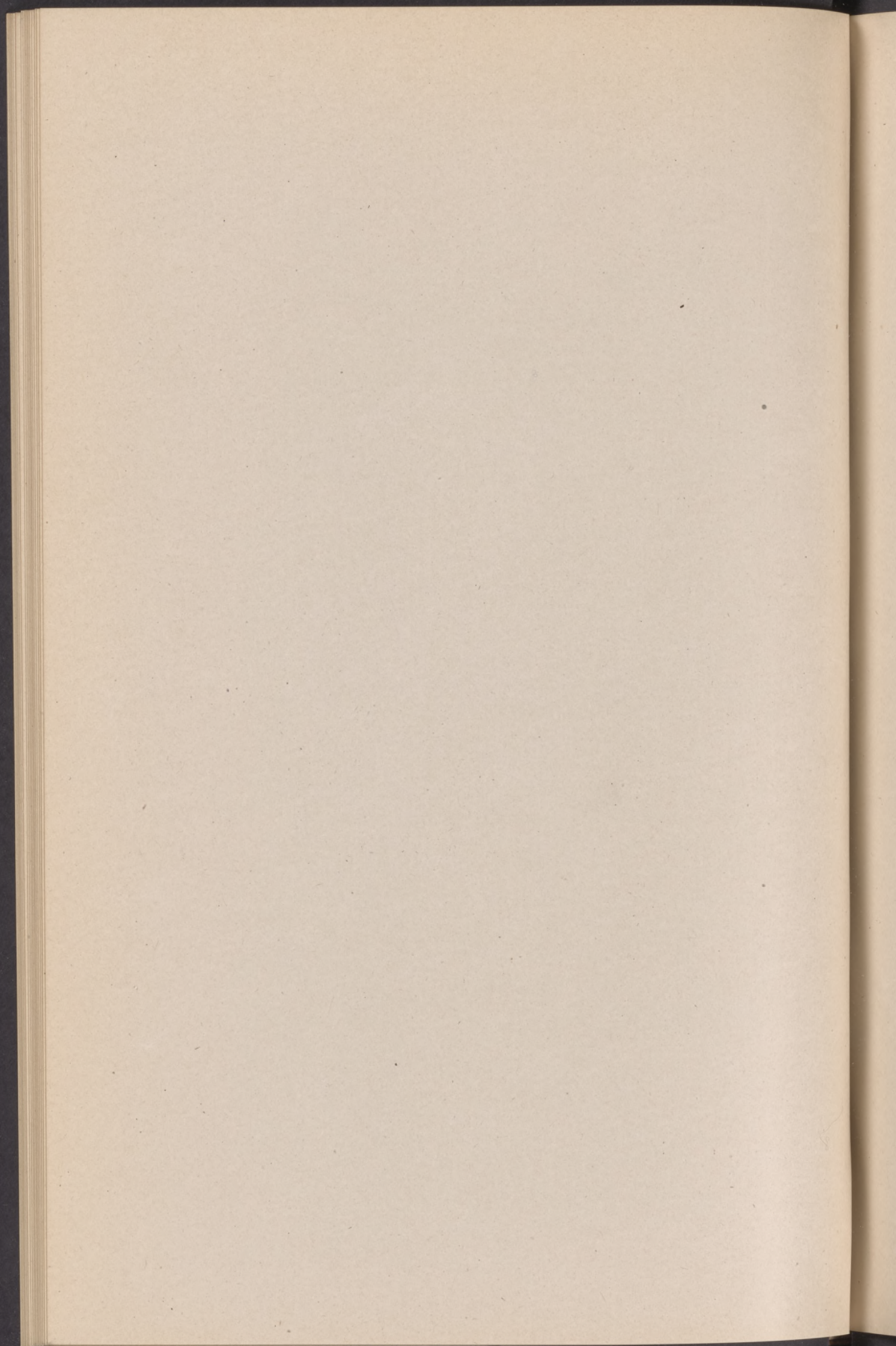
And to like effect is the decision of the Supreme Court of Illinois, in the case of *Cole v. Hall*, 103 Ill. 30. This was also a case attacking the right of the State to impose a license fee upon dogs. The Court therein holding that the State had the right to impose such license said:

"The 'license fee' imposed under the provisions of the statute is in no sense a tax, and is not therefore within the operation of Section I, Article 9, of the Constitution, which provides all needful revenue shall be raised by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to his, her or its property, and hence all questions as to the value of property to be taxed are of no consequence in this case. It is simply what it purports to be, a 'license fee,' and is imposed under the police power, and not under the taxing power of the State. * * * Everything hurtful to the public interest is subject to the police power of the State, and may be brought within its restraining or prohibitory influence, otherwise a public evil might exist, with no power to abate it. This ought not to be."

In *Commonwealth v. Boyd*, 74 N. W. Rep. 255, the Supreme Court of Massachusetts, passing directly upon the question as to the character of the registration fee, imposed by the Statute of that State upon automobiles said, that it "is plainly a license fee and not a tax."

EDWARD D. DUFFIELD,
Of Counsel for State of New Jersey.
ROBERT H. McCARTER,
Attorney General.





New Jersey Supreme Court.

THE STATE OF NEW JERSEY,

Deft. in Certiorari,

vs.

HARRY UNWIN,

Pltff. in Certiorari.

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WRIT OF ERROR.

(Returnable August 23, 1906.)

(Filed August 25, 1906.)

NEW JERSEY, ss.:—The State of New Jersey, to our 20
Justices of our Supreme Court, Greeting:

Because in the record and proceedings,

[L. s.] and also in the giving of judgment in a
plaint, which was in our said Supreme

Court before you, between the State of

New Jersey, plaintiff, and Harry Unwin, defendant, on
a certiorari issued out of our said Supreme Court di-
rected to the Judge of the Inferior Court of Common
Pleas of Hudson County, as is said manifest error hath
intervened to the great damage of the said Harry Un- 30
win, defendant as aforesaid, as by his complaint we
are informed, we being willing that the error, if any
there be, should in due manner be corrected, and full

and speedy justice be done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then you send distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, before the Judges thereof on the twenty-third day of August instant, and this writ, and that the records and proceedings aforesaid, being inspected, we may cause to be further
10 done thereupon what of right and according to law ought to be done.

Witness, WILLIAM J. MAGIE, Esquire, our Chancellor and President Judge of our said Court of Errors and appeals at Trenton aforesaid, the fourth day of August, one thousand nine hundred and six.

S. D. DICKINSON,

Clerk.

FRANK H. HALL,

Attorney.

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The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE, [L.S.]

C. J.

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NEW JERSEY SUPREME COURT.

JUNE TERM, 1906.

THE STATE OF NEW JERSEY,

*Def. in Cert.,**vs.*

HARRY UNWIN,

Plff. in Cert.

} On Certiorari.

AFFIRMANCE AND REMITTITUR.

The court having heard the argument of counsel, and inspected the judgment and proceedings removed by the writ in this cause, and duly considered the reasons filed,

It is ordered that said judgment be in all things affirmed with costs, and that the record be remitted to the Hudson County Court of Common Pleas to be proceeded in according to law.

Entered August 15, 1906.

On motion of

ROBERT H. McCARTER,

Atty.-Genl.

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I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule made by said Court in the above stated cause and entered in the minutes thereof.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-third day of August, A. D. nineteen hundred and six.

WM. RIKER, JR.,

Clerk.

[L. S.]

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NEW JERSEY SUPREME COURT.

HARRY UNWIN, <i>Prosecutor,</i> <i>vs.</i> THE STATE OF NEW JERSEY.	}	On Certiorari.
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SYLLABUS.

1. The provisions of section 2 of an Act defining motor vehicles and providing for the registration of the same (*P. I, 1903, p. 484*), which provisions require every resident or non-resident owner to file a verified declaration that he is competent to drive a motor vehicle and a statement of the name and address of the owner, of the maker, and number of the machine, and its rated horse-power, and requiring the payment of a fee of one dollar, and requiring the registration of each machine by the Secretary of State, and the issuance by him of a certificate to the owner, are not in contravention of the State or Federal Constitutions.
2. The provisions for the statements by the owner and for registration and license are within the exercise of the police power
- 20 of the State for the purpose of securing the safety of the public in the use of the highways against the danger of a new use by a powerful rapidly moving machine which requires careful and skilled drivers.
3. The designated fee of one dollar is a valid license fee.

Argued at February term, 1906, before Justices Fort, Pitney and Reed.

Frank H. Hall and Charles Thaddeus Terry of the New York Bar for Plaintiff in Certiorari.

Edward D. Duffield for the State.

- 30 The opinion of the Court was delivered by REED, J.
 The prosecutor was convicted before the First Criminal Court of Jersey City of violating the provisions of "A Supplement to an act, entitled 'An Act defining motor vehicles and providing for the registration of the same and uniform rules regulating the use and speed thereof,'" (*P. L. 1905, p. 484.*) The specific charge was that the prosecutor drove an automobile along a public highway in Jersey City without having pre-

viously filed in the office of the Secretary of State a duly verified declaration, setting forth that he was competent to drive said automobile, and a written statement containing his name, address, a description of the character of his automobile, the name of the maker, manufacturer's number, and the horse power thereof; and without having previously paid to the Secretary of State the registry fee of one dollar. Also, that the prosecutor, when requested by a patrolman of the police department, did not state the number under which the automobile was registered under the said act. 10

The conviction was affirmed by the Court of Common Pleas of Hudson county. This writ brings up the last judgment.

On the trial it appeared that the prosecutor was a resident of the State of New York, and that his automobile had been registered in that State in compliance with its statute. It appeared that he had not conformed with those provisions of the New Jersey Act, the violation of which is charged in the complaint. 20

The single question presented now is whether these provisions are constitutional. It is assigned as a reason why the conviction should be reversed that these provisions are in contravention of the provisions of Article IV, Section 2 of the Constitution of the United States; that they are in contravention of Section 1 of the Fourteenth Amendment of that instrument, and that they contravene our State Constitution.

It will first be inquired if these provisions are obnoxious to our State Constitution. Are they a legitimate exercise of the police power with which the State is invested? 30

No one will question the right of the State to regulate the method by which the public shall use the public highways. Such regulation, either directly or by a body to which such power is delegated, is essential to the safety and comfort of those who use a road or street. A simple and familiar instance of the exercise of this

power is seen in the statutory direction that the drivers of vehicles meeting shall turn to the right or left, or, if one wishes to pass another, he shall do so to the right or left of the vehicle in front.

Indeed, no affair has been more frequently the subject of direct legislative regulation or delegated control than the manner in which the public streets shall be used.

10 *Dillon Mun. Corp., sec. 326.*

01 Perhaps the cases which bear most closely upon the question now presented are those dealing with regulations respecting the use of streets by street railroad companies. It is true that it requires a franchise before a street can be occupied by such a road. When, however, the franchise is once granted, the use by such road stands upon the same footing as any other use of the street, in respect to any subsequent regulation. *North Hudson Co. Ry. vs. Hoboken, 12 Vr. 71.* The introduction of heavy cars propelled by electricity and capable of great speed, presented for the first time a new danger to pedestrians and to the drivers and occupants of horse-drawn vehicles using the same streets.

For the purpose of protecting these users of the highway, a number of regulations limiting the speed of these cars, requiring a license fee for each car, requiring that certain lights and signals at night should be displayed and that adequate brakes should be employed, have received judicial sanction. In *Trenton Horse R. Co. vs. Trenton, 24 Vr. 132*, an ordinance requiring the company to employ an agent in addition to the driver to assist in the control of the car and to prevent accidents, was held to be valid. In *Traction Co. vs. Elizabeth, 29 Vr., 619*, an ordinance prohibiting the placing of salt on any street was upheld. In *Cape May R. R. vs. Cape May, 30 Vr. 393*, an ordinance limiting the rate of speed of trolley cars was sustained. In *Cape May R. R. Co., vs. Cape May, 30 Vr. 396*, it

was held that under the power to regulate the use of the public streets the Common Council could compel a trolley company to place fenders on the front of each car. In the opinion in this last case will be found a citation of many authorities illustrating the exertion of a control over such companies in their use of the streets. In the opinion in that case, it was said that the ordinance could be tested only in view of the extraordinary propulsive power by which such cars are operated, and the danger arising from the high rate of speed which may be attained, and other dangers incident to their operation in the streets. 10

Now, turning from the trolley car to the automobile, we see introduced into use on the highways a vehicle propelled by a power as great and capable of attaining speed still greater than a trolley car. We see a machine confined to no part of the street, and which, if driven by an inexperienced or reckless driver, is a menace to all who are entitled to use the street. It seems too obvious for further remark, that the Legislature has the same right to protect other users of the highways against these dangers as it has to guard them against the unrestricted movements of a trolley car. Therefore, the provisions of the statute which limit the rate of speed, which require the display of signals and the use of efficient brakes are all appropriate to preserve safety in the use of the road. These requirements, however, will be practically useless, unless violators thereof can be detected and punished. The rapidity with which the machines can move renders detection almost impossible and the arrest of those violators equally difficult. For the purpose of aiding in the identification of each machine and of those who are responsible for its movements and conduct, the provisions of Section 2 of the amended act are designed. To attain this purpose, the compelled registration of the machine, with the name of its owner, together with the other partic- 20 30

ulars descriptive of the machine itself, are, if not efficient, at least suitable. So is the required license to the owner and the certificate of the registration of his machine.

But it is insisted that the required license fee of one dollar is a tax upon automobiles, and imposes upon the owner a double burden of taxation which is unconstitutional.

The designated fee is clearly not a tax upon property. Whether it can be regarded as a tax upon an occupation, which, under our Constitution, is entirely distinct from tax upon property, need not be considered; it need not be considered, because it is obvious that the fee mentioned is imposed as a license fee and not an impost on either property or occupation. Now, assuming, but not admitting, that the power of the Legislature itself is as limited as that of a municipal common council, to which power is delegated to license, but not to tax, still there is nothing in the present provision which is in excess of such a power to license.

It is entirely settled that under the police power a license fee can be imposed within the limit of the expense necessarily, or probably incurred in issuing the license, and of inspecting and regulating the business the license covers.

Indeed, there are authorities holding that for licensing amusements, exhibitions, the keeping of animals, etc., the fee exacted may be still greater. *North Hudson Co. Ry. vs. Hoboken*, 12 Vr. 71-82.

There is nothing to show that the fee of one dollar for each license is in excess of the expense of registration and issuing the license, regardless of any expense of inspection and regulation of the use of these machines.

Nor does the special provisions relating to dealers create any injurious distinction between owners of automobiles. The limited period covered by the license

to dealers in respect to any one machine, and the other circumstances which distinguish the situation of a dealer from that of another private owner renders the special provision respecting the increased fee to be paid by the dealer entirely appropriate.

The conclusion that this imposition is a license fee to be paid for the privilege of having a machine run upon a highway is not a tax, seems to dispose of all the constitutional objections resting upon assumed double or special taxation.

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Regarded as a license fee, it certainly infringes no provision of our Constitution, nor any section of the Federal Constitution. It applies to all who drive machines in this State, whether resident or non-resident owners. There is no infringement upon the privileges or immunities of any citizen of another State.

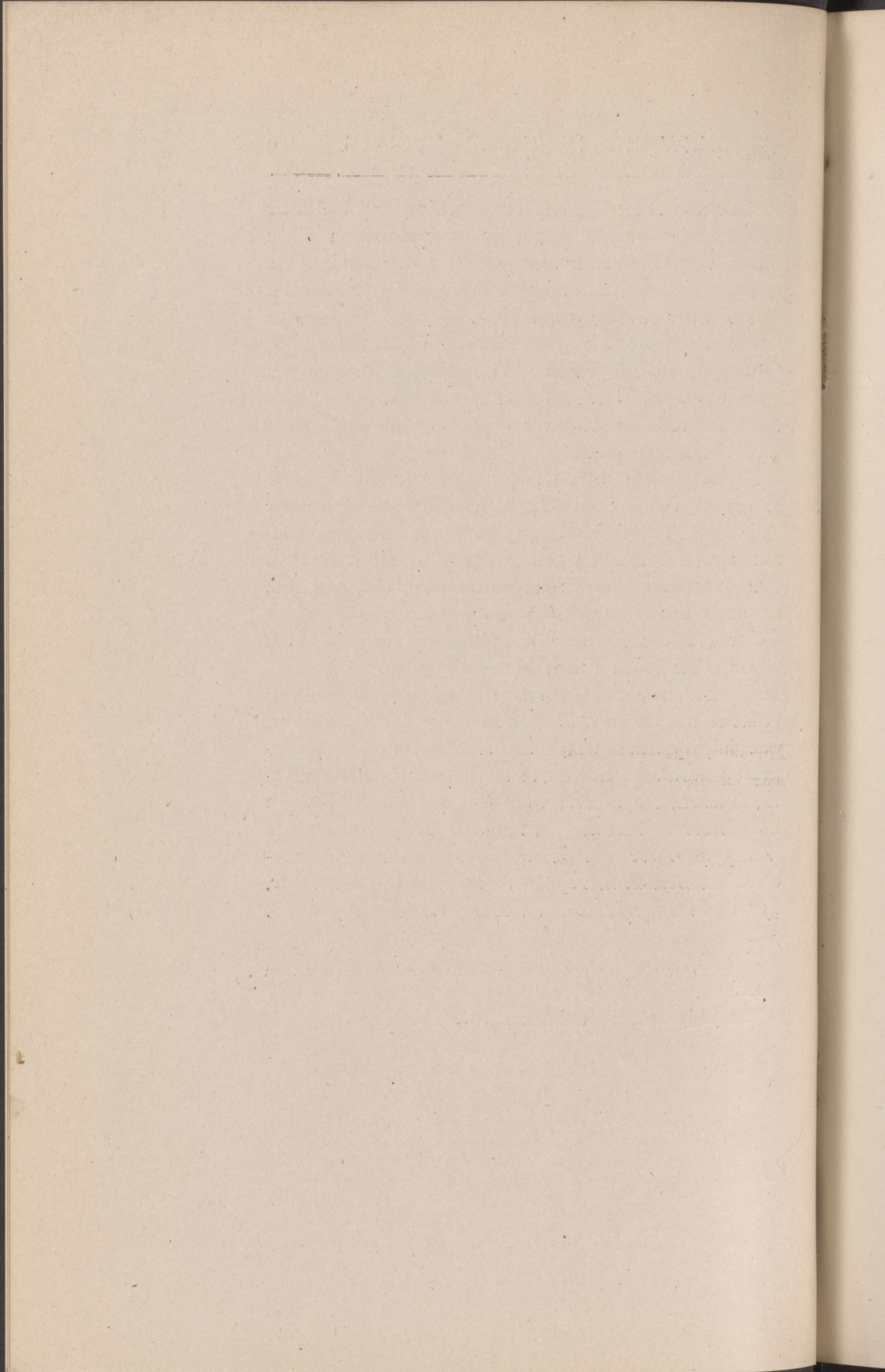
Nor does the Fourteenth Amendment to the Federal Constitution touch these provisions at all. If, as we have concluded, this legislation is a legitimate exercise of the police power, it is unaffected by that amendment. The only question which the federal courts will consider, in dealing with State legislation of this character, is whether it is within the police power with which each State is invested. *Slaughter House Cases*, 16 Wall 394; *Barber vs. Connolly*, 113 U. S. 27; *Minneapolis vs. Beckwith*, 129 U. S. 26; *Lawton vs. Steele*, 152 U. S. 133; *L'Hote vs. New Orleans*, 177 U. S. 587.

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If it is, then it is no infringement of that amendment.

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The judgment should be affirmed.



New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY

against

HARRY UNWIN.

On Certiorari.

Brief of Defendant
Unwin.

Memorandum in behalf of defendant on the validity and constitutionality of the automobile law of New Jersey entitled "An act defining motor vehicles and providing for the registration of the same, and uniform rules regulating the use and speed thereof, approved March 23rd, 1903," as amended by a supplement thereto approved March 26th, 1905, P. L., Page 484.

STATEMENT.

The statute before the Court for consideration became a law June 1, 1905; its aim and purpose was to regulate the use of automobiles. Under the pretense of an exercise of the police power this statute takes from a certain small number of users of the highway, their common and inalienable right to the use thereof, places a tax and other

unreasonable burdens upon them, discriminates against them in favor of all other users of the highway without reason, and deprives them of the free and untrammelled use of their property.

This law assumes that all other users of the highway have rights to the road superior to the users of motor vehicles, that the use of the motor vehicles is not compatible with the general use and safety of the road, and is to be discriminated against and prohibited.

This law has as its only foundation and basis the proposition that while for all other users of the highway the common law and general highway laws are sufficient, yet there must be special legislation imposing unusual, unnecessary and intolerable burdens in the case of those users of the highway who adopt the motor vehicles as a means of conveyance, in the exercise of their natural and common law rights. Although it is well established that the motor vehicle is at the present time the safest and most easily controlled of all the means used for the purposes of transportation, yet this statute would give us to understand that the law frowns upon rather than favors improvement and progress brought about by invention and discovery.

The act provides in the second and third sections that every resident owner of a motor vehicle and every owner whose motor vehicle is driven in the State shall file a verified statement that he, the owner, is competent to operate the vehicle, and apply for a license, and pay a fee of one dollar, whereupon the Secretary of State shall register the same in a book for that purpose, assign a number to such vehicle, which number shall appear on the front and rear of said vehicle at all times. And it is further provided that this pro-

cess must be followed every time there is a change of ownership of the machine.

Under the provisions of this statute the only operator who need swear to his competence is the owner; all others may operate the vehicle, even though incompetent; a man may operate any machine which is registered, without hindrance, as long as he is not an owner, but once he becomes an owner he violates the law unless he swears to his competence and registers his machine, although he may have been operating the machine of his friends for years before without ever having made such an affidavit.

There can be no reason given for such provisions and they establish beyond question that the purpose of the statute was not the furtherance of public safety by a valid exercise of the police power. If that was the purpose, the provisions of the act are illy designed to accomplish it. The statute only succeeds in imposing unreasonable and unnecessary burdens upon the owners of motor vehicles. Its further effect is that a citizen of another State is denied his constitutional right of passing through the State of New Jersey with a motor vehicle which he owns, although he has complied with the laws of his own State, unless he assumes all the unreasonable and intolerable burdens placed upon him by this statute.

Section 6 of the act provides that every person driving a motor shall at request or upon signal, by a person driving a horse or horses, come to a complete stop and remain stationary as long as is necessary for such horse to pass.

This sixth section further illustrates the utterly unreasonable discrimination (which characterizes this piece of legislation) against the users of motor cars and in favor of other users of the highways.

If the statute is intended as a police regulation why does it not contain a provision requiring that trolley cars come to such a stop under like circumstances? If there is no necessity for such provision why should there be for one in the case of motor vehicles?

Sections 9 and 22, which include some paragraphs, are taken up with provisions for penalties for violations of the first eight sections. Fines are to be imposed in sums from \$10 to \$100 and terms of imprisonment are provided for; also the statute provides that a peace officer may arrest without a warrant in case of certain violations, which extreme measure was seldom allowed under the common law, even in the case of felony. And it is a noteworthy fact that more space upon the statute books of the State of New Jersey is given to provisions for the punishment of the petty violations of this statute than is given to provisions for the punishment of the crimes of larceny or arson. On reading these provisions it becomes clear that unjust discrimination and oppression are the chief results attained by this law.

For refusing to file an affidavit stating his confidence in his ability to operate his motor car, and for refusing to submit to a double tax, for refusing to plaster his machine with additional tags and numbers when he already had a New York tag and number, for asserting his natural right to use the highways in an orderly manner, the defendant was taken into custody. He was not exceeding any speed limit; he was not negligent; he was not injuring any one in person or property, and yet he was arrested for exercising his natural and common law right to use the highway, by an ordinary and usual means of conveyance. The right to use the streets is a natural right inherent in every citizen and cannot be made a mat-

ter of purchase and sale at the will of the State. The free exercise of this right cannot be taken away by the imposition of a tax.

IT IS RESPECTFULLY SUBMITTED THAT,

THIS STATUTE IS IN VIOLATION OF THE FEDERAL CONSTITUTION AND THE CONSTITUTION OF THE STATE OF NEW JERSEY IN THAT

1. IT IMPOSES A DISCRIMINATING AND UNEQUAL TAX UPON MOTOR VEHICLES IN VIOLATION OF THE WELL ESTABLISHED PRINCIPLES OF UNIFORMITY AND EQUALITY IN TAXATION, AND PLACES UPON THEM A DOUBLE BURDEN OF TAXATION.

2. (A) IT IMPOSES A TAX UPON PROPERTY HAVING NO SITUS IN THE STATE OF NEW JERSEY AND (B) DEPRIVES CITIZENS OF OTHER STATES OF THEIR CONSTITUTIONAL RIGHT OF FREE PASSAGE THROUGH THE STATE OF NEW JERSEY WITH THEIR PROPERTY.

3. IT IS AN UNWARRANTED AND UNREASONABLE EXERCISE OF THE POLICE POWER.

4. IT DISCRIMINATES AGAINST OWNERS OF MOTOR VEHICLES IN FAVOR OF OTHER USERS OF THE HIGHWAY, AND DEPRIVES THEM OF THE FREE USE OF

THEIR PROPERTY, AND IT FURTHER DISCRIMINATES AGAINST CERTAIN OWNERS AND USERS OF MOTOR VEHICLES IN FAVOR OF OTHER OWNERS AND USERS OF SUCH VEHICLES.

POINT I.

This statute is in violation of the Federal Constitution and the Constitution of the State of New Jersey in that:

It imposes a discriminating and unequal tax upon motor vehicles in violation of the well established principles of uniformity and equality in taxation and places upon them a double burden of taxation.

This statute provides that every owner of a motor vehicle, desiring to operate it on the highways of New Jersey, shall pay to the Secretary of State a fee of one dollar.

The legislature must have based this fee upon one of two theories—it must be considered either a license fee, or a tax on the vehicle as property.

As a license fee, it must be exacted either as a fee for the right to operate a motor vehicle on the highway, or a fee for the use of the highway. These are the only possible theories which could be advanced for the exaction of this fee as a license fee. **It is generally conceded in the decisions and by all the authoritative**

text writers that a license is a privilege granted by the State, for the doing of something, the doing of which, without the license, in, and of itself, would be unlawful, or in other words a grant by the State giving a right to do something which is not included among the natural and common law rights of the citizen. A special dispensation granted to an excepted and chosen few, in excess of, and in addition to, the natural and common law rights of the citizen. This is unquestionably the understood meaning of the word "License," and this is the accepted and established meaning as a matter of law. The greatest authority in the history of American jurisprudence on the subject of taxation, Judge Cooley, in a decision in the Supreme Court of Michigan, in the case of *Youngblood v. Sexton*, 32 Michigan, 406, said:

"The popular understanding of the word 'License' is a permission to do something, which, without the license, would not be allowable. This we are to suppose was the sense in which it was made use of in the Constitution. But this is also the legal meaning. * * * Within this definition, a mere tax upon the traffic cannot be a license of the traffic unless the tax confers some right to so carry on the traffic which otherwise would not have existed. If the tax is paid, the traffic is lawful; if not paid, the traffic is equally lawful. There is, consequently, nothing in the law that appears to be in the nature of a license."

The same doctrine is declared by Justice Manning in the often cited case of *Chilvers v. The People*, 11 Michigan 43; "The object of a license is to confer a right

that does not exist without a license, and consequently a power to license involves, in the exercise of it, a power to prohibit under a pain or penalty without a license. Otherwise a license would be an idle ceremony, giving no right, conferring no privilege and exempting from no pain or penalty."

In Cooley on Taxation on page 596, 2d edition, it is said:

"A license is a privilege granted by the State, usually on a payment of a valuable consideration, though it is not essential. To constitute a privilege, the grant must confer authority to do something, which, without the grant, would be illegal, for, if what is done under the license is open to every one, without it the grant would be idle and nugatory, conferring no privilege whatever."

It is evident from the provisions of the statute under consideration that the fee is not exacted for the right to operate the automobile on the highway. If that were the case, the provisions of the law would necessarily prohibit all people but the few who paid the fee from operating a motor vehicle in the State of New Jersey. But such is not the case. Under the provisions of this statute, any one may operate a motor vehicle, without paying a fee or without a permit or grant of any kind, *unless he is an owner*.

A and B, not owners of motor vehicles, may operate any registered vehicle on the highways of the State; the statute does not in the least affect their right to do this. They may be incompetent; they may not know the first thing about automobiles, but they are free and at liberty to operate any registered machine.

Suppose A buys an automobile on Monday. He still may operate any registered automobile belonging to some other owner, but he is prohibited from operating his own, until he has paid his fee, sworn to his competence as a chauffeur, and registered his machine. He does not swear to his competency as a chauffeur or pay a fee for the privilege to operate motor vehicles on the highways, because he may exercise that right, without making any such affidavit, provided he does not operate his own machine.

Suppose A registers his motor vehicle on Tuesday, and at the same time B buys a motor vehicle. B may operate A's vehicle at any time, or on any highway without interference, but he is prohibited from operating his own. Such being the case, when B registers his vehicle, swears to his competence as a chauffeur, and pays his fee, can it be said that he has been granted a license to operate motor vehicles on the highway, when it is clear that he has always had, and has exercised, the right, by operating A's vehicle and the vehicles of his other friends, for years before he paid the fee and swore to his competence as a chauffeur?

If it is contended that the fee is exacted for the right to operate motor vehicles on the highways, then the law operates as follows: As long as a man is not an owner, he may operate any machine on the highways without a license or a permit of any sort, and as soon as he becomes an owner he may still operate any vehicle on the highway, which he does not own, but until he pays his fee, and swears to his competence he may not operate *his own vehicle*.

If the latter is the theory upon which the amazing provision was enacted, then we have a law which first discriminates between operators of ma-

chines who are owners on the one hand, and those who are not owners on the other, placing unreasonable burdens and restrictions on the former, and leaving the latter free and unrestricted; and which secondly discriminates between owners who are operating their own machines and owners who are operating a machine belonging to another.

Can there be any purpose in a law which affects and restricts only a small number of operators of motor vehicles, to wit, *owners operating their own machines*, and leaves all others free to operate as they will? Could there be a better example of discriminating legislation violative of Constitutional inhibition.

If the theory is that the fee is charged for the privilege of operating a motor vehicle on the highways, then it must also be conceded that the fee is not a license fee, but a tax, because no privilege or right to operate a motor vehicle on the highways is granted under this statute. It is lawful for any one to operate a registered motor vehicle on the highway without the payment of the fee, *as long as the operator does not own the machine*, and under the statute it is still lawful for any one to operate any other machine but his own, after he becomes an owner. There is, therefore, no right or privilege granted by the State, to any person to do something, which in, and of itself, would be unlawful before the payment of the fee.

It cannot be said that the fee is exacted for a license to a particular motor vehicle to be operated on the highway, because there cannot be such a thing as a license granted to an inanimate thing; it must run from the State to a living being, a person. A license is a privilege; an inanimate thing cannot take advantage of a privilege or grant. There has never been a case in which it has been

held that a license could be granted to an inanimate thing. If there were such a decision, it would be anomalous, and contrary to accepted legal meaning of the term "license."

The only possible theory remaining then, is that the fee is exacted for the use of the highways. The State cannot license that which it cannot declare unlawful and prohibit, and there can be nothing unlawful in the use of a highway within the purposes of its dedication. There can be no license granted to exercise a natural and common law right. Any citizen may use the highway for any purpose within the terms of its dedication without a grant or license from the State. There can be no privilege granted to one body of citizens as against another, giving the former body the right to use the highway and not the latter. All citizens have that inherent right to use the highway. The use of the highway is not a license or a privilege, but a right.

The automobile is an ordinary and usual means of conveyance, and its use on the highway is recognized by all as a use clearly within the purview of its dedication. There has never been a case in which it has been said that the use of the highway by motor vehicles is unlawful in and of itself. It cannot be said as a matter of common sense, or as a matter of law. The cases have all held that the motor vehicle has rights on the highway equal to the rights of all other vehicles, and is a use of the highway compatible with the purposes of its dedication.

The law on this subject was excellently and soundly stated in the case of *Indiana Springs Co. v. Brown*, in the Supreme Court of Indiana, 74 Northeastern, 615. The Court said:

"The law does not denounce motor carriages, as such, on the public ways. For, so

long as they are constructed and propelled in a manner consistent with the use of highways, and are calculated to subserve the public as a beneficial means of transportation, with reasonable safety to travelers by ordinary modes, they have an equal right with other vehicles in common use to occupy the streets and roads. Because novel and unusual in appearance, and for that reason likely to frighten horses, unaccustomed to see them, is no reason for prohibiting their use. In all human activities, the law keeps up with improvement and progress brought about by discovery and invention, and, in respect to highways, if the introduction of a new contrivance for transportation purposes, conducted with due care, is met with inconvenience, and even incidental injury to those using ordinary modes, there can be no recovery, provided the contrivance is compatible with the general use and safety of the road. It is, therefore, the adaptation and use, rather than the form or kind of conveyance, that concerns the courts. *It is improper to say that the driver of the horse has rights in the road superior to the driver of the automobile.*

"Both have the right to use the easement, and each is equally restricted in the exercise of his rights by the corresponding rights of the other. Each is required to regulate his own use by the observance of ordinary care and caution to avoid receiving injury as well as inflicting injury upon the other. And in this, the quantum of care required is to be estimated by the exigencies of the particular situation; that is, by the place, presence, or absence of other vehicles and travelers; whether the horse driven is wild or gentle; whether the conveyance and power used are common or new to the road; the known tendency of any feature to frighten animals, etc. The restrictions which the law imposes upon all modes of travel and traffic on the highways are such as tend to secure to the general public the largest enjoyment of the easement, and

must be observed and borne by all alike on the broad ground that all have an equal right to travel in safety, and when accidents happen as incidents to reasonable use and reasonable care, the law awards no redress. 'When the highway is not restricted in its dedication to some particular mode of use,' says Cooley, C. J., in *Macomber v. Nichols*, 34 Mich., 217, 22 Am. Rep., 522, 'it is open to all suitable methods; and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as formerly. A highway established for the general benefit of passage and traffic must admit of new methods of use, whenever it is found that the general benefit requires them.' *Knight v. Lanier* (Sup. 1902), 74 N. Y., Supp. 999; *Mason v. West* (Sup. 1901), 70 N. Y., Supp. 478; *Shinkle v. McCullough*, 77 S. W., 196, 25 Ky. Law Rep. (1903), pt. 2, p. 1143; *Elliott's Roads and Streets Sec. 851*; *Bogue v. Bennett*, 156 Ind., 478, 482, 60 N. E. 143, 83 Am. St. Rep., 212, and cases cited."

This same doctrine was enunciated in the case of *Mason v. West*, 61 N. Y. App. Div., 40. The Court there said:

"That the use of the streets must be extended to meet the modern innovations of rapid locomotion is evident, and we do not mean to suggest that an automobile or any other of the present means of conveyance is an unlawful or improper user, but in this particular case, there was evidence to support the judgment of the municipal court."

In the case of *the City of Chicago v. Banker*, 112, Illinois Appellate Court Reps. 94, a case

squarely in point with this case at bar. Mr. Justice Ball, delivering the opinion of the Court, said:

“In the case at bar the right of the appellee to the use of the streets is undoubted. It is true that he must use them without interfering with the safety of others in the exercise of the same right; subject to that limitation, his right cannot be regulated by an ordinance. The fact that an automobile is a comparatively new vehicle is beside the question. The use of streets must be extended to meet the modern means of locomotion. *Moses v. P. T. W. & C. Ry. Co.*, 21 Ill., 515.

The speed of an automobile may be regulated, and reasonable safety appliances such as gongs and brakes may be required, but to compel one who uses his automobile for his private business and pleasure only, to submit to an examination and take out a license (if the examining board sees fit to grant it) is imposing a burden upon one class of citizens in the use of the streets not imposed upon others.”

That the right to use the streets in conformity with the rights of others is a natural right inherent in every citizen which cannot be converted into a privilege or grant by legislation, has always been the established doctrine in the courts of this country.

In the case of *City of Chicago v. Collins*, 175, Ill. 445, Mr. Justice Phillips said:

“The right of the public to use the streets is the right to use them for purposes of travel in the recognized methods in which the public highways of the State are used. Any method of travel may be adopted by individual mem-

bers of the public, which is an ordinary method of locomotion or even an extraordinary method if it is not of itself calculated to prevent a reasonably safe use of the streets by others. Anything which cannot be enjoyed without legal authority would be a mere privilege, which is generally evidenced by a license. The use of the public streets of a city is not a privilege but a right. Tiedeman on Limitation of Police Power (sec. 281) says in distinguishing between license and a tax, 'It is, therefore, conclusive that the general requirements of a license for the pursuit of any business that is dangerous to the public can only be justified as an exercise of the *power of taxation*, or the requirement of a compensation for the enjoyment of a privilege or franchise.' * * * A license, therefore, implying a privilege cannot possibly exist with reference to something which is a right free and open to all, as is the right of the citizen to ride and drive over the streets of the city without charge and without toll, provided he does so in a reasonable manner."

In the case of *Densmore v. City of Erie*, 20 Penn. Co. Rep. 513, where the constitutionality of a bicycle license fee was in question, the Court said, in holding the fee a tax and unconstitutional, in reference to the right to use the streets:

"The plaintiffs as well as other resident bicycle owners and users of the same upon the streets of the city of Erie have an inherent and indefeasable right to use the streets of Erie."

To the same effect is *Swift v. Topeka*, 43 Kan., 671, where the question considered was the validity of an ordinance prohibiting bicyclists from riding across a public bridge in the city, it was said by the Court:

"Each citizen has the absolute right to

"choose for himself the mode of conveyance he
 "desires, whether it be by wagon or carriage,
 "by horse, motor, or electric car, or by bi-
 "cycle, or astride of a horse, subject to the
 "sole condition that he will observe all those
 "requirements that are known as the law of
 "the road. This right of the people to the use
 "of the public streets of a city is so well es-
 "tablished and so universally recognized in
 "this country, that it has become a part of
 "the alphabet of fundamental rights of the
 "citizen. While the tyranny of the American
 "system of government very largely consists
 "in the action of the municipal authorities,
 "this right has *not yet been questioned or at-*
 "*tempted to be abridged.* There can be no
 "question, then, but that a citizen riding on
 "a bicycle in that part of the street devoted
 "to the passage of vehicles is but exercising
 "his legal right to its use, and a city ordi-
 "nance, that attempts to forbid such use of
 "that part of a public street, would be held
 "void as against common right."

It needs no further citation to establish that, as
 a matter of law, the right to the use of the streets
 for traveling in a motor vehicle or in any mode of
 conveyance within the purview of the dedication of
 the highway, is a natural, indefeasible right, which
 cannot be defeated or impaired by prohibitory and
 discriminating legislation. No license or privilege
 can be granted for the exercise of such a right.
 The citizen does not need a franchise or a license
 to walk upon the street, drive his horses or oper-
 ate his motor vehicle thereon. The law recog-
 nizes such uses as was said by Judge Cooley in
Macomber v. Nichols, 34 Mich., 212:

"When the highway is not restricted in its
 dedication to some particular mode of use,
 it is open to all suitable methods, and
 it cannot be assumed that these will be the
 same from age to age or that a new means

of making the way useful must be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as before."

The right to use the highways in an automobile without first obtaining a license is exactly equal to the right to drive a horse, ride a bicycle or walk upon the highway.

The knowledge of how to properly manage a horse or ride a bicycle may be learned on the highway, the public meanwhile taking the risk of the driver's inexperience equally with himself. If he does harm he must answer for it. It has never been claimed that the State constitutionally may exact a license before a man may drive his own horse or any number of them at one time or a bicycle, no matter how little he may know of their proper management or before a man may walk upon the highway. A statute requiring a license to use the highway with a motor vehicle is no more warranted or constitutional than would be a statute requiring a license to use the highway for driving or walking. If it is contended that the fee is exacted for the use of the highway in a motor vehicle, then we have this state of affairs; the Legislature may prohibit the use of the highway to pedestrians, horse-drawn vehicles and motor vehicles; may require a license to be paid before *any one* may walk, ride or drive upon the highway. Because if the State can prohibit and restrain one use of the highway, which is within the purview of the dedication of that highway, it can prohibit and restrain all uses of the highways, because it is conceded, and it is the law, that

all proper uses of the highway are equal, and no one proper use is superior to or above another.

Further, if it is contended that the fee is exacted for the use of the highway, the only person using a motor vehicle from whom it is exacted is the owner; all other persons under this statute may use the highway in a registered motor vehicle, which they do not own, *ad libitum*; so that we return again to the proposition that in such a case, the statute is unconstitutionally discriminating against a small class of users of the highway in motor vehicles, to wit, the owners of those vehicles, leaving all other users of the highway in motor vehicles free and unrestrained.

That being the case, the legislative theory of the license fee in this statute reduces itself to this: that the license runs to the motor vehicle itself. It then becomes a license to the motor vehicle as such to be upon the highway. There never was and there never will be a license or privilege running to an inanimate thing. Such a proposition is absurd on the face of it. What privilege or franchise can an inanimate thing take advantage of. An automobile cannot be licensed as such; therefore under this statute it is *taxed*.

If the Honorable Court decide that this statute grants a license, and the fee is a license fee and not a tax, it must decide either that it is a fee exacted for the right to operate a motor vehicle on the highway or for the use of the highway with a motor vehicle. If the first theory is adopted then this Court must also decide that the State can constitutionally require of an owner of motor vehicles a license fee for operating his machines, and at the same time exempt all other operators of motor vehicles who are not owners, and leave them free to operate any machine without restraint of any kind. That the State can require A to pay a

license fee to operate a vehicle in the highway because he owns it, and at the same time allow B to operate A's machine on the highway *ad libitum* without paying a license fee or making an affidavit, or without restraint, is a proposition which cannot stand in reason. The statement of it is enough to refute it. Surely, this learned Court cannot go upon record in support of such a theory or in support of such unreasonable and unconstitutional discriminatory legislation.

If the second theory is adopted then this Court must also decide either that the use of the highways by motor vehicles is unlawful in and of itself; that it is not a use within the purposes for which the highway was dedicated, that the motor vehicle is not a lawful means of conveyance, that the owner of the motor vehicle has no rights to the use of the highway equal to other users of that highway, that he never had the right to use the highway for such a purpose, that Judge Cooley was wrong when he said in *Macomber vs. Nichols supra*, that the highway was open to all suitable methods of use, and that a new means of making the way useful could not be excluded because its introduction might tend to inconvenience or even injure those who used the road in the same manner as before, that a highway established for the general benefit of passage and traffic must admit of new methods of use whenever it is found that the general benefit requires it.

Or the Court must decide that while the use of the highway with a motor vehicle is within the purposes for which that highway was dedicated; and while any use within such dedicated purposes is proper and that while all such uses are equal and none superior to or above the others, yet the legislature may prohibit and restrain any one or all of such uses, and require a license fee to be

paid before any such use can be exercised; that the State may require a license fee before the right to walk, drive or ride upon the highway may be lawfully exercised; that the right to use the highway is not an inherent right in the citizen but a franchise or privilege granted by the State or if it is not such now it can be made so for every use or for any particular use at the will of the legislature.

And further if the second theory is adopted this Court must also decide either that the legislature may require that all owners of motor vehicles must have a license to use the highways in a motor vehicle, while all other users of the highway in motor vehicles who are not owners, need not pay a fee or have a license, and that the legislature may constitutionally discriminate against those users of the highway in motor vehicles who are owners, and put the burden of obtaining a license upon them and paying a fee if they operate their own machines, while it leaves all other users of the highway in motor vehicles and other vehicles unburdened and unrestricted or it must take the untenable position that a license, or franchise or a privilege from the State can run to an inanimate thing, a motor vehicle, and that the motor vehicle itself and not the owner himself is licensed to be upon the highway. Confronted with the propositions above set forth, and being unable to answer them, the Attorney General in the Court below sought to put the exaction of this fee first upon the theory of the dog license, and then upon the meaningless ground of the police power.

Let us consider what the theory of the dog license has been held to be in the United States Supreme Court and throughout the Courts of the States and at what point this Court will neces-

sarily and logically arrive if that theory is adopted in the case of the motor vehicle.

It has always been established that the State can prohibit and destroy all dogs situated anywhere within its boundaries. That no one has an inherent or natural right to keep or harbor such an animal, and that a dog license is a license to the owner to keep or harbor a particular dog, a privilege granted by the State *to one* who pays the license fee *to have property* in something in which under the common law the person paying the fee would have no property, and which would and could constitutionally be destroyed at any time and under any circumstances without compensation to the person who might claim property in it.

In the case of *Sentell v. New Orleans R. R. Co.*, 166 U. S., 698 at page 701, the constitutionality of a statute which provided that no dog could have any value as property, no matter what its breed might be, unless it was placed upon the assessment rolls, in which case it should have the value so stated, was upheld in the United States Supreme Court. Mr. Justice Brown in his opinion said:

“They (dogs) are not considered as being
 “upon the same plane with horses, cattle,
 “sheep, and other domesticated animals.
 “They have no intrinsic value by which we
 “understand a value common to all dogs as
 “such and independent of the particular
 “breed or individuals. Unlike the other do-
 “mestic animals they are useful neither as
 “beasts of burden for draught (except to a
 “very limited extent) nor for food. As it is
 “practically impossible by statute to distin-
 “guish between the different kinds and be-
 “tween the valuable and the worthless, such
 “legislation as has been enacted upon the sub-
 “ject, though nominally including the whole
 “canine race, is really directed against the
 “latter class and is based upon the theory

“that the owner of a really valuable dog will
 “feel sufficient interest in him to comply with
 “any reasonable regulation designed to dis-
 “tinguish him from the common herd. Act-
 “ing upon the principle that there is but a
 “qualified property in them and that while
 “private interests require that the valuable
 “ones shall be protected, public interest de-
 “mands that the worthless shall be extermin-
 “ated, they have from time immemorial been
 “considered as holding their lives at the will
 “of the legislature.”

In support of this the Court cited with approval the case of *Blair vs. Forehand*, 100 Mass., 136, in which it was held that a statute declaring that any private person might and every police officer and constable should kill, or cause to be killed, all dogs, whenever or wherever found not licensed and collared according to the provision of the statute, was within the constitutional limits of the Legislature.

The Court then says:

“The only case to the contrary to which our
 “attention has been called is that of *Mayor v.*
 “*Meigs*, 1 MacArthur, 53, in which a city or-
 “dinance of Washington requiring the owner
 “of a dog to obtain a license for the keeping
 “of the same was held to be illegal. The sub-
 “stance of the opinion seems to be that if the
 “dog is a species of property, which was con-
 “ceded in the case, it was entitled to the pro-
 “tection of other property and the owner
 “should not be required to obtain a license
 “for keeping the same.”

This decision of the United States Supreme Court clearly shows that the only theory as a matter of law upon which the dog license has ever

been supported, is that it is a privilege or grant from the State to a person to own or keep or harbor a dog, to have property and keep a thing which the licensee would have no property in, or have any right to keep or harbor without the license; a license to a person to hold and keep something which, as the Court says, holds its life at the will of the legislature.

The cases and the authoritative text writers accept this as established theory.

In *Fox v. Mohawk & H. R. Humane Society*, 165 N. Y., 517, at page 521, the Court of Appeals held that a decision of the Court below, holding that a direction for the summary destruction or appropriation of a dog without notice to the owner was taking the property of such owner without due process of law, was unsound and not the law.

Mr. Justice Cullen said: "Under any circumstances, there is but a qualified property in dogs, cats and similar animals, and, in fact, there may be said to be no property in them as against the police power of the State" (citing *Sentill v. New Orleans & C. R. R. Co.*, *supra*). "The legislation and decisions are in substantial harmony" (citing with approval *Blair v. Forehand* above referred to). "The same title of the Revised Statutes that directed the taxation of dogs authorized any person to kill a dog so taxed unless the tax was paid within five days after demand or any dog which he might see chasing, worrying or wounding sheep.

"Summary confiscation of this character without judicial process would in the case of domestic animals such as horses, oxen, and

the like, even tho' the animals were trespassers, be unconstitutional (*Rockwell v. Nearing*, 35 N. Y., 302), but the legislation regarding dogs, though it has stood on the statute books for nearly a century, has never been questioned; nor if the statute is not condemned for other reasons do we think it presents a case of the delegation of the government power to a private corporation. As unlicensed dogs have long been subject to destruction by every person, the authority given to the officers or agents of the defendant to kill such dogs is neither greater or less than that conferred upon other citizens."

That the license fee paid by the owner in the case of dogs is for the privilege of keeping the dog, which the licensee would otherwise have no right to keep, and the keeping of which, the Legislature could at will entirely prohibit, is accepted as the theory in Tiedeman on State and Federal Control of Person and Property, Vol. 2, 845. The author says:

"And it has been frequently held lawful for the State as an encouragement for the rearing of sheep to discourage the keeping of dogs by the requirement of a license fee for each dog. And conceding the right of the State to require a license for the keeping of the dogs, it is intended to operate as a check upon the keeping of dogs."

So also Freund in his work on the Police Power says at page 446, Section 421,

"The property in dogs is regarded as not entitled to the same protection as property in other domestic animals (citing *Sintell v. New Orleans & C. R. R. Co.* giving the quotation set forth *supra*). Upon this ground it is held that the keeping of dogs may be condi-

tioned upon a license and upon compliance with strict regulations intended to prevent them from becoming a nuisance, and non-compliance with such regulations may be followed by the entire withdrawal of the legal protection of the property so that they may be killed without further legal process and without giving to the owner a right of action for damages."

If it is the law, then, that the license fee in the case of the dog is exacted for the privilege, granted by the State to the licensee, of keeping the dog, for the privilege of bringing something within the protection of the law as the property of the licensee, which would not as a matter of common law or inherent right, come within the protection of the law as property, but which at will, the Legislature might, without limitation, prohibit and destroy. Can it be said that such a theory will support an exaction of a license fee in the case of a motor vehicle? Can it be said that a man is licensed to keep and own a motor vehicle? If such a theory is adopted, this Court must then decide that the man cannot have property in a motor vehicle entitled to the protection of the laws; that the Legislature can prohibit and restrain the keeping of a motor vehicle, and confiscate and destroy it at will.

This Court cannot logically accept any such theory in support of the constitutionality of the statute in question. The theory of licensing the owner of a dog cannot be used as a theory in support of a statute requiring the licensing of an owner of an automobile. Such being the case, the theories upon which the requirement of a fee in the case at bar can be supported as a license have

been exhausted, and, as we have seen, not one of them can be invoked.

Will this Court, then, to avoid declaring this statute unconstitutional, adopt the unsound proposition that, as automobiling is within the police power of the State, it therefore may be licensed? In other words, that everything which is within the police power may be licensed, restrained and prohibited. Surely, this Court will appreciate the only conclusion which can be reached from such a major proposition, to wit, everything, and every act, and all property is properly within the police power of the State, and that therefore, the doing of any act, or the keeping or holding of any property may be licensed and restrained by the State at the will of the Legislature. Nothing could be more unsound than such a proposition. *While it may be said that everything and every act that is licensed is within the police power, it may not be said that everything and every act which is within the police power may be required to be licensed at the will of the Legislature.*

To use a concrete illustration :

A's driving his horse on the highway is within the police power of the State, and he may be required to keep to the right side of the road; but because A's driving may be so regulated does not warrant the passing of a statute which would require A to register his horse and vehicle and procure a license to drive on the highway. The fact that driving and walking on the highway is within the police power does not warrant a conclusion that therefore driving and walking may be licensed and restricted, and prohibited.

Such a conclusion needs no further illustration to demonstrate its absurdity. It is contrary to

all legal definitions of a license and it would eventually lead to the proposition which is contrary to all the principles upon which the constitution of a free country rests; and it would on the other hand be an application of the cardinal principle of an autocracy or a tyrannical dynasty, to wit, that there are no rights inherent in the people; that all rights which the people exercise are favors and privileges granted by the State.

The Attorney General in the lower court cited the case of *Tenney vs. Lenz*, 16 Wis., 566, in support of a similar conclusion. If that were decided in the case then much was said by the honorable Court in that case which had better been left unsaid. What the Court intended to say there, and what it did say, was, that under the statute, there considered, a man was licensed to keep and harbor a dog, that being a privilege or right granted by the State, and that the licensing or giving of such a privilege or grant was clearly within the police power of the State. But the Court did not and could not have said that anything which was within the police power of the State might be licensed, and that the keeping of a dog being within the police power was therefore something which could be licensed and prohibited.

The learned Justices must have appreciated the absurd conclusions to which such an unsound major premise would inevitably lead. To say otherwise is to insult the intelligence of an honorable and learned Court.

We have seen that under the well established legal definition of a license, there must be a special privilege granted and conferred; that in the statute in the case at bar the fee cannot be exacted, for the right or privilege of operating or driving a motor vehicle on the highway, or for the use of the highway with a motor vehicle, or for a

right or privilege running to the motor vehicle an inanimate thing to be upon the highway or for a right or privilege granted to the owner to keep and harbor a motor vehicle as in the case of the dog, or merely for the reason that the use of the highway with a motor vehicle is within the police power.

There is no possible ground or theory remaining upon which the exaction of such a fee may be held a license.

The fee exacted cannot be, and is not, a license fee. It cannot be, and is not, a tax for the use of the highway. It is, therefore, and must remain, a tax on the vehicle as property, and as such is unconstitutional. Such was the holding in the case of *Chicago v. Collins*, *supra*, in which the Court said that as a license fee could not be charged for the use of the highway, within the purview of its dedication, the fee charged was an unconstitutional tax on the vehicle as property.

“It is a fundamental maxim in taxation
 “that the same property shall not be subject-
 “ed to a double tax, payable by the same
 “party, either directly or indirectly. * * *
 “The exaction imposed is a tax on specific ar-
 “ticles of personal property which are re-
 “quired by law to be, and which the bill al-
 “leges have been assessed for general taxa-
 “tion at their value, and upon which taxes
 “have been paid. To tax them again by de-
 “claring by ordinance that they shall not be
 “used until another tax is paid, levied as in
 “this ordinance without regard to values, is
 “not only double taxation, but is a violation
 “of the principles of equality and uniformity,
 “which is indispensable to all legal taxation.
 “It imposes a heavier burden upon one class
 “of tax-payers than is imposed upon others,
 “and is violative of the principle of equality
 “and uniformity which must underlie all valid

“taxation. A statute which makes any kind
 “of property the subject of taxation and dis-
 “criminating, imposes upon it a double bur-
 “den for a single object, makes even approxi-
 “mate equality and uniformity impossible,
 “because it is an arbitrary and radical de-
 “parture from both.”

Such was also the holding of *Ellis v. Frazier*, 63 Pacific, 642. There under the pretense of exacting a license, a statute required all persons using bicycles upon the highway to pay a fee of \$1.25 in order to obtain the license. The statute also required that a tag be fixed to the bicycle showing that the owner had obtained the license required. The Court said:

“The exaction of \$1.25 imposed upon all
 “bicycles in addition to the *ad valorem* tax,
 “levied thereon, subjects such property to a
 “burden from which other classes of prop-
 “erty are exempt, and in this respect, contra-
 “venes the clause of the constitution last ad-
 “verted to.”

The Court in the case of *Johnston v. Macon*, 62 Ga., 645-652, had under consideration a statute which imposed a tax on vehicles, both private and public. This statute the Court held void as regards vehicles used only for private purposes, in that it imposed a double tax upon such property, and the two taxes amounted to more than was exacted of owners of other personal property, and because it amounted to more than the legislature could legally or constitutionally require of the owners of property.

“But a tax on a private wagon for private
 “use, not employed in any business of the
 “owner, is not a tax on business, but on prop-
 “erty, and cannot be more than one per cent,

“and if taxed that much, as property, it cannot be taxed again.”

In the case of *Livingston v. Paducah*, 80 Ky., 657, the Court said:

“A statute which makes any kind of property the subject of taxation and discriminating imposes upon it a double burden for a single object, makes even approximate equality and uniformity impossible because it is an arbitrary and radical departure from both. By express provision of the statute before us, the private vehicles of the appellant are designated as subjects of taxation, and as such are required to contribute not incidentally or indirectly, but directly, twice each year, to the support of the city government while on other property in Paducah only an annual tax is levied.”

Motor vehicles, in common with other forms of personal property, are subject to the general provisions of the laws regulating taxes on personal property. They are included in the assessment of the personal property tax, and they cannot be taxed again under a special law. The tax in the case at bar is not exacted according to a uniform rule. An owner of a \$100 motor vehicle pays as much as an owner of a \$10,000 car. It is not paid at any set time, but every time the ownership of the vehicle is changed. Can it be conceded for an instant that such a tax is constitutional? Is there any principle of taxation upon which it can be justified?

Such a tax discriminates against motor vehicles as a class of personal property, and places a special burden thereon, which is not placed upon other property, or even a class of property, and at the same time it is re-

quired that all motor vehicles must bear the burden of the general personal property tax. By means of such a tax, the motor vehicle as a piece of personal property must contribute twice to the support of the government, while all other personal property as a subject of taxation must contribute but once.

A law which brings about such a result is contrary to the basic principles of a free government, and the constitution of this nation and of the State of New Jersey.

Under the decisions in the United States Courts no other view can be maintained. In the Railroad Tax cases, 13 Fed. 722, the Court said regarding the application of the Fourteenth Amendment to cases of discrimination in taxation:

“The fourteenth amendment to the constitution in declaring that no State shall deny
 “to any person within its jurisdiction, the
 “equal protection of the laws, imposes a limitation on all the powers of the State, which
 “can touch the individual or his property including among them that of taxation. Whatever the State may do, it cannot deprive any
 “one within its jurisdiction of the equal protection of the laws, and by equal protection
 “of the laws is meant equal security under
 “them to everyone on similar terms—in his
 “life, his liberty, his property, and in the pursuit of happiness. It not only implies the
 “right of each to resort, on the same terms
 “with others, to the courts of the country for
 “the security of his person and property, the
 “prevention and redress of wrongs, and the
 “enforcement of contracts, but also his exemption from any greater burdens or
 “charges than such as are equally imposed
 “upon all others under like circumstances.
 “Unequal exactions in every form or under
 “pretense are absolutely forbidden; and of

“course, unequal taxation, for it is in that
 “form that oppressive burdens are usually
 “laid. It is not possible to conceive of equal
 “protection under any system of laws, where
 “arbitrary and unequal taxation is permis-
 “sible; where different persons may be taxed
 “on their property of the same kind, similarly
 “situated at different rates; where, for in-
 “stance, one may be taxed at one per cent on
 “the value of his property, and another at
 “two or five per cent.”

UPON THE ARGUMENT AND THE LAW
 ABOVE SET FORTH, IT IS RESPECTFULLY
 SUBMITTED THAT, AS THE FEE EXACTED
 IN THE STATUTE UNDER CONSIDERA-
 TION, CANNOT BE A LICENSE FEE FOR
 THE PRIVILEGE OF OPERATING A MOTOR
 VEHICLE ON THE HIGHWAY—AS IT CAN-
 NOT BE A FEE FOR A LICENSE TO
 USE THE HIGHWAY—AS IT CANNOT
 BE A FEE FOR A LICENSE TO THE
 MOTOR VEHICLE, AN INANIMATE THING,
 TO BE UPON THE HIGHWAY—AS IT CAN-
 NOT BE A FEE FOR A LICENSE TO OWN OR
 KEEP A MOTOR VEHICLE—AS IT IS UN-
 SOUND AS A PROPOSITION BOTH OF
 LOGIC AND LAW TO SAY THAT EVERY-
 THING WITHIN THE POLICE POWER CAN
 BE LICENSED, THE FEE EXACTED MUST
 BE, AND IS, A TAX—AND AS IT CANNOT BE
 A TAX FOR THE USE OF THE HIGHWAY, IT
 IS, AND MUST BE HELD TO BE A DOUBLE
 TAX ON THE MOTOR VEHICLE AS
 PROPERTY, AND AN UNCONSTITUTIONAL
 DISCRIMINATION.

POINT II.

The statute is in violation of the Federal Constitution and the Constitution of the State of New Jersey, in that:

(A) It imposes a tax on property having no situs in the State of New Jersey, and

(B) Deprives citizens of other States of their constitutional right of free ingress and egress with their property through the State of New Jersey.

(A)

It imposes a tax upon property having no situs in the State of New Jersey.

There need be no lengthy discussion or citation of cases to establish the first proposition. The fee being a tax, it is imposed under this statute upon all motor vehicles, operated at any time on the highways of New Jersey. It makes no difference that a non-resident has paid such a tax in another State, in addition to the general personal property tax (as had the defendant in this case). He must pay this treble tax in the State of New Jersey or his motor vehicle is excluded. He may desire only to pass through as a traveler to another State or to the seat of the Government at Washington, yet even in passing through the State for that purpose he must pay the tax of one dollar.

A, an owner of a motor vehicle, who resides,

votes, and all of whose property, including his motor vehicle, is situated and taxed in the State of New York, may desire to travel in his motor vehicle to Washington. He does not stop in the State of New Jersey, and his stay there is a matter of a very short time, yet, because he comes into that State with his motor vehicle for the sole purpose of using the highways for travel, he must pay a tax of one dollar.

Under this statute, then, we have this situation: That a man who is a resident of New York who desires to operate his motor vehicle on the highways of New Jersey, must not only pay a discriminating treble tax upon his vehicle as property, but he must pay such a tax upon property having no taxable situs in the State of New Jersey.

It is a fundamental principle of taxation, that property must have a situs within the jurisdiction of the taxing power in order for it to be lawfully taxed. That property situated, owned and taxed in the State of New York cannot be taxed in the State of New Jersey, even if such property may temporarily be situated in the latter State.

This is well established in the law and all the cases on the point are in harmony.

As was said by Earl, *J.*, in *Jefferson v. Smith*, 88 N. Y., 576:

“Before personal property can be taxed in
“this State under the statute it must be with-
“in the State. There is no more authority
“for taxing personal property not within the
“State than there is for taxing lands not
“within the State.”

The question was thoroughly discussed in the highest court in the State of New Jersey in the case of *State v. Haight*, reported in 30 N. J., L. 428. In that case, the authorities of New Jersey sought to tax a ferryboat plying between New

York and Jersey City. The boat was owned by a New York corporation; was registered in the Custom House in New York City and only touched at or remained in New Jersey as long as necessary on each trip.

The Court (Judge Van Dyke) said:

“It cannot be, I think, that all vessels belonging in other States and owned by citizens thereof, visiting our shores but never coming upon them, daily and several times a day, and returning back again as often as they come, can be considered as situated here. The establishment of the principle contended for by the assessor in this case would seem to authorize him in assessing everything that he can find within the official limits at any time while making his assessments, which would render it unsafe for a stranger to our soil to visit it with his property during that time. The law does not contemplate any such thing. It is only intended to tax such personal property of foreigners as is actually located or used within the State with something like permanency and not having its actual location or home somewhere else. These boats have no actual location or place of residence, so to speak, in this State, but they have a location and home in the State of New York, and cannot, I think, be considered in any sense as belonging here as the object of taxation.”

A similar decision will be found in the case of *State v. Engle*, 34 New Jersey Law, 425. The question there was the right to tax coal, which was merely being transported through the State of New Jersey.

The Court said:

“Property in transit through the State, or which has been sent within the State simply for the purpose of sale, is not to be consid-

“ered as having a situs within such State for
“the purpose of taxation.”

That the above cases set forth the only sound constitutional doctrine is apparent, for *while it may be held*, as it is in some courts, that the situs of personal property always follows the domicile of the owner for the purpose of taxation, although actually permanently situated elsewhere, *it has never been held* that personal property could have a situs for taxation where the owner has no residence or domicile, and where the property is not actually and permanently situated. Taxation in any such manner would be clearly unconstitutional *confiscation*. And that is exactly the situation under this statute. The motor vehicle of a resident of the State of New York or any other State is taxed, although it has no actual or permanent situs in the State of New Jersey, and is merely being used by the owner as a means of transportation through that State.

This is *confiscation*. Motor vehicles temporarily in the State of New Jersey for transportation on the highway cannot be subjected to such a tax, any more than can land or personal property owned by a resident of, and situated in New Jersey, be taxed in California or England. The cases may differ in degree, but the principle is the same, and the Constitutional inhibition preventing the deprivation of property without compensation and due process of law apply equally to both.

B.

It deprives citizens of other States of their constitutional right of free passage through the State of New Jersey with their property.

Under the system of government in force in the United States, all citizens have the free, natural

and constitutional right to travel and go, with their property, anywhere within its territorial confines. A citizen of New York or of California needs no passport to travel in or through the State of New Jersey or any other State, and the State of New Jersey cannot require that such a citizen pay a tax fee of one dollar or any other sum, and register, before this free, constitutional right can be exercised. The right of any citizen of the United States to travel through the territory of any State unmolested, and without restriction is fundamental, and this right of travel includes the right to use any or all ordinary and usual methods of locomotion. If A, a citizen of New York, desires to ride through New Jersey to Washington, on a mule, the authorities of the State of New Jersey cannot say that he shall use a horse, because mules are prohibited as a means of travel, unless a tax of one dollar is paid, and they are registered in the office of the Secretary of State.

The same principle should apply in the case of motor vehicles, the court having decided, and it being generally recognized, that a motor vehicle is an ordinary and usual method of travel, having equal rights with other vehicles on the highway.

Indiana Springs Co. *vs.* Brown, *supra*;
 Mason *vs.* West, *supra*;
 City of Chicago *vs.* Collins, *supra*;
 City of Chicago *vs.* Banker, *supra*;
 Densmore *vs.* City of Erie, *supra*;
 Swift *vs.* Topeka, *supra*;
 Hennessey *vs.* Taylor, 76 N. E., 224;
 Shinkle *vs.* McCullough, 116 Kentucky,
 960-965;
 Knight *vs.* Lanier, 69 N. Y. App. Div.,
 458.

What constitutional power has the State of New Jersey to interfere with the right of a citizen of the State of New York to travel to the seat of the Government at Washington by an ordinary and usual means of conveyance? If the State of New Jersey can require the owner of a motor vehicle who is a resident of New York to register his vehicle and pay a tax of one dollar before he may travel in it, through the State of New Jersey, it may require a pedestrian or the owner of a horse-drawn vehicle, who is a resident of the State of New York, to register and pay a tax before he may travel to Washington through the State of New Jersey.

The motor vehicle being an ordinary and usual means of conveyance, having equal rights with the other users of the highway, the State of New Jersey cannot prohibit it from the highways, or prevent any citizen of another State from traveling through that State in a motor vehicle, unless it is registered there, and a tax paid, any more than it can prohibit or restrain a citizen of New York or Pennsylvania from walking or riding a horse through its territory.

There can be no denying the general proposition that every citizen of the United States and every citizen of each State, has, as an attribute of personal liberty, a right to free transit by any ordinary and usual means of conveyance, from and through the territory of any State. The freedom of ingress and egress is guaranteed to all by the clearest implications of the Federal as well as of the State Constitutions. This liberty of interstate travel is referable to many clauses of the Federal Constitution.

In *Ward v. Maryland*, 12 Wall., 418, 430, it was classed by Mr. Justice Clifford as one of the "privileges and immunities of the citizens of the sev-

eral States," guaranteed to citizens of each State by Article IV, Section 2, of the Constitution of the United States.

In the Passenger cases 7 Howard, 283, it was recognized by a majority of the Supreme Court of the United States as a right protected by the commercial clauses of the Federal Constitution from hostile State legislation and its existence was admitted by all and denied by none.

The Court said:

"For all purposes for which the government was formed, we are one people with one country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption as freely as in our own State. And a tax, imposed by a State for entering its territories or harbors, is inconsistent with the rights which belong to citizens of other States as members of the Union and with the objects which that Union was intended to attain. Such a power in the States could produce nothing but discord and mutual irritation and they very clearly do not possess it."

In *Crandall v. The State of Nevada*, 6 Wallace, 35, the question of the right of a State to restrain and levy a tax upon persons residing in a State who wish to pass out of it, and upon other persons not residing in it, who wish to pass through it, was fully considered and discussed. The Legislature of the State of Nevada imposed a tax of one dollar upon every person leaving the State of Nevada by railroad or stage coach or other mode of conveyance.

Mr. Justice Miller, in an opinion for the Court holding such a tax unconstitutional and void, said:

"The Federal Government has a right to
 "declare and prosecute wars, and as a neces-
 "sary incident, to raise and transport troops
 "through and over the territory of any State
 "of the Union. If the right is dependent, in
 "any sense, however limited, upon the pleas-
 "ure of the State, the Government itself may
 "be overthrown by an obstruction to its exer-
 "cise. * * * But if the Government has
 "these rights on its own account, the citizen
 "has correlative rights. He has a right to
 "come to the seat of Government to assert
 "any claim he may have upon the Govern-
 "ment, or to transact any business he may
 "have with it, to seek its protection, to share
 "its offices, to engage in administering its
 "functions. He has a right to free access of
 "its seaports, through which all the opera-
 "tions of foreign trade and commerce are
 "conducted, to the sub-treasuries, the land of-
 "fices, and the courts of justice, in the several
 "States, and this is, in its nature, independ-
 "ent of the will of the State over whose soil he
 "must pass in the exercise of it. All citizens
 "of the United States as members of the same
 "community must have the right to pass and
 "repass through every part of it, without in-
 "terruption, as freely as in their own States.
 "Such a tax imposed by a State is incon-
 "sistent with the right which belongs to citi-
 "zens of other States as members of the
 "Union.

"The views here expressed are neither
 "novel nor unsupported by authority. The
 "question of the taxing power of the States,
 "as its exercise has affected the functions of
 "the Federal Government has been repeat-
 "edly considered by this court, and the right
 "of the States in this mode to impede or em-
 "barrass the constitutional operations of the
 "Government, or the rights which its citizens
 "hold under it has been uniformly denied."

In the case of the Matter of Archy, 9 California,

147, the contention herein made by the defendant was upheld in every particular. In that case, the point under discussion was the right of a traveler from another State owning a slave to bring the slave through the State of California when the laws of that State provided that slavery would not be tolerated therein and was expressly prohibited. The Court held that the right of transit through each State with every species of property known to the Constitution of the United States and recognized by that paramount law, is secured by that instrument, and does not depend upon the uncertain and changeable ground of mere comity.

The Court said:

“If then in virtue of the paramount sovereignty of the United States, the citizens of each State have the right to pass through the other States with any property whatever, are they not equally entitled to this right of transit with their slaves? Is not the right of free passage a right that necessarily flows from the relation that the States sustain to each other, under the general bond of the Union? We are one Government for certain specified purposes and this right of transit across the territory of a sister State is one of the necessary incidents of the purposes and ends for which the Federal Government was created.”

POINT III.

This Statute is in violation of the Federal Constitution and the Constitution of the State of New Jersey in that,

It is an unwarranted and unrea-

sonable exercise of the police power.

The basis upon which the Legislature of any State may regulate its citizens in the use of their property is found in the implied power to pass police measures for the welfare of the citizens in general, and it is well settled that the instant the Legislature passes the limits determined by the necessities of the general public regarding the use of the particular property regulated, then the constitutional provisions, prohibiting the deprivation of property and personal liberty, are violated and such police regulations cannot be considered to constitute due process of law.

The statute under consideration cannot be constitutionally justified as a police regulation. Its provisions are not such as are required by the general welfare; they are prohibitions against and restraints of the exercise of a common law right.

Can the Legislature, under the police power, require that a man register and procure a license before he may exercise his right to walk or drive a horse upon the highway? If the negative is true, then it is submitted that the State of New Jersey cannot justify its requirement that the owner of a motor vehicle shall procure a license to operate his vehicle upon the public highways, as an exercise of the police power.

If this statute is sound and constitutional, then we have it as law that every act of a citizen depends upon the whim of the Legislature, and that his property and his use of it is always at its absolute and unrestrained direction and command.

If this statute is constitutional, then Act I, Section 1 of the Constitution of the State of New Jer-

sey is nothing but a high sounding phrase. It says:

“All men are by nature free and independent, and have certain entire and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring and possessing and protecting property and in pursuing and obtaining safety and happiness.”

It is the law, recognized in almost every State of this Union, that a motor vehicle is an ordinary and usual means of conveyance, having equal rights on the highway with other means of conveyance, as stated in the cases cited, *supra*, Point I, and in

Wright *v.* Crane, 106 N. W., 71.

Mr. Justice Montgomery, writing for the Mich. Supreme Court, says:

“THERE IS NO DOUBT THAT OWNERS OF AUTOMOBILES HAVE THE SAME RIGHTS IN THE STREETS AND HIGHWAYS OF THE STATE THAT THE DRIVERS OF HORSES HAVE, BUT THE RIGHT OF EITHER CLASS IS NOT TO USE THE MEANS OF LOCOMOTION WITHOUT REGARD TO THE RIGHT OF OTHERS HAVING OCCASION TO TRAVEL ON THE HIGHWAY. THE DEGREE OF CARE REQUIRED OF EITHER THE DRIVER OF A HORSE OR THE CHAUFFEUR OF AN AUTOMOBILE IS GOVERNED BY THE CHARACTER OF THE AGENCY EMPLOYED.”

Upon what ground, then, can any Court logic-

ally say that the Legislature may constitutionally require a license from an owner of a motor vehicle before he may operate it on the highway? A license is a privilege or grant from the State, while the operation of a motor vehicle upon the highways is an exercise of a common law right, a natural right and an inalienable right.

It is not denied that the Legislature can constitutionally prescribe certain rules to be observed in the use of the highways which are applicable to all vehicles; that is well within the police power; no one is deprived of liberty or property by such a statute; general order and the public welfare are preserved. But it does not follow from such an exercise of legislative power that the Legislature could prohibit and license the use of the highways, in such a case, if its members desired.

But when you come upon a statute such as this, requiring that before a man may use a highway in an usual and ordinary manner and for which the highway was expressly dedicated, he must procure a license, you find something which has gone far beyond constitutional boundaries. If the Legislature can require a license for an ordinary use of the highway, it may prohibit and restrain that use entirely. **That which is within the State's power to license is within its power to prohibit and restrain absolutely.**

The Legislature can require a license to keep a dog, because, as we have seen, it can entirely prohibit and restrain the keeping of dogs, on certain historical common law grounds. Can such a principle be contended for in the case of motor vehicles? Could the Legislature of the State of New Jersey constitutionally prohibit its citizens from owning or harboring automobiles? It is submitted that if this statute be constitutional, such a result would inevitably follow.

But, leaving aside for the moment the question of the power of the Legislature to license operators of motor vehicles, this statute in addition to being an unwarranted exercise of the police power is unreasonable in every particular. It requires that an affidavit of competence be made, and a license procured, before a motor vehicle may be operated in the State of New Jersey, *but this requirement is made only in certain cases and from certain persons—OWNERS.*

Why it should require owners of motor vehicles to make an affidavit of competence and procure a license is hard to see! Certainly, if it is claimed that the public welfare requires it, the more so should it be required in the case of other persons operating motor vehicles who are not owners. An owner in nine cases out of ten knows more about operating such a vehicle than any other person. At the time of his purchase he received instruction, whereas, in the case of another person, he is operating hap-hazard at the risk of life and limb. Under this statute, if you *do not* own a motor vehicle you may operate any vehicle belonging to some one else, anywhere and at any time in the State of New Jersey, without restraint or prohibition, although you may never have been in one before, do not know the first thing about its management, and, although you may endanger numberless lives, as would a five-year-old child in driving a spirited team of horses. But, under this statute, a vast discrimination is made in the case of *the owner*. He may have operated motor vehicles for many years and be skilled in their management and control, yet he must make an affidavit and procure a license, and if he does not, he is guilty of a crime.

It is submitted that if the public welfare requires any one to make an affidavit as to his com-

petence to operate motor vehicles it is a beginner and a person who does not own one, and has had no instruction or experience in their management and conduct, which is the very situation which the statute does not cover, but which it ignores; the object aimed at by the statute is not attained and the method adopted is crude and illy adopted to the purpose. This part of the statute is unwarranted as an exercise of the police power and not calculated to subserve the general welfare of the people of the State, but is calculated to and does abridge and restrict the common law right of the citizen owning a motor vehicle.

The mere attachment of a number to a vehicle serves as no protection to the general public; the vehicle is capable of just as great speed with, as without, a registration number, and may come into the hands of and be driven by just as careless a person with, as without, registration. That a motor vehicle is capable of speed cannot justify registration and licensing. Such an argument applies equally well to every person, and every species of property. Because a man is capable of breaking the law is not a sufficient reason for requiring that every man register and carry a number.

It is well established that the police power cannot be so indiscriminately exercised by the legislature. It is confined within clear and well defined limits. The rule in this regard is excellently stated in

Lawton v. Steele, 152 U., 338.

“To justify the State in thus interposing
 “its authority in behalf of the public, it must
 “appear first that the interests of the public
 “generally, as distinguished from those of a
 “particular class, require such interference,

“and second that the means are reasonably
 “necessary for the accomplishment of the
 “purpose and not unduly oppressive upon in-
 “dividuals. The Legislature may not, under
 “the guise of protecting the public interests,
 “arbitrarily interfere with private business
 “or impose unusual and unnecessary restric-
 “tions upon lawful occupations, in other
 “words, its determination as to what is a
 “proper exercise of its police power is not
 “final or conclusive, but is subject to the su-
 “pervision of the courts.”

An excellent application of the rule is found in the case of *Toledo W. & W. R. Co. v. Jacksonville*, 67 Illinois, 37. In that case, an ordinance was passed requiring a steam railroad company to keep a flagman at a certain crossing in the city, although it was not shown that there was any special necessity for such a requirement. The Court, in holding the ordinance unconstitutional, said:

“But such regulations must be what they
 “purport to be, reasonable regulations, and
 “must be reasonable whether applied to cor-
 “porations or individuals. What are reason-
 “able regulations and what are subjects of
 “the police power must necessarily be a judi-
 “cial question. The law-making power is the
 “sole judge of when the necessity exists and
 “when it will exercise the right to enact such
 “laws.

“Like other powers of government, there
 “are constitutional limitations to its exercise.
 “It is not within the power of the General
 “Assembly, under the pretense of exercising
 “the police power, to enact laws not neces-
 “sary to the preservation of the health and
 “safety of the community, that will be op-
 “pressive and burdensome on the citizen. If
 “it should prohibit that which is harmless in
 “itself or command that to be done which
 “does not tend to promote the health, safety

“or welfare of society, it would be an unauthorized exercise of the police power and it would be the duty of the courts to declare such legislation void. It seems to us that the ordinance in this case, imposes an unreasonable burden on the railroad company.”

Upon the question of the right of the Legislature to require registration and license as an exercise of the police power, the great weight of authority is that such requirements are both unconstitutional under the State and Federal Constitutions, if they interfere with, abridge or restrict a common law and inalienable right of the citizen, and if they are not absolutely necessary for the welfare of the general public.

In the case of *Bessette v. State of Illinois*, 193 Ill., 334, an act was passed, requiring any person practicing the business of horse-shoeing in Illinois to work four years at the business of horse-shoeing and to be examined by the board of examiners provided for in the act, and to obtain a license to be issued by said board upon the payment of \$5 to practice said business in the State. By the terms of the act, the issuance of a license by a board of five examiners appointed by the Governor of the State is made a condition precedent to the right of practicing the business of horse-shoeing.

The Court, in holding the act unconstitutional, and void, as an unwarranted and unreasonable exercise of the police power, said:

“It is impossible to conceive how the health, comfort, safety or welfare of society is to be promoted by requiring a horse-shoer to practice the business of horse-shoeing for four years, and submit to an examination by a board of examiners, and pay a

"license fee for the privilege of exercising
 "his calling. * * *

"If this act is valid, then the Legislature
 "can regulate almost any act of the citizen by
 "the requirement of previous study and pre-
 "vious examination and the payment of a li-
 "cense fee, and the issuance of a license.
 "While we are always reluctant to put the
 "stamp of invalidity upon any act of the leg-
 "islative branch of the government, it is yet
 "our duty, in the exercise of the trust im-
 "posed upon us by the Constitution to pro-
 "tect the constitutional rights and privileges
 "of the individual citizen against such an in-
 "vasion of them as is embodied in the pres-
 "ent enactment."

Such being the law in the case of an ordinary employment or occupation, how can it be said that the Legislature may constitutionally interfere with or restrict, as is done in the statute under consideration, the exercise of the common and inalienable right of the citizen to travel upon the highway in an ordinary and usual means of conveyance?

If this statute under consideration is valid, to use the words of the Court above quoted, then the Legislature of the State can regulate any use of the highway by the requirement of previous examination, the payment of a tax and the issuance of a license. It can license the right to walk upon the highway, in fact, there is nothing that it cannot license.

To the same effect as the case above cited, are the cases of

In re Aubrey, 78 Pacific Rep., 901,
Ruhstat vs. People, 185 Ill., 135.

In the latter case, *Ruhstat vs. People*, it was held that a statute which prohibited the use of the national flag or emblem, for any commercial purpose, or as an advertising medium, was unconstitutional and void. The Court said:

"The Legislature has no power, under the
 "guise of police power, to arbitrarily invade
 "the personal liberty and personal rights of
 "the individual citizen; its determination
 "upon this question is not final or conclusive.
 "If it pass an act ostensibly in the exercise
 "of the police power, but which in fact inter-
 "feres unnecessarily with the personal lib-
 "erty of the citizen, the courts have the right
 "to examine the act and see whether it re-
 "lates to the objects, which the exercise of the
 "police power is designed to secure and
 "whether it is appropriate for the promotion
 "of such objects. * * *

"An act of legislation, passed by a particu-
 "lar State, which deprives the citizen of such
 "privilege, contravenes that clause of the
 "amendment to the National Constitution
 "which forbids any State to abridge the priv-
 "ileges and immunities of a citizen of the
 "United States. If the State Legislature can
 "restrict the use of the National flag and per-
 "mit its use for one purpose and prohibit its
 "use for another purpose it would have the
 "right to prohibit the use of the National
 "flag altogether. It necessarily follows that
 "it has no authority to prohibit its use for
 "certain purposes.

"We are of the opinion that this law is un-
 "constitutional, not only as infringing upon
 "the personal liberty guaranteed to the citi-
 "zen by both the Federal and State Consti-
 "tutions, but also as depriving a citizen of the
 "United States of the right of exercising a
 "privilege, impliedly, if not expressly grant-
 "ed to him by the Federal Constitution."

*Using the same reasoning as the Court above,
 it is the contention of the defendant that if the
 State Legislature of New Jersey can restrict the
 use of the public highway, and permit its use for
 one purpose—walking or driving—and restrict
 and prohibit its use for another—operating a mo-
 tor vehicle—both of which are equal and common
 law uses and within the purview of the dedica-
 tion of the highway, it would have the right to pro-*

hibit the use of the highway altogether for either walking, driving or operating a motor vehicle. As was said by the Court above, it necessarily follows that it has no authority to restrict or prohibit its use for any purpose which is within the purview of the dedication of the highway.

Upon the question of the right to the use of the streets unrestrained, it has been held that an ordinance which prohibited processions or parades without a permit was unconstitutional and void.

In re Garrabad, 84 Wis., 585,

the Court said:

“The people do not hold rights, as important and well settled as the right to assemble
“and have public parties and processions
“with music, banners, and shouting and songs
“in support of any laudable or lawful cause,
“subject to the power of any officer to interfere or prevent them.”

That the use of the streets in any manner within the purview of their dedication, is a right and not a privilege and cannot be made the subject of a license, is well established by the cases above cited, as is the proposition that a motor vehicle on the highway is within the purview of the dedication of that highway, and is an ordinary and usual use thereof.

Upon the unconstitutional unreasonableness of this statute under consideration, in providing that the only operators of motor vehicles who are required to make an affidavit and take out a license are owners, while other persons, not owners, may operate motor vehicles *ad libitum*, without restriction, the case of *Harmon vs. The State of Ohio*, 66 Ohio State, 249, is squarely in point.

Harmon v. State of Ohio, 66 Ohio State Rep., 249.

In this case an act was passed, providing that all operators of steam engines and boilers should be licensed, after passing an examination, and that the license should be in force for one year, and also provided that any engineer who was continuously employed for three years prior to the passage of this act is entitled to a license without an examination. The Court held that this was an unreasonable exercise of the police power and unjustly discriminating.

“This section confers the privilege of obtaining a license without examination on all engineers who were continuously employed as such for three years next prior to the passage of the act, no matter how incompetent they may have become by reason of age, habits or other causes, and no matter how competent an engineer may be by reason of long service, if he has not been employed continuously for three years before the passage of the act, if he is short a month or more in three years he is denied the privilege of obtaining a license without examination. This three-year provision is clearly arbitrary and without reason. It is arbitrarily forming a favored class, and is in conflict with section 2 of the Bill of Rights which guarantees equal protection and benefit, and it is also in conflict with the purpose for which the constitution was established, which was to establish our common welfare. This section of the act is to promote the welfare of a particular three-year class instead of the common welfare of all. The section is therefore unconstitutional, and the two sections 6 and 7 are so interwoven with the whole act as to be inseparable and therefore the whole act is unconstitutional.”

The Court below in handing down an opinion

in the case at bar, rested it on the following illogical proposition. The Court says:

“Perhaps the cases which bear most closely upon the question now presented, are those dealing with regulations respecting the use of the streets by street railroad companies. It is true that it requires a franchise before a street can be occupied by such a road. When, however, the franchise is once granted the use by such a road stands upon the same footing as any other use of the street in respect of any subsequent regulation.

“North Hudson R. R. Co. *vs.* Hoboken, 12 Vroom, 71.

“The introduction of heavy cars propelled by electricity and capable of great speed presented for the first time a new danger to drivers and occupants of horse-drawn vehicles.”

After citing one or two cases, which it is respectfully submitted are not in point, the Court in the present case amazingly concludes:

“It seems too obvious for further remark that the Legislature has the same right to protect other users of the highway against these dangers as it has to guard them against the unrestricted movements of a trolley car.”

With great respect for the learned justice who pronounced the above opinion, it is respectfully submitted that, as a matter of logic and of law, it is absolutely unsound. No comparison can be made between the use of a highway by a mode of conveyance within the purview of its dedication, and the use of the highway by a public service corporation under the authority of a State franchise. They are not parallel.

The use of the highway for a purpose within the dedication thereof is a common law and in-

alienable right of every citizen and one which the Legislature cannot prohibit.

The use of the highway for a street railroad is a purpose foreign to its dedication, and is a statutory right and privilege which may be granted or denied by the Legislature, and it cannot be said as a matter of law that the use of the highway for walking and driving may be subjected to the same or similar restrictions and for the same reason as a public service corporations's use of the same highway under a franchise. Public service corporations, because of their peculiar character, and because they are given great and peculiar privileges and because they are allowed to carry people for *hire and profit*, have always, since the earliest common law times, been specially subjected to restrictions and regulations which in other cases would not be constitutional.

Munn vs. Illinois, 94 U. S., 113.

Moreover, the very case cited by the Court as authority for the Court's conclusion, as it is no authority at all for it, destroys the value and effect which the argument advanced in the opinion might otherwise have. The opinion of the Court below, in the case at bar, asserts that as a street railroad may be licensed in the use of the highway, even after its franchise is granted, citing *Hudson R. R. Co. vs. Hoboken*, 12 Vroom, 71, the Legislature may therefore properly license the use of a highway by a motor vehicle.

The major premise of this proposition is not sound. The case is not authority for it, and, in fact, decides directly the contrary.

The Court, in *Hudson R. R. Co. vs. Hoboken*, *supra*, the case upon which the Court below, in the present case, based its opinion, said:

"But an ordinance requiring a license as
 "the condition under which a railway com-
 "pany shall be permitted to run its cars, and
 "exacting a license fee therefore, is quite a
 "different thing. Its effect is to interdict the
 "enjoyment by the company of its franchise,
 "except on terms and conditions which the
 "Legislature in its charter has not imposed.
 "The legal definition of a license is a right
 "given by some competent authority to do an
 "act, which, without such authority, would be
 "illegal. Bouvier's Law Dit., title 'License.'
 "The prosecution did not need any authority
 "from the City Government to legalize the
 "running of cars and operating its railroad.
 "Adequate authority for that purpose was de-
 "rived from the several acts of the Legisla-
 "ture relating to this Company."

The reasoning above quoted is directly applic-
 able to the case at bar. A law requiring a license
 before the highway may be used for a purpose
 within the purview of its dedication, as the driv-
 ing of a motor vehicle, thereas does in effect, "in-
 terdict," to use the language of the Court
 in the above quotation, "the enjoyment"
 of a common law and inalienable right of the
 citizen. As the Court said the legal defini-
 tion of a license is a grant or privilege
 to do something, the doing of which, without
 the license, would be unlawful, no authority is
 necessary from the Legislature to operate a mo-
 tor vehicle on the highway, any more than author-
 ity is necessary to drive a horse or walk upon
 such highway. Adequate authority for any such
 purpose is derived from the Constitution. It may
 be done as a matter of common right.

It must not be lost sight of that what is sought
 to be done by this statute is to license the mere
 operating of a motor vehicle as such, apart entire-
 ly from the manner or method of the operation,

and it is respectfully submitted that this cannot be done, in view of the 14th Amendment of the U. S. Constitution, guaranteeing to all citizens the equal protection of the laws.

POINT IV.

This statute is in violation of the Federal Constitution and the Constitution of the State of New Jersey in that:

It discriminates against owners of motor vehicles in favor of other users of the highway, and deprives them of the full use of their property, and it further discriminates against certain owners and users of motor vehicles in favor of other owners and users of such vehicles.

The Constitution of the United States, Fourteenth Amendment, Section 1, in condemning discriminatory State Legislation, provides as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of

“law, nor deny to any person within its jurisdiction the equal protection of the laws.”

It has been held repeatedly by the Courts that this clause of the Constitution, in declaring that “no State shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws,” conclusively and effectively established that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that no impediments should be interposed to the pursuits of any one, except as applied to the same pursuits by others; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition; that no law could be upheld upon a theory of classification which contained inequalities, and, in fact, that arbitrary selection in the making and the enforcement of laws was prohibited and condemned.

In accordance with the foregoing principles, the Supreme Court of the United States has held that a State law which, under the cloak of an exercise of the police power, attempts to lay burdens on some and to exempt others, is unconstitutional and void.

Cotting vs. Kansas City Stock Yds. Co.,
183 U. S. 79,

the Court, in its opinion, quoted and approved the statement of Mr. Justice Catron in *Van Zant vs. Waddel*, 2 Yerg, 260, 270.

“Every partial or private law which directly proposes to destroy or affect individual rights or does the same thing by affording remedies leading to similar consequences is unconstitutional and void. Were this other-

wise, odious individuals and corporate bodies would be governed by one rule and the mass of the community who made the law by another."

The statute under consideration is clearly violative of the principles above stated, in that it attempts,

First. To create an arbitrary class of vehicles known as motor vehicles, and discriminates against such vehicles by putting unreasonable and intolerable burdens upon them in favor of all other vehicles which may be in use on the highway.

Second. It seeks to create an arbitrary class of persons known as owners of motor vehicles and discriminates against them by requiring that they procure a license before they may operate their vehicles, in favor of all other users of the highway, and in favor of all other persons who may desire to operate a motor vehicle.

Third. It unreasonably discriminates between different owners of motor vehicles and places burdens and restraints on some *individual owners of such vehicles*, which are not placed upon others in exactly the same condition and circumstance, to wit, manufacturers or dealers.

Let us consider first the unconstitutional discrimination between motor vehicles, and all other vehicles which may be used upon the highway. The only general classification of property used as a means of conveyance, which reason will allow is the class known as vehicles, defined in Words and Phrases, Volume 8, page 7284, as follows: "A vehicle is a carriage moving on land, either

on wheels or runners—a conveyance—that which is used as an instrument of conveyance, transportation or communication.” They are all used for the same purpose—transportation on the highway, and they all have the same object. It will be conceded that there would be no warranted classification between wagons with two wheels and wagons with four wheels, or between wagons drawn by oxen and wagons drawn by fleet race horses, and that a statute which was based upon such a classification would be arbitrary and unconstitutional. And the reason is that the only accepted and reasonable class is *vehicles*, or, let us say, vehicles the use of which is within the dedication of the highway, not horse-drawn vehicles or oxen-drawn vehicles, or two or four-wheeled vehicles, or vehicles propelled by motor power. All such vehicles are of the same class. The class is made and must be made of those things which have the same object and the same general use. You cannot constitutionally classify citizens of the State of New York according to the clothes they wear or the money they have in their pockets. You cannot classify watches into stem-winders, and key-wound watches; the class is watches. So you cannot classify vehicles into motor vehicles and other vehicles, merely for the reason that one may be a little different in construction from the other. *It is not the method of construction which is to be taken into consideration in making a classification; it is the object and purposes of the things to be classified, and all things which, under the same general principle, attain the same object and purpose must remain in the same class.* That this is the law is abundantly established by authorities.

The constitutionality of a statute very similar to the one in the case at bar was under consideration in the case of *Bailey vs. People*, 190 Ill. 28.

In that case the statute provided that it was unlawful for more than six persons to occupy the same room for sleeping purposes in a lodging house, and every room in such lodging house should contain at least 400 cubic feet of space for each person sleeping therein. The Court, in holding the statute void as violative of the 14th Amendment, said:

“This legislation is directed only against
 “lodging house keepers. Keepers of board-
 “ing houses, inns, hotels and taverns do not
 “fall within the purview of its prohibition.
 “If the enactment is a valid one, inn or hotel
 “keepers or keepers of boarding houses may
 “lodge seven or any greater number of guests
 “or patrons in the same room, at the same
 “time, for sleeping purposes, as may suit
 “their convenience, subject only to the con-
 “sent of their patrons or guests, without in-
 “curring the penalties which under the pro-
 “visions of this enactment, would be visited
 “upon a lodging house keeper, should he al-
 “low more than six persons to occupy the
 “same sleeping apartment at the same time.
 “This is to discriminate against the lodging
 “house keepers as a class, and to deprive
 “them of liberty and a property right which
 “other persons engaged in business of the
 “same general character, and similarly con-
 “ducted, may freely exercise without let or
 “hindrance.

“The Attorney-General concedes that the
 “term ‘lodging house’ and the words ‘inn,’
 “‘hotel,’ or ‘boarding house’ are none of
 “them convertible terms or words, and that a
 “distinction exists between these several in-
 “stitutions and a lodging house, but he insists
 “that the act, though it has no penalties
 “against the inn or hotel keepers or boarding
 “house keeper, may be legally enforced
 “against keepers of lodging houses as a sani-

"tary measure, under the police power. Some
 "lodging houses, as it is urged, may be, and
 "doubtless are, the recognized abiding places
 "of unclean, diseased and vermine-infected
 "guests or patrons, who together with the
 "owners or keepers of the lodging houses, are
 "indifferent of sanitary conditions, render-
 "ing such houses sources of contagious and
 "infectious diseases. But it cannot be as-
 "serted that all lodging houses are of this
 "character; neither can it be said boarding
 "houses, inns and hotels are not to be found
 "which shelter the same class of patrons, and
 "whose keepers are likewise indifferent to
 "sanitary conditions. The public health is
 "less endangered by a cleanly and well con-
 "ducted lodging house than by a filthy, ill-
 "managed, disease-breeding hotel or board-
 "ing house. The lodging of more than six
 "persons in any one room from a cleanly
 "point of view is not more objectionable than
 "the lodging of a like number of guests in one
 "room in a hotel or boarding house. If in-
 "tended as a measure to protect health, the
 "act should have been directed against the
 "evil which threatens to introduce sickness or
 "disease whether found in a lodging house,
 "boarding house or hotel, and as its penalties
 "are not so levied, it can but be regarded as
 "partial and discriminatory legislation."

The State's attempt in the case just cited, to
 justify the statute, under a general plea of an ex-
 ercise of police power, is exactly the same as in the
 case at bar. The statute under consideration is
 directed against motor vehicles. Horse-drawn
 vehicles, no matter what the character or speed,
 in fact, all other vehicles, are exempt. An owner
 of a horse need not take out a license or register
 his animal to drive on the highway; no matter
 how speedy or inherently vicious such an animal
 may be, the owner may go upon the highway when-

ever it suits his convenience. This is discrimination against the motor vehicle of the same character as that condemned in the case just cited.

The State's whole endeavor is to justify such discrimination as a necessary exercise of the police power as in the case cited, but the reasoning of the Court in answer thereto may be as readily applied here. Some motor vehicles may be dangerous and unsafe, but it cannot be asserted that all are of this character, neither can it be said that horse-drawn vehicles are not to be found which greatly endanger the life and safety of the public. The public safety is less endangered by an easily controlled and well-constructed motor vehicle than by an ill-tempered, unmanageable team of horses. If intended as a measure to secure the safety of the public, the measure should have been directed against all vehicles, whether motor or horse-drawn, and, as it does not so provide, it cannot but be regarded as partial and discriminatory legislation. Under its provision, what is lawful if done by A, the driving on the highway of a horse, no matter how unmanageable, is a crime if done by B, in operating a motor vehicle on the highway, no matter how perfectly controlled. This is violative of constitutional inhibition.

Yensen vs. State of Ohio,

7 Nisi Prius, Ohio Rep. 18,

is another excellent application of constitutional principles condemning discriminatory legislation. In that case a statute provided that all persons fishing with nets in Lake Erie should procure a license and pay certain fees, distributed as follows: For a tug or steam vessel, \$40.00; for a sailboat, \$5.00; for each net used in fishing, except the nets used on boats licensed as aforesaid, \$2.00

and \$3.00, and it was required that all such boats or nets, when licensed, should have affixed to them a metal tag at all times, with the license number plainly visible thereon. The Court held that, as fishing with nets was the same occupation, whether in a steam vessel, sailboat or by any other means, the statute was therefore discriminatory and unconstitutional. The Court said:

“And these unequal burdens are imposed upon men engaged in the same lawful occupation upon the same water, and in the same locality. Now the question is whether the provisions of a law that imposes such unequal burdens upon men engaged in the same occupation is or is not in conflict with any constitutional provision. The great principle of our government, the fundamental principle, is Equality; that all men shall be treated alike; all men under like circumstances; that there shall be no privileged classes, and that there shall not be one law for one man and another law for another.
* * *

“Any act of the Legislature that interferes, in violation of these principles, with the citizen’s right to liberty, and his right to acquire, possess and protect his property, is unconstitutional.”

As in the case just cited, the statute in the case at bar places unequal burdens upon property in the same class with other property not restricted. It requires that before a motor vehicle may be operated on the highway, a license must be procured and the vehicle registered, while all other vehicles may be used on the highway without restraint, when, at the same time, it is established as a matter of law that motor vehicles have equal rights with other vehicles on the highway. See Point I. This is exactly the vicious proposition

rightfully condemned above, as unconstitutional. Traveling on the highway is the same, whether in a horse-drawn vehicle or any other means of conveyance.

In the Statute under consideration in the case at bar, the Legislature has picked out, not a class of property, but a certain portion of a class of property, motor vehicles, and subjected them to unreasonable burdens and restrictions, and has, at the same time, exempted other property in the same class—all other vehicles used on the highway—from such burdens and restrictions. In the case of

City of Kansas *vs.* Grush,
52 S. W. Reporter 286,

an ordinance having provisions of exactly the same character was held to be unconstitutional and void. In that case the ordinance required that all commission merchants and produce dealers procure a license and pay a license tax, while no such requirement was placed upon merchants in other branches. The Court said:

“Nor is there any reason why a merchant who deals altogether in produce should be required to pay \$50 for the privilege of carrying on his business, in addition to his *ad valorem* tax, which his neighbor, who deals in groceries, hardware, or dry goods, is wholly exempt from a license tax. Both are merchants and neither are subject to more burdens than the other. No doubt exists as to the power of the Legislature or a special charter, to divide the various occupations into different classes, and that a tax upon one class would not be obnoxious to the Constitution merely because another class was not taxed. But when, as in this case, the ordinance singles out a part of a legal class, to wit, *merchants*, and imposes a burden upon it and exempts all others of the

same class, then those against whom this unjust discrimination is directed may justly complain of the violation of the constitutional guaranty of equality of taxation and equal protection of the laws."

The reasoning of the above opinion is squarely in point in the case at bar. A statute cannot single out certain merchants or produce dealers and put restrictions upon them. The class is merchants.

So in the case at bar, the statute cannot single out certain vehicles, to wit, automobiles and burden and restrict them. The class is vehicles. Any other attempted classification is arbitrary and unconstitutional.

The only argument which can be advanced in support of the discrimination in the statute under consideration is the old argument of the great danger in the use of motor vehicles from their capacity for speed.

The flaw in this argument is, that a possibility of danger cannot be guarded against by an unconstitutional discrimination. A desire for a speedy result does not justify the passing of an unconstitutional law, especially when the same result may be attained by the proper enforcement of the highway laws.

The end never justifies the means.

Further, such an argument can be advanced just as strongly and pointedly for a requirement that all other vehicles be licensed and numbered, such as carriages drawn by fast horses or bicycles. The provisions of this statute under consideration should in reason apply to all swift moving bodies upon the public highway. Why should not a person desiring to drive a fast horse upon the highway be required to register his horse with the

Secretary of State and attach a registration number to his carriage? There are as many horses capable of great speed as there are motor vehicles. Some automobiles are incapable of attaining a speed exceeding the limit allowed by the law. The theory of the law is, in the argument advanced by the State, that capacity for speed is dangerous. A fast horse is more dangerous than a slow automobile. The latter, even if fast, is more easily controlled; yet no registration of a horse is required, and *all* motor vehicles must be registered.

If capacity for speed and danger to the public is the argument advanced in support of this statute then if the law is to be constitutional all vehicles in the highway should be registered and carry a number, because statistics show that there are more accidents in proportion from horse-drawn vehicles than from motor vehicles. The case of

In re Marshall, 102 Federal, 323,

is illustrative of the point made.

In that case an ordinance made it a misdemeanor to use a repeating shotgun in the killing of game birds, while any other gun was not legislated against.

The Circuit Court of the United States, Judge Ross, said:

“No valid reason is therefore perceived, and none has been suggested by counsel, why the owner of a repeating or magazine shotgun should be prohibited from using it, and the owner of the equally, if not more effective, double-barreled automatic ejector shotgun, be free to use it, in killing the 25 quail, partridges or grouse permitted to be killed by any person in one day. The equal protection of the laws, to which every person is, by the provision of the Constitution of the United

States, above quoted, declared entitled, would indeed be a vain thing if such discriminatory legislation was sustained by the courts. If section 7 of the ordinance in question is valid, no reason is perceived why the process of elimination may not be extended by next prohibiting the use of the double-barreled automatic ejector shotgun, next all but muzzle-loading guns, and so on, until the popgun only is permitted to be used upon wild duck, geese, quail, partridge, grouse, doves, or other birds in Marin County. Laws enacted in the exercise of the police power, whether by a municipal corporation acting in pursuance of the laws of a State, or by a State itself, must be reasonable, and are always subject to the provisions of both the Federal and State Constitutions, and they are always subject to judicial scrutiny."

Let us consider, *secondly*, the two-fold unconstitutional discrimination in this statute (A) against users of the highway in motor vehicles and in form of all other users of the highway (B) against owners operating their motor vehicles and in form of all other persons who may operate such vehicles.

(A) To take up the first arbitrary discrimination, the statute under consideration provides that all owners desiring to use their motor vehicles on the highways of New Jersey, must make an affidavit as to their competence to operate such a vehicle and procure a license, and the failure to do this is made a misdemeanor, while no such requirements are made in the case of other users of the highway; they may drive or walk upon the highway without restriction. This is clearly an unreasonable and arbitrary classification, and such as has without exception been condemned in the cases and authorities on constitutional law as vio-

lative of the 14th Amendment. People cannot be classified in a statute according to the particular character of property they own. To use a common illustration, owners of gold watches and owners of silver watches cannot be classified separately. The class must embrace all watches. Owners of estates in remainder cannot be classified into those vesting before 1885, and those vesting after that date. The class must embrace all estates in remainder.

Matter of Pell, 171 N. Y., 48.

So users of the highway cannot be classified into those who use motor vehicles, and those who use other means of conveyance. The class is users of the highway. It has been absolutely and firmly established as the law that owners of motor vehicles have equal rights on the highway with owners of horse-drawn vehicles and pedestrians.

Cases cited in Points I and III,

and, such being the case, this statute operates to destroy those equal rights and imposes burdens on one that are not put upon the other.

This statute not only unconstitutionally requires a license for the exercise of a common law right and an inalienable right, the use of a highway for a purpose within the purview of its dedication, to wit, the operating of a motor vehicle, but it further requires this license from owners of motor vehicles alone, and exempts all other users of the highway.

How can it be said that a statute which requires owners operating motor vehicles to procure a license and make an affidavit of competence to operate a motor vehicle, and at the same time allows owners of horse-drawn vehicles to drive any horse

on the highway without restriction, no matter how uncontrollable and no matter how little the driver may know of driving, is constitutional?

If it is said that there are many persons who do not know how to properly manage and control motor vehicles, it may also be said that there are just as many persons who do not know how to properly manage and control a horse or team of horses; in fact, there is as much danger to the public in the driving of a spirited horse on the highway by an incompetent or even competent driver than there is in the operation of a motor vehicle. A horse is an agency which can never be said to be absolutely under control; it is always more powerful than the person driving, while a motor vehicle is so constructed as to be always under perfect control, and it has been demonstrated to the satisfaction of all that such a vehicle can be stopped absolutely within twice its own length.

Both uses of the highway have the same relation to the public, and both are equal, common law uses. One cannot be licensed and prohibited while the other is unrestricted.

If a license can be required for the use of the highway within the purview of its dedication, and we contend it cannot, a certain use cannot be singled out, and a license required for that use, and all other uses be exempted. They are all equal, and all must be included in the restricting law.

The Laundry cases, decided in the highest Court of the States and the United States, are clear authority upon this point.

The Stockton Laundry Case, 26 Fed. Rep., 611;

Ex Parte Sing Lee, 96 Cal., 354;

In re Henry Wah, 82 Fed., 623;

Yick Wo vs. Hopkins, 118 U. S., 356.

In these cases it was attempted to license and restrict by ordinance or statute all proprietors of laundries, and Chinese laundries in particular.

The Court in the Stockton Laundry case in holding the ordinance unconstitutional, said:

“It is one of the most common ordinary
“and necessary employments, in which every
“one may engage, as of common right upon
“terms of equality not only as to those em-
“ployments, but upon terms of equality with
“those engaged in any other ordinary or use-
“ful occupation.

“The right to labor in this or any other
“honest, necessary, and in itself harmless
“calling, where it can be most conveniently,
“advantageously and profitably carried on,
“without injury to others, is one of the high-
“est privileges and immunities secured by the
“Constitution to every American citizen, and
“to every person residing within its protec-
“tion.”

In re Henry Wah (*supra*),

The Court arriving at the same conclusion said:

“It is certainly a matter of common ob-
“servance that a public laundry is harmless
“in itself, and if properly conducted with
“reference to sanitary and other conditions,
“which may be easily complied with, not of-
“fensive or dangerous to the health of the
“community in which it may be located; and
“this being so, a person has under the Con-
“stitution of the United States, the same
“right to engage in the business of conduct-
“ing a public laundry as in any other, and
“has equally with the grocer, lawyer or car-
“penter, the right to select the particular lo-
“cality in which he shall conduct such busi-
“ness.”

A statute arbitrarily attempting a classifica-

tion, similar to the one in the case at bar, was condemned in the case of

City of Tacoma vs. Krech, 46 Pacific Reporter, 255.

There an ordinance was passed prohibiting all barbers from pursuing their calling on Sunday, while all other occupations were unrestricted.

The Court said:

“One class of people is singled out by this law, while other laboring people, in different characters of employment are allowed to prosecute their work. Conceding for the purpose of this case, the right for the Legislature to pass a law restricting or forbidding manual labor on Sunday, yet under the provisions of our Constitution, the restriction must be imposed alike on all residents of the State, or the effect of the law would be to work privileges and immunities upon one class of citizens which did not equally belong to all citizens. If this law is valid, then the Legislature would have the right to prohibit farm labor on Sunday, to prohibit working by printers on Sunday, to prohibit nine-tenths of the employments which citizens usually engage in in this country, and leave the other one-tenth of the people to pursue their vocations.

“This would plainly be granting privileges and immunities to one class which did not belong equally to all citizens. The object of the Constitution was to prohibit special legislation and substitute in its place a general law which bore on all alike.”

Similarly in the statute under consideration in the case at bar one section of a class of people is singled out, to wit, owners using the highway in motor vehicles, while all other users of the highway are allowed to proceed unrestrained and un-

limited. If the law is valid (to use the reasoning of the Court above quoted) then the Legislature must have the right to restrict and license owners of horses using the highway, owners of oxen using the highway, to restrict and license those walking in the highway, to restrict nine-tenths of those using the highway for a purpose within its dedication, and leave the other one-tenth unrestricted and free.

As was said by the Court above, this is plainly the granting of privileges and immunities to one class which are not granted to others equally entitled thereto, which it is the very purpose of the Constitution to condemn.

To the same effect are the cases of

Louisiana v. John Mahner, 43 Louisiana Annual, 496;

City of Denver v. Bach, 38 Pacific, 1089.

In the former case the Court said:

“This section establishes an inequality; “granting to some persons following the same “occupation, privileges, that are not extended “to others. The ordinances do not regulate “dairies in the interest of the public health. “One dairy may be a nuisance, because the “City Council has refused to give the required permission for its establishment; another may be perfectly harmless, and in no way detrimental to public health because it “exists by permission of the City Council.”

That is equally the situation brought about by the statute under consideration. One use of the highway, the operating of a motor vehicle is made a crime if a license is not procured, and all the other uses are lawful and proper because no license is required.

B. —The statute under consideration goes further, however, in the matter of unconstitutional discrimination; it not only unreasonably discriminates between owners of motor vehicles and other users of the highway; its provisions become absurd in further discriminating between owners of motor vehicles, operating their own vehicles, and other persons operating motor vehicles, requiring of the former that they make an affidavit as to their competence and take out a license, while the latter may operate any registered motor vehicle at liberty and without restraint and without any license.

Under the provisions of this statute any one may operate a motor vehicle without paying a fee or without license or permit of any kind unless he is an owner.

A, B and C not owners of motor vehicles may operate any registered motor vehicle on the highway, no matter how incompetent they may be, without making an affidavit as to competency to operate or procuring a license.

If A buys a motor vehicle on Monday he may still operate any registered motor vehicle belonging to some other owner, but he is prohibited from operating his own vehicle until he paid his fee, swore to his competence as chauffeur and registered his machine.

If B buys a motor vehicle after A has registered his machine, he may operate A's machine without restraint and without a license, but he is prohibited from operating his own until he has procured a license.

There is no justification possible for such discriminatory provisions, and no argument can be

advanced in support of them. No classification is here attempted. Automobile owners are restricted in operating their own machines. Is there any reason on earth for requiring a license and an affidavit of competence from owners of motor vehicles before they may operate their own machines, while all other persons may operate motor vehicles at will?

Why should owners operating their own vehicles be singled out, restricted and discriminated against in favor of all other operators of motor vehicles?

Such provisions clearly put burdens and restrictions upon certain persons, in the same circumstance and condition with others who are exempt and unrestricted. If the 14th Amendment of the United States Constitution condemns anything as discriminatory, it conclusively condemns such statutory provisions as these.

Such was the holding of the case of

Commonwealth *vs.* Densmore, 29 Penn.
Co., Ct. Rep., 217,

in which the constitutionality of a statute with exactly similar provisions was in question.

The Court said:

“But the validity of that branch of the act
“requiring the owners of automobiles to take
“out licenses is not clear. The title of the
“act provides for the licensing of the opera-
“tors of automobiles; while there is no provi-
“sion in the act for licensing operators, but
“a provision for licensing ‘owners.’ As to
“that, the title is misleading, for the act pro-
“vides neither for licensing the operator or
“the machine. The owner may be one person
“and the operator another. The Legislature
“may have intended to license the machine
“or the operator, but this is a penal statute

“and must be taken as it is written. There
 “is nothing in the act as to what such license
 “shall contain, and that branch of the statute
 “is so uncertain that we will not sentence the
 “defendant on the first count. When an au-
 “tomobile has been registered under said act
 “I am unable to see how issuing a license to
 “the owner affords an additional protection
 “to the public.”

The statute in the case at bar is also a penal statute and its provisions must stand or fall as they read, and operate. The Court cannot assume that they were intended to be constitutional or assume facts which would make them so.

Thirdly. Let us take up the discrimination in this statute between the manufacturer or dealer and other owners of motor vehicles. It is provided in the case of the manufacturer or dealer that they may come within the provisions of the law by filing a statement that they are manufacturers or dealers and that they desire to use a single number for all their vehicles, and in such case upon the payment of a fee of ten dollars it is provided that the license issued to such manufacturer or dealer shall cover all the motor vehicles owned or controlled by him. In other words, it is provided that the manufacturer or dealer is exempt from the provision requiring an affidavit of competence to operate, and the vehicles of such manufacturer or dealer may be operated by anyone for a period of five days without restriction.

An owner who is not a manufacturer or dealer must procure a license, make an affidavit of competence any pay a fee for every motor vehicle owned by him. A manufacturer or dealer, upon the payment of one fee of \$10 and a statement that he is a manufacturer or dealer, may operate an

unlimited number of machines and anyone else may also operate them without restriction. Why should a private owner, owning ten vehicles be required to make an affidavit of competence to operate each vehicle and pay a tax in each case which aggregates twice as much as the tax of \$10 paid by the manufacturer or dealer operating twenty vehicles? Under the law, the manufacturer's license is just as valuable as the individual license, but it may be procured more easily and without the payment of the same proportionate tax.

Would a law which required that in case of a vehicle operated by an American the fee would be \$3, by a Frenchman \$2, by a negro \$5, and in the case of the Frenchman no affidavit of competence to operate would be required, be constitutional? Would not a law which provided that in the case of an owner of five motor vehicles no affidavit of competence would be required, whereas, in the case of an owner of one or less than five vehicles such requirement would be made, be violative of the 14th Amendment of the U. S. Constitution? There is no difference in substance between such case and the manufacturers' provisions in the statute under consideration. The cases without exception have condemned such provisions. In

Connelly vs. Union Sewer Pipe Co., 184
U. S., 540,

a statute denying to offending corporations the right to enforce their contracts by suit, was condemned because of a section by which it was sought to exempt persons and corporations in certain lines of business from the operation of the act. The Court said:

“In prescribing regulations for the conduct of trade, it (the State), cannot divide

"those engaged in trade into classes, and
 "make criminals of one class if they do cer-
 "tain forbidden things, while allowing an-
 "other and favored class engaged in the same
 "domestic trade to do the same thing with
 "impunity. It is one thing to exert the power
 "of taxation so as to meet the expenses of the
 "Government and at the same time indirectly
 "to build up or protect particular interests
 "or industries. It is quite a different thing
 "for the State, under its general police
 "power, to enter the domain of trade or com-
 "merce and discriminate against some, by
 "declaring that particular classes within its
 "jurisdiction shall be exempt from the ope-
 "ration of a general statute making it crim-
 "inal to do certain things connected with do-
 "mestic trade or commerce. Such a statute
 "is not a legitimate exercise of the power of
 "classification, rests upon no reasonable
 "basis, is purely arbitrary, and plainly de-
 "nies the equal protection of the laws."

The decision of the Supreme Court is control-
 ling and the reasoning of the Court in the above
 case is directly applicable to the provisions of the
 statute in the case at bar, exempting manufactur-
 ers or dealers.

What this law does is to make a criminal of an
 individual operator, if he operates a motor vehi-
 cle without making an affidavit of competence to
 operate, whereas, the manufacturer or dealer is
 exempt from any such provisions, and in addition,
 requires the owner to take out a license for every
 vehicle owned by him, whereas, the manufacturer,
 on procuring one license, may own and operate an
 unlimited number of vehicles.

To the same effect is the case of

Ruhstat vs. People, 185 Ill., 135.

In that case a statute prohibited the use of the

national flag or emblem for any commercial purpose or as an advertising medium, and it made an exception of public or private exhibition of art, or for patriotic purposes. The Court, in holding the act unconstitutional and void, as discriminatory and in violation of the 14th Amendment, said:

“The act is also unduly discriminatory and partial in its character. It exempts from penalties of the act persons who may choose to make use of the National flag or emblem for either public or private exhibitions of art. The act excludes artists or exhibitors from the inhibition of Section 1 of the act, and thereby creates a class or classes of persons who are exempt from the penalties embraced therein, hence the act discriminates in favor of one class of occupations and against all others, and places it in opposition to the constitutional guarantees hereinbefore referred to.”

The exemption of manufacturers in the statute in the case at bar, is a more arbitrary discrimination than the exemptions condemned as unconstitutional in the case above cited; the cases are not distinguishable.

A statute with provisions similar to the manufacturers' provision in the case at bar was condemned in

State vs. Scampini, 77 Vermont, 92.

In that case a statute provided that no one should sell liquor without first procuring a license, and then the statute exempts sales by manufacturers by barrel; sales of cider by the barrel by farmers who raise apples to make such cider, if it is not drunk on the premises, and sales by manu-

facturers of native wines by the barrel if not drunk on the premises.

The Court, in holding the statute unconstitutional and violative of the 14th Amendment as discriminatory, said:

“This brings us to the consideration of the most important question, whether this act is repugnant to the Fourteenth Amendment of the Constitution of the United States. The classification attempted by this act creates four classes:

“(1) Persons who cannot furnish, sell or expose nor keep for sale any intoxicating liquor without first procuring a license.

“(2) Manufacturers of cider in this State.

“(3) Farmers who raise apples sufficient to make the cider they sell.

“(4) The makers of native wines manufactured in this State.

“How do farmers and manufacturers of cider and of native wines in selling them as they are permitted to do under this law stand in any different class, having a reasonable and just relation to either the comfort or the safety or the welfare of society from that of other persons or dealers who sell the same commodities in the same place and in the same way? In either case the article sold is intoxicating liquor by the terms of the statute, yet farmers and manufacturers may sell without a license and with impunity, while all others who sell without authority by license are criminals and subject to a fine, and in certain contingencies to imprisonment.

“It must be held that the discriminations in favor of farmers and of manufacturers of cider and of native wines are unreasonable and unjust, and that by reason thereof that part of the statute in question is a denial of the equal protection of the laws.”

Citing:

Connelly *vs.* Union Sewer Pipe Company (*supra.*)

To apply the reasoning of the Court to the case at bar, how do manufacturers or dealers in motor vehicles, in operating them, as they are permitted to do under this statute, stand in any different class, having a reasonable and just relation to either the comfort, or the safety, or the welfare of society, from that of other owners of motor vehicles, who operate the same character of vehicle in the same place and in the same way? In either case, the vehicle operated is a motor vehicle by the terms of the statute, yet the manufacturers and dealers may operate an unlimited number of vehicles without making an affidavit as to competence, upon one license, while all other owners of motor vehicles who operate a motor vehicle without making an affidavit of competence, and without procuring a license for every motor vehicle operated, and paying a fee in each case, are criminal and subject to a fine and in certain contingencies to imprisonment.

Other cases holding unconstitutional and void statutory provisions of the same character as the manufacturers' provision in the statute in the case at bar, are:

Ex Parte Jones, 43 Southwestern, 513;
Poteet vs. State, 53 N. W., 869;
Rarney vs. State, 53 N. W., 882;
Commonwealth vs. Clark, 21 Penn. Co.,
 Rep. 495;
Noel vs. People, 187 Ill., 589;
Millet vs. People, 117 Ill., 294;
Sutton vs. State, 96 Tenn., 696;
State vs. Garbrowski, 111 Iowa, 3.

In this case, a statute which exempted war veterans from its provisions, requiring peddlers to secure a license, was declared unconstitutional.

In re Garrabad, 84 Wis., 585.

In this case an exception of political processions, funerals and fire companies from the provisions of an ordinance requiring that a license be procured to hold public assemblages or processions on the public streets, was condemned as unconstitutional.

People vs. Zimmerman, 102 App. Div., 103.

In this case a statute prohibited persons from issuing trading stamps, unless they shall have legally printed or written upon the face thereof the redeemable value thereof, in money, making a violation of its provision, a misdemeanor, and which excluded from the provisions of the section trading stamps issued by a merchant or manufacturer in his own name and redeemable by him. The Court, in holding the statute unconstitutional, said:

“There is another infirmity in the statute which we apprehend renders it invalid. By subdivision Five, as already noted, the business of dealing in trading stamps is reserved for the merchant or manufacturer. This creates a preferential class. The vice, it seems, is not in allowing one to buy by promise of a gift, but in permitting the promise to be fulfilled by another than the seller. It is a narrow ledge for the distinction to rest upon, when in one instance the transaction is subject to legislative control to the extent of confiscation, while in the other it goes without let or hindrance.”

The discrimination condemned in the opinion in the above case is not as arbitrary as the discrimination attempted in the statute at bar, to wit, between manufacturers or dealers on the one hand, and other owners of motor vehicles on the other.

The constitutional principles upon which statutory provisions similar to those in the case at bar have without exception been condemned are excellently stated by Judge Cooley in his text on Constitutional Limitations. 7th Edition, page 559:

“Every one has a right to demand that he
 “be governed by general rules, and a special
 “statute which, without his consent, singles
 “his case out as one to be regulated by a dif-
 “ferent law from that which is applied in all
 “similar cases, would not be legitimate legis-
 “lation, but would be such an arbitrary man-
 “date as is not within the province of free
 “governments. Those who make the laws
 “are to govern by promulgated, established
 “laws, not to be varied in particular cases,
 “but to have one rule for rich and poor, for
 “the favorite at court and the countryman at
 “the plow.” This is a maxim in constitutional
 “law, and by it we may test the authority
 “and binding force of legislative enact-
 “ments.”

The statute under consideration in the case at bar is a flagrant and arbitrary violation of these constitutional principles in every particular.

Upon the above points and argument, it is respectfully submitted that the statute under consideration is in violation of the Federal Constitution, Article IV, Section 2, Subdivision I, and also of the 14th Amendment, Section I, and also the 5th Amendment.

And the Constitution of the State of New Jer-

sey, Article I, Section 1, Article IV, Section 7, Subdivision 12, in that

I. *It imposes a double tax upon motor vehicles.*

II. *It imposes such a tax upon vehicles having no situs in the State of New Jersey.*

III. *It restricts and impedes the constitutional right of a citizen of the United States to travel through the State of New Jersey in an ordinary and usual means of conveyance.*

IV. *It prohibits and attempts to license the exercise of a common law and inalienable right of a citizen to travel on the highway in a motor vehicle which is established by law to be an ordinary and usual means of conveyance within the purview of the dedication of the highway, having equal rights with other vehicles or pedestrians thereon.*

V. *It arbitrarily discriminates against motor vehicles in favor of all other vehicles used for the same purpose and in the same class.*

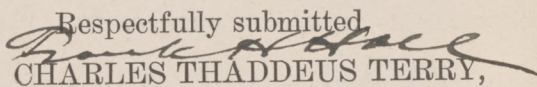
VI. *It arbitrarily discriminates against owners of motor vehicles in favor of all other users of the highway, especially owners of horse-drawn vehicles, requiring a license and an affidavit of competence to operate, from the owner of the motor vehicle and placing special restrictions and burdens upon him, while the owners of horse-drawn vehicles may drive any horse, no matter how spirited, upon the highway without restriction.*

VII. *It arbitrarily discriminates against the owner of the motor vehicle, in favor of all other*

operators of such vehicles, requiring that the former must be licensed and make an affidavit of competence to operate, while all other operators are unrestricted.

VIII. *It arbitrarily discriminates against the individual owner of motor vehicles in favor of the owner of such vehicles, who is a manufacturer or dealer.*

Respectfully submitted,


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of the United States
and the Government of the State of New York
in the year 1880

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