

**Morris Vs. Duby**

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**Court :** US Supreme Court

**Decided On :** Apr-18-1927

**Appeal No. :** 274 U.S. 135

**Appellant :** Morris

**Respondent :** Duby

**Judgement :**

Morris v. Duby - 274 U.S. 135 (1927)

U.S. Supreme Court Morris v. Duby, 274 U.S. 135 (1927)

**Morris v. Duby**

**No. 372. Argued October 29, 1926 \***

**Decided April 18, 1927**

**274 U.S. 135**

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES*

*FOR THE DISTRICT OF OREGON.*

**SYLLABUS**

1. The power of the states to make reasonable regulations to protect highways from damage by vehicles is not affected by the Acts of Congress providing for national and state cooperation in the construction of rural post roads. P. [274 U. S. 143](#) .

Page 274 U. S. 136

2. A state order limiting the maximum weight of motor trucks and loads on highways in the state is valid if reasonable and nondiscriminatory, and is applicable to vehicles moving in interstate commerce in the absence of legislation by Congress. P. [274 U. S. 143](#) .

3. The fact that a truck company, in interstate commerce, may not make a profit if loads are limited as prescribed by a state highway regulation does not prove the regulation unreasonable or discriminatory, and the fact that its competition with parallel steam roads may be prevented is outweighed by the fact that greater loads damage the highways. P. [274 U. S. 144](#) .

4. In the absence of a showing of fraud or abuse of discretion, a finding of the proper state administrative body as to the damage caused to highways by loads exceeding a specified weight must be accepted by this Court. P. [274 U. S. 144](#) .

5. The Acts of Congress and of Oregon for state and federal cooperation respecting construction and maintenance of highways do not impose a contractual obligation on the state to continue permitting the weights of trucks and loads that were permitted on the highways when the agreement was made. P. [274 U. S. 144](#) .

6. Under the convention effected between the state and the United States by the state's acceptance of the conditions prescribed in the Acts of Congress providing for state and federal cooperation, and use of federal funds, in improvement of highway systems and in facilitating carriage of the mail over them, maintenance of a highway is primarily imposed on the state, and regulation of its use is therefore state function in which it is not to be interfered with unless regulations adopted are

so arbitrary or unreasonable as to defeat the purposes of the federal acts. P. [274](#)  
[U. S. 145](#) .

*Affirmed.*

Appeal from a decree of the district court refusing an interlocutory injunction and dismissing the bill in a suit to enjoin the members of the Oregon Highway Commission from enforcing an order limiting the weight of trucks and loads that may operate on a highway in the state.

Page 274 U. S. 139

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

The plaintiffs below, the appellants here, owned and operated for hire, under proper license, motor trucks on the Columbia River Highway in Oregon from the east boundary of Multnomah County to the west limits of the City of Hood River, a distance of 22.11 miles. This highway extends from Portland to The Dalles, Oregon, and is a rural post road. The plaintiffs have complied with all the state rules and regulations respecting the operation of motor trucks upon the highway, and, under previous regulations, carried a combined maximum load of not exceeding 22,000 pounds. The Highway Commission, under a law of Oregon, has reduced the maximum to 16,500 pounds by an order in which the commission recites that the road is being damaged by heavier loads. The plaintiffs filed this bill to enjoin the enforcement of the order on the ground that it invades their federal constitutional rights.

The case was heard under 166 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, before a court of three judges, on an order to show cause why a preliminary injunction should not issue restraining the commission from enforcing the order. A

Page 274 U. S. 140

motion to dismiss was interposed to the complaint by the defendant and submitted at the same time. The district court denied the application for a preliminary injunction, and granted the motion to dismiss the plaintiff's amended bill, on the ground that it did not state facts sufficient to constitute a cause of action or to entitle the plaintiffs to the relief demanded. As the plaintiffs refused to plead further, the cause was dismissed, and the case comes here directly from the district court by virtue of paragraph 3 of 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936.

The Secretary of Agriculture, by virtue of three Acts of Congress, one of July 11, 1916, 39 Stat. 355, c. 241, an amendment thereto of February 28, 1919, 40 Stat. 1189, 1200, c. 69, and the Federal Highway Act of November 9, 1921, c. 119, 42 Stat. 212, is authorized to cooperate with the states, through their respective highway departments, in the construction of rural post roads. These require that no money appropriated under their provisions shall be expended in any state until it shall by its legislature have assented to the provisions of the Acts. They provide that the Secretary of Agriculture and the state highway department of each state shall agree upon the roads to be constructed therein and the character and method of their construction. The construction work in each state is to be done in accordance with its laws and under the supervision of the state highway department, subject to the inspection and approval of the secretary and in accord with his rules and regulations made pursuant to the federal acts. The states are required to maintain the roads so constructed according to their laws. In case of failure of a state to maintain any highway within its boundaries after construction or reconstruction, the Secretary is authorized to proceed on notice to have the highway placed in proper condition of maintenance at the charge and cost of the federal funds allotted to the state,

Page 274 U. S. 141

and henceforth to refuse any further project in such state until the state shall reimburse the government for such maintenance and shall pay into the federal highway fund for reapportionment among all the states the sum thus expended.

By 5, c. 237, of the General Laws of Oregon for 1917, the Oregon Highway Law was passed. That creates a Highway Commission, with authority to carry out the provisions of the Act and to exercise general supervision over all matters pertaining to the construction of state highways and to determine the general policy of the highway department. By 5 the Oregon Legislature assents to the provisions of the Act of Congress of 1916 furnishing aid in the construction of rural post roads, and the department is authorized to enter into all contracts and agreements with the national government relating to the survey, construction, improvement, and maintenance of the roads under the Act of Congress, and to submit any scheme of construction as may be required by the Secretary of Agriculture, and to do all things necessary to carry out the cooperation contemplated by the Act. The good faith of the state is pledged to make the available funds sufficient to equal the funds apportioned to the state by the government, and to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provision for carrying out such maintenance. By General Laws of Oregon 1917, pp. 256, 268, c.194, 28, in force when the first federal act was passed, it was provided that no motor truck of over 5 tons capacity should be driven or operated on any road or highway of the state except with the consent and upon a permit issued by the county court of the county wherein such truck was sought to be driven or operated, and this was the provision of law in force when the law was passed accepting the federal acts for Oregon. By the General Laws of Oregon of 1921, c. 371, 35,

Page 274 U. S. 142

it was provided that the Highway Commission and the county court might grant special permits to permit any vehicle having with its load a combined weight in excess of 22,000 pounds to move on the highways, the permission to be written and to include such terms, rules, and stipulations as the commission or court might deem proper. By 36 of the same act, whenever in the judgment of the State Highway Commission or any county court or board of county commissioners of any county it would be for the best interests of the state or county and for the protection from undue damage of any highway or highways or any sections thereof

to reduce the maximum weights and speeds in the act provided for vehicles moving over or upon the highways of the state, and to fix the reduced weights and speeds and prohibit the use of such highways for any other weights, authority is given such commission or board to do so and to post a notice of the limitation.

The order complained of, set forth as an exhibit to the amended bill of complaint, recites that the Commission, as a result of due investigation, finds that the road is being damaged and injured on account of the kind and character of traffic now being hauled over it, and that the loads of maximum weight moved at the maximum speed are breaking up, damaging, and deteriorating the road, and that it will therefore be for the best interests of the state highway that the maximum weight be reduced from 22,000 to 16,500, and that changes be made with respect to tires and their width.

The amended bill gives a history of the highway and its continued use for a weight of 22,000 pounds for four years, which has been availed of by the appellants as common carriers and as members of an Auto Freight Transportation Association of Oregon and Washington, with costly terminals in Portland established by requirement of that city; that the 22 miles

Page 274 U. S. 143

of the Columbia River Highway here involved is a part of the interstate highway from Astoria, Oregon, into the State of Washington, and all subject to the federal Highway Acts, and that this order will interfere with interstate commerce thereon. The amended bill denies the damage to the road as found by the Highway Commission, and says that the reduction of the limit will be unreasonable, arbitrary, and discriminatory. It avers that the plaintiffs have been engaged in active competition with steam railroads paralleling the Columbia River Highway and charging rates of traffic which, unless the appellants can use trucks combined with loads of 22,000 pounds, will prevent their doing business except at a loss. It alleges that the acts of Congress and of Oregon constitute a contract by which the permission for the use of a 5-ton combined weight of truck and load is a term which cannot be departed from by the State Highway Commission, and constitutes

a protection to the plaintiffs of which they may avail themselves in this action.

An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the state its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the state may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens. *Hendrick v. Maryland*, [235 U. S. 610](#) , [235 U. S. 622](#) *et seq.*; *Kane v. New Jersey*, [242 U. S. 160](#) , [242 U. S. 167](#) . Of course, the state may not discriminate against interstate commerce. *Buck v. Kuykendall*, [267 U. S. 307](#) . But there is no sufficient averment of such discrimination in the bill. In the *Kuykendall* case, this Court said, p. [267 U. S. 315](#) :

Page 274 U. S. 144

"With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles -- particularly the large ones commonly used by carriers for hire -- promotes both safety and economy. State regulation of that character is valid, even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject. *Vandalia R. Co. v. Public Service Commission*, [242 U. S. 255](#) ; *Missouri Pacific Ry. Co. v. Larabee Flour Mills Co.*, [211 U. S. 612](#) . Neither the recent federal highway acts nor the earlier post road acts, Rev.Stat. 3964; Act March 1, 1884, c. 9, 23 Stat. 3, do that."

The mere fact that a truck company may not make a profit unless it can use a truck with load weighing 22,000 or more pounds does not show that a regulation forbidding it is either discriminatory or unreasonable. That it prevents competition with freight traffic on parallel steam railroads may possibly be a circumstance to be considered in determining the reasonableness of such a limitation, though that is

doubtful, but it is necessarily outweighed when it appears by decision of competent authority that such weight is injurious to the highway for the use of the general public and unduly increases the cost of maintenance and repair. In the absence of any averments of specific facts to show fraud or abuse of discretion, we must accept the judgment of the Highway Commission upon this question, which is committed to their decision as against merely general averments denying their official finding.

Nor is there anything either in the federal or state legislation to support the argument that the agreement between the national and state government requires that the weight of truck and load which was permitted by the state when the agreement was made binds the state contractually to continue such permission.  
Conserving

Page 274 U. S. 145

limitation is something that must rest with the road supervising authorities of the state, not only on the general constitutional distinction between national and state powers, but also for the additional reason having regard to the argument based on a contract that, under the convention between the United States and the state in respect to these jointly aided roads, the maintenance after construction is primarily imposed on the state. Regulation as to the method of use therefore necessarily remains with the state, and cannot be interfered with unless the regulation is so arbitrary and unreasonable as to defeat the useful purposes for which Congress has made its large contribution to bettering the highway systems of the Union and to facilitating the carrying of the mails over them. There is no averment of the bill or any showing by affidavit making out such a case.

The temporary injunction was rightly refused, and the motion to dismiss the bill was properly granted.

*Affirmed.*

\* On the above date, the Court entered an order remanding the case and vacating the judgment of the district court upon the ground that the case had become moot.

On January 10, 1927, the previous order was vacated on joint motion of counsel, and the case was restored for reargument on February 28, 1927. On that day, the case was submitted.

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