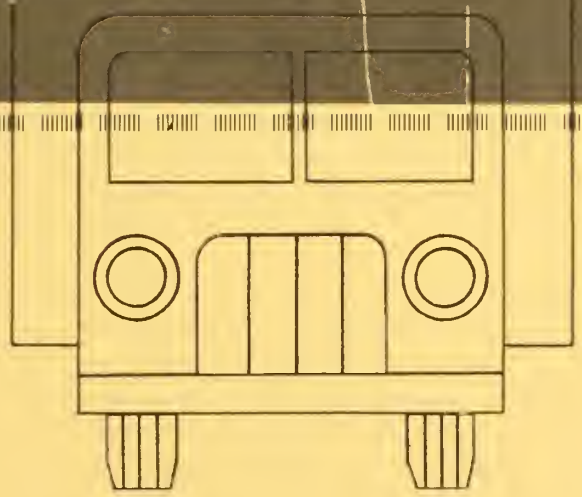
MARKETING RESEARCH REPORT NO. 188

THE AGRICULTURAL EXEMPTION IN INTERSTATE TRUCKING



A Legislative and Judicial History

UNITED STATES DEPARTMENT OF AGRICULTURE
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CONTENTS

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THE AGRICULTURAL EXEMPTION IN INTERSTATE TRUCKING--
A LEGISLATIVE AND JUDICIAL HISTORY

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Much has been said and much has been written about the scope of the "agricultural exemption." This is the provision in the Interstate Commerce Act exempting motor carriers of agricultural commodities (including unmanufactured products thereof) from economic regulation by the Interstate Commerce Commission. Economic regulation includes control over who may engage in trucking, the routes or areas to be served, and the rates to be charged.

The intent of the Congress in writing this exemption into law has been variously interpreted by different groups. It seems appropriate, at this time, to set forth both the words and the deeds of the Congress itself with reference to the exemption clauses. A later chapter reviews the construction placed on the language of the exemption by the Interstate Commerce Commission and the courts in the leading cases.

LEGISLATIVE HISTORY OF THE AGRICULTURAL EXEMPTION

Before tracing the evolution of the agricultural exemption, it would be well to see it as it stands now (May 1957). It comprises 3 subsections of Part II of the Interstate Commerce Act as follows:

> Sec. 203
> * * *
> (b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * *
>
> (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm; or
>
> (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined; or

(6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation;

Now let us turn to its origin.

The Motor Carrier Act of 1935

In 1935, S. 1629 was introduced in the Senate to regulate transportation by motor carriers. This bill was drafted by the Coordinator of Transportation, Joseph B. Eastman, at the request of the Senate Committee on Interstate Commerce. The bill, as introduced, made no direct reference to any exemption from economic regulation for farmers or farm products. The portion of the bill pertinent to this discussion read as follows:

Section 303
* * *
(b) Nothing in this part shall be construed to include * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 302, shall the provisions of this bill apply to: * * *

(7) the casual or occasional transportation of persons or property in interstate or foreign commerce for compensation by any person not regularly engaged in transportation by motor vehicle as his or its principal occupation or business.

The Senate Committee amended this provision by renumbering Section 303 to become Section 203 and rewording subsection (7) as follows: 1/

(7) the casual, /or/ occasional or reciprocal transportation of /persons/ passengers or property in interstate or foreign commerce for compensation by any person not /regularly/ engaged in transportation by motor vehicle as /his or its principal/ a regular occupation or business.

Several interested organizations 2/ had sent Senator Wheeler a statement, dated April 15, 1935, in which they had set forth their objections to S. 1629. It read in part:

1/ Words in brackets were deleted, those underlined were added.

2/ American Farm Bureau Federation; National Dairy Union; American National Livestock Association; National Association of Retail Druggists; The National Grange; National Cooperative Milk Producers' Federation; National Wool Growers' Association; American Assn. of Creamery Butter Manufacturers; American Ports Cotton Compress and Warehouse Association. Congressional Record, vol. 79, part 5, p. 5733.

We are opposed to the proposed legislation for the following specific reasons:

1. The Eastman bill (S. 1629), if enacted, would increase the cost of highway transportation without respect to the cost of providing that type of transportation.

2. It would impair the flexibility of highway transportation, thus taking a valued aid from farmers and other producers and distributors of life's necessities. This would have a direct effect upon the general public.

3. It would vest a Federal Commission with unlimited power to force increases of charges made by motor-truck operators for hire, or it would authorize such a Commission to suspend the schedules of motor-truck operators' rates embodying reduced charges to the shipping public.

4. It would impose rigid and extreme regulation, exceeding even the present extensive regulation of railroads, upon common and contract carriers of freight in the field of highway transportation.

5. Small purveyors of highway freight transportation would be "squeezed out." This would be the result of imposition of the measure's requirements relating to filing and publication of tariffs, filing of contracts and revisions of rates. * * * Services made available and rendered by these small operators have kept and are keeping economic disaster from overtaking thousands of producers and shippers of agricultural and dairy products, livestock, and other basic commodities. By the same token, those services have made and are making possible movement of life's necessities from source to consumer with economy and facility that could otherwise not be attained.

When Senator Wheeler reported the bill out of committee, he was asked: 3/

MR. DICKINSON. Mr. President, I should like to inquire of the Senator from Montana whether he is familiar with the objections filed by the various farm organizations to this bill, setting forth five reasons for their opposition, and if so, I should further like to ask him whether or not the bill has been amended to cover any of these objections which have been made?

Mr. WHEELER. Mr. President, I will say to the Senator that I appreciate the fact that some of the farm organizations have filed protests against the bill. Mostly, however, they have been based on the theory that they were afraid the Interstate Commerce Commission was not going to regulate the busses and trucks as a separate institution; but we have exempted the casual or reciprocal transportation by the farmers from the operation of the bill should it become a law. In other words, any farmer who engages in casual trucking operations, say, from his farm to Des Moines, Iowa, for the purpose of carrying his products and his neighbor's products, is within the exemption.

3/ Congressional Record, vol. 79, part 5, p. 5735.

There has been propaganda by some who do not want any regulation to the effect that this bill would cause an increase of rates up to the standard of the railroad rates. That contention is not based upon any fact, but is based upon pure propaganda, in my judgment, and is without foundation.

Coordinator Eastman has suggested--and we have written the suggestion into the bill specifically--that bus and truck operations should be viewed by the Commission in the peculiar light of their particular business, and that railroad rates should not be the yardstick for the rates which should be established for bus and truck operators.

MR. DICKINSON. Is it the conclusion of the Senator from Montana that this proposal is based upon a rather false assumption?

MR. WHEELER. I do not think there is any doubt about that.

Thus, we find that, at the time the bill was under consideration on the Senate floor, the only reference to exemption from economic regulation for trucking of farm commodities or by farmers was in this explanation by Senator Wheeler that Sec. 203(b)(7) was intended to cover it.

The Senate passed the bill in this form and sent it to the House. There, a subcommittee of the Committee on Interstate and Foreign Commerce (after holding extensive hearings), had drafted a bill which would have regulated motor carriers only with respect to safety devices and hours of labor. It would not have regulated rates or routes. The full committee rejected the proposed bill and chose the Senate bill as the basis for the legislation to be reported to the House. The House Committee on Interstate and Foreign Commerce reported the bill out with a further provision exempting from economic regulation:

Sec. 203(b) * * *
(8) motor vehicles used exclusively in carrying livestock or unprocessed agricultural products.

On the House floor there was a full scale debate on the bill. (See Appendix, in which all debate pertinent to the agricultural exemption has been included.) In the course of this debate a number of amendments were introduced and accepted. The Members delivered themselves of statements indicating the object of the exemption. For example, Representative Gillette asked of Representative Holmes, one of the proponents of the bill: 4/

4/ Congressional Record, vol. 79, part 11, p. 12212.

"What was the object in providing an exemption for carriers of livestock exclusively or farm products exclusively? Why not regulate that? What was the object of the exemption?"

Mr. Holmes replied:

"The object /of the exemption/ was to help the farmer and keep him out of any regulation whatsoever insofar as handling unprocessed agricultural products or livestock on the farm. As an individual owner he would be exempt anyway and would not come under the provision of the bill."

In speaking of the reason for requiring that a carrier haul agricultural products or livestock exclusively in order to qualify as an exempt carrier, Mr. Holmes explained: 5/

"The purpose of this exemption is that a man who may take a bag of beans or a bushel of potatoes or any other unprocessed agricultural commodity and put it on his truck cannot get exemption from regulation and then go into the general trucking business in competition with his neighbor who has a legitimate permit to operate as a contract carrier."

In stating his purpose in offering an amendment from the floor to exempt motor vehicles controlled and operated by cooperative associations, Mr. Jones said: 6/

"Cooperative organizations do not act as moneymakers in transportation. The hauling is done as a means of reducing the marketing expenses of their members.

"Especially in highly organized communities, it is almost essential they do some hauling for nonmembers. Otherwise certain farmers who are only temporarily in the community and in some instances tenants might be left without transportation facilities. In some instances it reduces the expense of handling to combine some hauling for nonmembers. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition."

After concern had been expressed by several members about the extent of exemption afforded agricultural commodities which might be regarded as processed to some degree (see Appendix), Mr. Pettengill, speaking for the Committee, proposed an amendment striking the words "unprocessed agricultural products" and substituting "agricultural commodities (not including manufactured products thereof)."

5/ Ibid., p. 12212.
6/ Ibid., p. 12218.

In discussing the purpose of this amendment, the following colloquy, which gives some indication of the scope of the commodity exemption intended by the Congress, took place: 7/

> MR. PETTENGILL. Mr. Chairman, we have heard a good deal of discussion this afternoon as to what is a processed agricultural product, whether that would include pasteurized milk or ginned cotton. It was not the intent of the committee that it should include those products. Therefore, to meet the views of many Members we thought we would strike out the word "unprocessed" and make it apply only to manufactured products.
>
> MR. WHITTINGTON. In other words, under the amendment to the committee amendment, cotton in bales and cottonseed transported from the ginneries to the market or to a public warehouse would be exempt, whereas they might not be exempt if the language remained, because ginning is sometimes synonymous with processing.
>
> MR. PETTENGILL. That is correct.

Earlier in the debate, when Mr. Sadowski had been asked what was covered in the term "unprocessed agricultural products," he said: 8/

> "I cannot say, but that has been used previously in legislation. I imagine the courts may be called upon some time to interpret that, but it is not for us at this time to go into a lengthy discussion, trying to define all agricultural products which are unprocessed. They would run into the thousands."

An amendment offered by Mr. Bland to broaden the exemption to include "fish, including shellfish" was accepted without discussion.

Mr. Whittington proposed: 9/

> "* * * to strike out that language that would give the Interstate Commerce Commission power to nullify the exception which both the Committee of the Whole and this committee here have approved in this bill. If that language * * * remains, then it will be possible for the Interstate Commerce Commission to nullify the exception that grants a privilege to the farmer, the occasional operator of a truck, to haul his produce to market. That is the purpose of the amendment; * * *"

7/ Ibid., p. 12220.
8/ Ibid., p. 12205.
9/ Ibid., p. 12225.

This proposal was approved by the House. The bill, as passed by the House and returned to the Senate, carried the exemptions of special interest to agriculture in the following amended form:

> Sec. 203
> * * *
> (b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * *
>
> (4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or
>
> (4b) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended; or * * *
>
> (6) motor vehicles used exclusively in carrying livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof);

Subsection (4a) does not give to farmers operating their own vehicles any further exemption from economic regulation beyond that already enjoyed by all private carriers. It merely serves to state explicitly for this group of private carriers (farmers) a freedom from such regulation.

When the amended bill was presented to the Senate for reconsideration, Senator Wheeler was asked to explain the amendments. He said: 10/

> "Mr. President, the House amended the bill in minor details, generally liberalizing the provisions of the measure with reference to trucks which are owned by farmers, and which carry farm products. The bill was also liberalized with reference to associations of cooperative farm organizations. It was liberalized in those respects. I personally have no objection to the amendments, and think the bill is improved."

The bill was enacted and became law (P.L. 255) on August 9, 1935. It was designated the Motor Carrier Act of 1935 and was incorporated as Part II of the Interstate Commerce Act.

10/ Ibid., p. 12460.

Changes in the Exemption Since 1935

Since the passage of this basic motor carrier act there have been a number of attempts to amend the clauses dealing with the agricultural exemption. These amendments were intended, in some instances, to liberalize the exemption and, in others, to restrict it. An analysis of the amendments proposed shows that the attempts to liberalize the exemption provision met with considerable success, while the efforts to restrict it were invariably defeated.

On June 29, 1938, a bill became law (P.L. 777) amending Sec. 203(b)(6) of the Motor Carrier Act to read as follows: 11/

> (6) motor vehicles used /exclusively/ in carrying property consisting of livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation;

This revision was made in the face of interpretations handed down by the Interstate Commerce Commission that, if a vehicle was used at any time (not only on a particular trip) to transport anything other than "agricultural commodities (not including manufactured products thereof)," it was barred from that day forward from the benefit of the agricultural exemption. This interpretation has come to be known as the "poisoned vehicle" doctrine. The amendment was intended to soften this rigid "poisoned vehicle" interpretation. It made the commodity being carried, rather than the vehicle, the determining factor in the application of the exemption.

On May 27, 1939, the Legislative Committee of the Interstate Commerce Commission wrote a letter to Senator Wheeler, then chairman of the Senate Committee on Interstate Commerce, recommending that Sec. 203(b)(6) be amended to read as follows:

> (6) Motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish) or agricultural commodities (not including manufactured products thereof) from the point of production to the point of primary market, processing, manufacture or transshipment, if such motor vehicles are not used in interstate or foreign commerce in carrying any other property or passengers for compensation.

This would have limited the exemption to commodities in their first movement off the farm and would have seriously restricted the application of the exemption. The Senate Committee on Interstate Commerce took no action upon this recommendation of the Legislative Committee.

11/ See footnote 1.

In a letter to Senator Wheeler dated January 29, 1940, the same Legislative Committee recommended another amendment to Section 203(b)(6), which would similarly have limited the application of the agricultural exemption to the first movement from the point of production. The suggested language was as follows:

> * * * or (6) the transportation of property consisting of ordinary livestock (including poultry), whole fresh fish (including shellfish), or agricultural commodities (not including manufactured products thereof), in the first movement from the point of production to the point of sale by the producer, or to the point of manufacture or transshipment. The point of production for fish shall mean the wharf or other landing place at which the fisherman debarks his catch, and the point of production for livestock or agricultural products shall include the point at which they are gathered for initial shipment to the point of first sale, manufacture, or transshipment. The point of first sale shall not be deemed to include the point of production.

In this case, too, no action was taken by the Senate Committee.

On September 18, 1940, S. 2009 was passed and became the Motor Carrier Act of 1940 (P.L. 785). It made some revision in each of the clauses dealing with the agricultural exemption. They were changed to read: 12/

> (4a) motor vehicles controlled and operated by any farmer /~~and~~/ when used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or
>
> /~~(4b)~~/ (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined; * * *
>
> (6) motor vehicles used in carrying property consisting of ordinary livestock, * * *

The amendment to subsection (4a) was a further attempt to clarify the question of when a vehicle was to be exempt from economic regulation. The subsection dealing with cooperatives was expanded to include federations of cooperatives. The change in subsection (6) limited the exemption for livestock haulers to carriers of "ordinary" livestock.

12/ See footnote 1.

On February 26, 1941, Senator Gurney introduced S. 975. It would have altered subsections (4a) and (6) to include the transportation of horticultural commodities along with products of agriculture. The bill was reported out by the Senate Interstate Commerce Committee on March 20, 1942, but was passed over on the floor without discussion at the request of Senator Clark of Missouri and never brought to a vote.

Senator Lodge introduced S. 1148 on May 28, 1943. This would have amended Section 203(b)(6) in the following manner: 13/

> (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof), by the producers of such property or by private carriers of property by motor vehicle, if such /motor/ vehicles are not used in carrying such property or any other property, or passengers for compensation.

This bill would have removed all commercial transportation from the agricultural exemption and would thus, in effect, have nullified subsection (6) entirely. The bill was never reported out of committee.

Some years later, on March 30, 1950, Representative Kilday introduced in the House H.R. 7547 to amend Section 203(b)(6). It would have been amended as follows: 14/

> (6) motor vehicles used in carrying property consisting of ordinary livestock, live poultry, /or/ and other agricultural commodities (not including the products of slaughter, nor preserved, frozen, or manufactured products /thereof/ and fish (including shellfish but not including preserved, frozen, processed, or manufactured products), if such motor vehicles are not used in carrying any other property, or passengers, for compensation.

This would have given a strict construction to the term "agricultural commodities (not including manufactured products thereof)" but apparently the temper of the Congress was against restricting the scope of the exemption. The bill was referred to the House Committee on Interstate and Foreign Commerce and was never reported out.

S. 2357 was introduced by Senator Johnson of Colorado (chairman of the Senate Committee on Interstate and Foreign Commerce), by request, on January 10, 1952. In its original form this bill would have eliminated trip leasing 15/ of farmers' vehicles by amending Section 203(b)(4a) and would further have limited, by definition, the products of agriculture which could be carried under the exemption. Section 203(b)(6) would have been completely rewritten

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13/ See footnote 1.
14/ See footnote 1.
15/ See page 14 for explanation of term.

to eliminate commercial transportation of agricultural commodities from the benefit of the exemption. The text of these subsections would have been altered to read:

> (4a) motor vehicles controlled and operated by any farmer (i) transporting supplies to his farm, or (ii) transporting ordinary livestock as defined in section 20(11) of this Act, or agricultural commodities (not including livestock or commodities which have been processed to a greater extent than is customarily done by farmers) prior to their marketing by the farmers raising or producing such livestock or commodities, if such motor vehicles are not used at the same time or on the return trip or customarily in any other kind of transportation for compensation; or * * *
>
> (6) motor vehicles transporting unprocessed fish (including shellfish) to market for the fisherman catching such fish, if such motor vehicles are not used at the same time or on the return trip or customarily in any other kind of transportation for compensation; or

Another version of this bill was offered by Senator Johnson for committee consideration on March 17, 1952, on the recommendation of the Legislative Committee of the Interstate Commerce Commission. This version was as follows:

> (4a) the transportation by motor vehicle for compensation, from farm to market, or to the point of first off-the-farm processing, or to storage, of ordinary livestock, nursery stock, or other agricultural commodities (not including manufactured products thereof); or * * *
>
> (6) the transportation by motor vehicle for compensation, from wharves or other landing places at which fishermen debark their catch, to market or to the first point of processing, or to storage, of fish (not including manufactured products thereof); or

Another alternative recommended by the Legislative Committee and offered by Senator Johnson for consideration on April 2, 1952, would have left subsection (4a) unaltered and would have changed subsection (6) to read:

> (6) the transportation of property consisting of ordinary livestock (including poultry), whole fresh fish (including shellfish), or agricultural commodities (not including manufactured products thereof), in the first movement from the point of production to the point of sale by the producer, or to the point of manufacture or transshipment; the point of production for fish shall mean the wharf or other landing place at which the fisherman debarks his catch, the point of production for livestock or agricultural products shall include the point at which they are gathered for initial shipment to the point of first sale, manufacture, or transshipment, and the point of first sale shall not be deemed to include the point of production; or

This, in effect, was a repetition of the recommendations made by the Legislative Committee of the Interstate Commerce Commission in 1939 and in 1940 that the agricultural exemption be limited to the first movement off the farm or the wharf. Again, the Senate Committee refused to approve these restrictive proposals. Instead, S. 2357, was reported out in a form that merely inserted in subsections (4a) and (6) the words "(including horticultural)" after "agricultural." This language became law (P.L. 472) on July 9, 1952. It served to remove any doubt that, contrary to earlier interpretations by the Interstate Commerce Commission, the Congress intended horticultural products to be included within the scope of the exemption.

On March 11, 1954, Senator Hoey introduced S. 3117. It was intended, in part, to amend Section 203(b)(6) by inserting, after "not including manufactured products thereof", the words "or leaf tobacco other than that moving from the farm to warehouse, other original storage or market". This would have singled out the one commodity, tobacco, to be restricted to exemption for only the first movement off the farm. The bill was never reported out of committee.

The next year, on May 4, 1955, Senator Thurmond (for himself and Senator Byrd) introduced a similar bill, S. 1891. This bill met the same fate as its predecessor.

On May 2, 1956, Representative Talle introduced a bill to amend Section 203(b)(6) by adding after "manufactured products thereof" the words "and for this purpose butter shall not be held to be a manufactured product". The House Committee on Interstate and Foreign Commerce took no action on the bill, thereby defeating this effort to broaden the meaning of the exemption.

Representative Gathings introduced H.R. 5765 on March 7, 1957, to broaden the agricultural exemption by adding after "(not including manufactured products thereof)," the phrase "or fertilizer and fertilizer materials". This bill was referred to the House Committee on Interstate and Foreign Commerce, where no action has yet been taken.

In its 69th Annual Report (November 1, 1955) to the Congress, the Interstate Commerce Commission recommended that Section 203(b)(6) be amended (1) to limit the exemption of motor vehicles transporting agricultural commodities, fish, and livestock to transportation from point of production to primary market, and (2) to limit the exemption specifically to the transportation of commodities produced in the United States. This represented another effort on the part of the Interstate Commerce Commission to have the exemption limited to the first movement of agricultural commodities. Just as in 1939 and 1940, when the Interstate Commerce Commission's Legislative Committee had made similar recommendations, the Congress took no action.

The 70th Annual Report (November 1, 1956) of the Interstate Commerce Commission, although it contained no specific reference to the elimination of foreign agricultural commodities from the exemption, repeated the first portion of its proposal, to restrict the exemption to the first movement from the point of production to the primary market.

Representative Harris (chairman of the House Committee on Interstate and Foreign Commerce) introduced H.R. 5823 on March 11, 1957, to effectuate this recommendation of the Interstate Commerce Commission. The bill was referred to the House Committee on Interstate and Foreign Commerce. On March 22, 1957, Senator Magnuson (chairman of the Senate Committee on Interstate and Foreign Commerce), by request, introduced an identical bill, S. 1689, which was referred to the Senate Committee on Interstate and Foreign Commerce. These bills would amend Section 203(b)(6) to read as follows: 16/

> (6) Motor vehicles used in carrying property consisting of ordinary livestock, live poultry, fish (including shellfish), or agricultural (including horticultural) commodities (not including manufactured products thereof or frozen foods) from the point of production to a point where such commodities first pass out of the actual possession and control of the producer, if such motor vehicles are not at the same time used in carrying any other property, or passengers, for compensation. For the purpose of this paragraph the point of production for fish shall be deemed to be the wharf or other landing place at which the fisherman debarks his catch, and the point of production for agricultural commodities shall be the point at which grown, raised or produced, or the point at which the fish or agricultural commodities are gathered for shipment.

At this writing neither the Senate Committee nor the House Committee has taken action on the bills.

The legislative history of the agricultural exemption was summed up by Judge Henry N. Graven of the U. S. District Court for the Northern District of Iowa in his opinion in the case of Interstate Commerce Commission v. Allen E. Kroblin (212 F. 2d 555,557). He said:

> "There are two features that stand out predominantly in the voluminous legislative history relating to amendments made or proposed to Section 203(b)(6). One feature is that every amendment that Congress has made to it has broadened and liberalized its provisions in favor of exemption and the other feature is that although often importuned to do so, Congress has uniformly and steadfastly refused or rejected amendments which would either directly or indirectly have denied the benefits of the exemptions contained therein to truckers who are engaged in operations similar to that of the defendant herein. It is believed that the actions and attitude of Congress as manifested in connection with amendments to Section 203(b)(6) are preponderantly indicative of an intent on the part of Congress that the words 'manufactured products' used in that subparagraph are not to be given the restricted meaning contended for by the Interstate Commerce Commission herein."

16/ See footnote 1.

Trip-Leasing of Motortrucks Hauling Exempt Agricultural Products

A common practice among haulers under the agricultural exemption is "trip-leasing." This term is used to designate the practice of leasing a motor vehicle for a single trip, usually a return haul, by a carrier (private or for-hire), and generally to a trucking firm subject to economic regulation by the Interstate Commerce Commission. Since exempt haulers may not transport manufactured commodities, this practice permits the avoidance of the economic waste of an empty return movement, and thereby permits cuts in the cost of delivering agricultural commodities to market.

Following an extensive investigation of leasing practices of common and contract carriers, the Interstate Commerce Commission issued a series of orders prescribing rules and conditions designed to regulate leasing operations in a number of ways. The Commission's order of May 8, 1951 (MC-43), among other provisions, prohibited, for the first time, the leasing of vehicles for less than a 30-day period, and the fixing of compensation for the use of the leased vehicle on the basis of a percentage or fixed division of rates or revenues received for the haul.

These regulations were altered and new orders were issued time and time again because of the objections of farm groups and haulers of agricultural commodities, who claimed the above provisions would work a severe hardship on them. The Commission finally revised the order to alleviate the impact on "exempt" haulers, but still not to an extent, according to the agricultural interests, that satisfactorily met the legitimate transportation needs of farmers.

In August 1956, Public Law 957 was enacted to amend Section 204 of the Interstate Commerce Act--the section on "General Duties and Powers of the Commission." This law specifically exempts agricultural haulers from the trip-leasing regulations to which the agricultural interests objected. The Commission's revised order which conforms to the provisions of Public Law 957 became effective on April 2, 1957.

The law adds to Section 204:

> (f) Nothing in this part shall be construed to authorize the Commission to regulate the duration of any such lease, contract, or other arrangement for the use of any motor vehicle, with driver, or the amount of compensation to be paid for such use--
>
> (1) where the motor vehicle so to be used is that of a farmer or of a cooperative association or a federation of cooperative associations, as specified in section 203(b)(4a) or (5), or is that of a private carrier of property by motor vehicle as defined in section 203(a)(17) and is used regularly in the transportation of property of a character embraced within section 203(b)(6) or perishable products manufactured from perishable property of a character embraced within section 203(b)(6), and such

motor vehicle is to be used by the motor carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; or

(2) where the motor vehicle so to be used is one which has completed a movement covered by section 203(b)(6) and such motor vehicle is next to be used by the motor carrier in a loaded movement in any direction, and/or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based.

In urging passage of this law, Representative Dixon of Utah expressed most eloquently the need of the farm community for the exemption both from economic regulation and from trip-lease regulation for the farmers themselves, their cooperative associations, and the for-hire truckers who serve them. He said: 17/

"Mr. Speaker, I speak in support of S. 898. In essence, this bill provides that the Interstate Commerce Commission shall not regulate the duration of truck leases in these circumstances.

"First. Where the truck is owned by a farmer or cooperative and is to be trip-leased home in one or more of a series of movements.

"Second. Where private carriers regularly are used to carry processed or manufactured perishable agricultural commodities and is to trip-lease home in one or more of a series of movements.

"Third. Where the truck concerned has handled agricultural commodities and is to be used next in a loaded movement in any direction or in one or more of a series of movements toward home.

"Mr. Speaker, I believe this bill is absolutely essential to the efficient marketing of agricultural commodities. More efficient marketing, of course, means lower prices to consumers, higher prices to farmers, and increased demand for agricultural commodities. At this time when agriculture is beginning to recover pricewise from a low-price period of long duration, I believe it is absolutely essential not only to their welfare, but also that of the processors and consumers of agricultural commodities, that every effort be made to minimize the cost of marketing and to expedite the flow to market of agricultural commodities, especially those which we designate as perishable commodities--fruits, vegetables, dairy, and meat products.

17/ Congressional Record, vol. 102, part 14, pp. 12025ff.

"Mr. Speaker, unless this bill is passed, it is evident to me that depending upon common carriers alone, operating over specifically designated routes, will not satisfactorily meet the transportation needs of farmers. Common carriers, as you know, do not load at the farm gate. Most of them do not have loading facilities in agricultural areas. What few there are simply are not sufficient to meet adequately the needs of farmers. I should also like to point out that farmers cannot stand the cost of having to provide transportation from their own farms to loading centers where common carrier service is available. In this respect, I should further like to point out that common carriers do not reach all agricultural markets. This would mean that costly delays are involved in rerouting over common-carrier routes to appropriate markets of agricultural commodities. Efficient and economic marketing of agricultural commodities require fast and adequate transportation to all possible markets. Producers of agricultural commodities must be able to ship to all possible markets since on different days different markets may offer the best possible prices. Adequate transportation to all possible markets is essential if market gluts are to be prevented and, also, if people living in different marketing areas are to be uniformly supplied with their needs. If farmers must ship by common carrier only, this obviously restricts their number of market outlets. It also restricts, as a result, the ability to get the best possible prices for their commodities.

"In addition, Mr. Speaker, I should like to point out that exempt truck haulers give farmers personalized service which common carriers of necessity simply cannot supply. Individual truckers, for example, learn how to handle different farmers' livestock and commodities in the way they desire. Truckers also can readily adjust their operations and movements to meet farmers' needs better than can common carriers operating on a time schedule and over specified routes. Likewise, many truck haulers check alternative market prices for farmers before delivering their commodities to commissionmen or other middlemen for sale. Exempt truck haulers also will sell part of an individual farmer's produce at different markets, if he desires. This is a specialized service which common carriers are in no position to provide. Likewise, it is essential to note that during the peak marketing seasons, especially those relating to perishable commodities--fruits, vegetables and meat products--common carriers simply cannot meet farmers' demands for ready transportation.

"On the other hand, the Trip Lease provision provided for in S. 898, is essential to the trucking industry which handles a large percentage of agricultural commodities. Their ability to obtain return loads is necessary to their survival. Since unless they can cut costs through this device, the rates they charge farmers for the services I have mentioned previously would have to be much higher. Because of these reasons, I earnestly beseech the House Members to pass S. 898."

JUDICIAL HISTORY OF THE AGRICULTURAL EXEMPTION

In connection with the legislative history of the agricultural exemption, it is both interesting and significant to note the interpretation placed upon Section 203(b)(6) by the Interstate Commerce Commission and the courts. In this portion of the report, an effort has been made to set forth the outstanding cases which have marked the path of this section from its enactment in 1935 to the present (May 1957). They show the changes in the thinking of the Commission itself and the conflicts between it and the courts in the interpretation of the statute.

Monark Egg Case--No. 1 18/

Monark Egg Corporation operated as a private carrier to transport eggs for its own account. It carried property of others, chiefly fish and oysters, as return hauls for compensation. Monark claimed that its return hauls were exempt under Section 203(b)(6). Therefore, it did not seek authority to operate as a motor carrier. It filed application solely for clarification. If any of the commodities transported for compensation would bring the vehicles outside the exemption, it would discontinue that portion of the operation.

The Interstate Commerce Commission noted that Section 203(b)(6) exempts not the transportation of the commodities named in it, but the vehicles, if not used in carrying any other property or passengers for compensation. It ruled that it was therefore necessary to consider all the commodities transported by the applicant for compensation, not only those listed in the application. Monark also transported for compensation shelled pecans, shelled walnuts, and dressed poultry, picked but not drawn. The Commission stated that if any of the commodities transported by Monark for compensation did not come within the provisions of Section 203(b)(6), then all of the operations of every vehicle used in the carriage of such nonexempt commodities for compensation were subject to the certificate or permit provisions 19/ of the act.

In denying the application of the Monark Egg Corporation, the Commission stated:

> "We are of the opinion that by the use of the words 'ordinary livestock' Congress meant live domestic animals kept for farm purposes, including marketable animals, such as cattle, horses, sheep, hogs, and poultry or fowl; that by the use of the words 'fish (including shellfish)' Congress meant whole fresh fish, dead or alive, as taken from the water; and that by the use of the words 'agricultural commodities (not including manufactured products thereof)'

18/ No. MC-89207, Monark Egg Corporation Contract Carrier Application, 26 M.C.C. 615. Decided November 7, 1940.

19/ Common carriers of property in interstate commerce must have a "certificate of convenience and necessity" issued by the Interstate Commerce Commission to operate. Contract carriers of property are required to have a "permit" from the ICC. Interstate Commerce Act, Sections 206, 209.

> Congress intended to include those commodities which are marketable in their natural state and those which have been processed to the extent customarily required to place them in a marketable state by the producer. * * * We believe that Congress intended an analogy between ordinary livestock and fish (including shellfish); that it did not intend to include any processed or manufactured products thereof; and that the words used are in themselves, without qualification, sufficient to exclude any other interpretation. * * *
>
> "From what has been said, it is clear that, of the commodities transported by the applicant for compensation, only fresh whole fish and oysters in the shell, whether iced or not, come within the provisions of the exemption provided in section 203(b)(6). Dressed poultry does not come within the term livestock, and, while pecans and walnuts (in the shell) are agricultural commodities, shelled nuts (nut meats) are products resulting from processing beyond that forming a part of the harvesting or ordinarily customary in the preparing of the commodities for market by the producer."

The Commission found, on the strength of this reasoning, that none of the applicant's motor vehicles used in the transportation of property for compensation, was exempt from the certificate or permit provisions of the act.

Monark Egg Case--No. 2 20/

Upon requests for reconsideration, the case was opened for rehearing before the Interstate Commerce Commission, and this time representatives of the U. S. Department of Agriculture participated. A new decision was rendered on October 2, 1944.

The application was again denied but, at this time, the Commission made a change in the premise on which it based its decision. In the first decision it had reasoned that, if a motortruck was used at any time to carry a non-exempt commodity for compensation, that vehicle was subject to the certificate or permit requirements of the law. This was an application of the "poisoned vehicle" doctrine.

In its decision upon rehearing, the Commission placed emphasis on the "channels of commerce" principle in delimiting the scope of the exemption. The Commission said:

> "The Interstate Commerce Act is remedial legislation and must therefore be liberally interpreted to effect its evident purpose.

20/ No. MC-89207, Monark Egg Corporation Contract Carrier Application, 44 M.C.C. 15. Decided October 2, 1944.

> The provision here under consideration is an exemption from the general terms of the statute, and as such must be strictly construed. Its benefits extended only to those carriers plainly within its terms; and the stricter the construction of the exemption, the more liberal is the construction of the main act. * * * The legislative history indicates that the benefits of the exemption were intended for the farmer by affording relief in the transportation of his products to the point where they first enter the ordinary channels of commerce."

In speaking of shelled peanuts, one of the commodities hauled by Monark, the Commission said:

> "* * * When the peanut has reached the shelling plant and has been processed by removal of the shell, it has entered the ordinary channels of commerce and the operation performed upon it at that point removes it from the class of unmanufactured agricultural commodities which was intended to be designated by the section here under consideration."

Carrying through the same principle with reference to the poultry carried by Monark, the Commission stated further:

> "* * * It is common knowledge that, generally, farmers do not kill and pick poultry in marketing it. Probably without exception, or at most, with rare exceptions, the commercial killing and dressing of poultry is done by meat-packing companies or by special poultry packers. Its subsequent transportation is under refrigeration. As such it can no longer be considered an unmanufactured agricultural commodity."

The testimony relating to fish showed that much of it was beheaded and gutted on the fishing boat before it was landed at the pier. There were so many variations in the situations described that the Commission concluded:

> "The moment we get beyond the original fish as taken onto the boat and consider the various steps by which it progresses to other forms, we become involved in distinctions so subtle as to be wholly impractical as a basis for concluding that any given commodity is within or without the description used in the act. We conclude that only fish and shellfish dead or alive, as taken from the water, are within the purview of this exemption."

Commissioner Lee dissented from the majority opinion with reference to commodities included within the agricultural exemption. In speaking of fish eligible for the exemption he included:

> "Fish in the various forms in which it is customarily shipped such as live fish, fish in the round, beheaded and gutted fish, and filleted fish (frozen, quick frozen, or unfrozen), and also oysters,

clams, crabs, lobsters, scallops, and shrimp, with or without shells (including crab meat and lobster meat), when not packed in hermetically sealed containers.

* * *

"* * * It should be noted that Congress did not limit the meaning of the word 'fish' as was done in the case of 'agricultural commodities.' On the contrary, by the parenthetical phrase '(including shell fish)' Congress indicated that all 'fish' falls within the exemption."

In speaking of the poultry and nuts hauled by the applicant, Commissioner Lee applied the "substantial identity" test, citing the United States Supreme Court's definition of "manufactured products" in Hartranft v. Weigmann, 121 U.S. 609, and in Anheuser-Busch Assn. v. United States, 207 U.S. 556. In both these cases arising under the tariff laws the definition of "manufactured products" was at issue. Commissioner Lee said:

"The killing, picking, and drawing of poultry and the shelling of the nuts do not result in their transformation into new or different articles. They still remain, and continue to be known as, poultry and nuts. They continue to be adapted for exactly the same uses and purposes. In my opinion, they are still agricultural commodities and not manufactured products of such commodities. This opinion is in accord with the construction placed on the term 'manufactured products' by the United States Supreme Court."

Harwood Case 21/

Harwood, owner of 4 units of motor carrier equipment, filed on September 22 1946, an application with the ICC seeking a permit authorizing him to operate in interstate commerce as a contract carrier of fruits and vegetables, fresh and frozen, between points in Michigan, Ohio, Indiana, and Illinois.

One of the shippers who supported his application was a dealer in fresh fruits and vegetables; the other was engaged in preparing fresh vegetable salads and spinach. The salads consisted of cut-up vegetables which had been washed and cleaned and were ready for use. The spinach was washed, cleaned, and packed ready for cooking. Both spinach and salads were packed by the shipper in cellophane bags and boxes.

The Examiner recommended that the application be denied on the ground that the commodities were exempt, and therefore the operation was outside the jurisdiction of the Commission. But Division 5, with Commissioner Lee dissenting, overruled the recommendation.

21/ No. MC-107669, Norman E. Harwood Contract Carrier Application 47 M.C.C. 597. Decided December 16, 1947.

In concluding that cut-up salads and washed spinach did not fall within the exemption of Section 203(b)(6), the majority said:

> "The washing, cleaning, and packaging of fresh vegetables in cellophane bags or boxes for sale to consumers place such commodities in the ordinary channels of commerce and remove them from the class of unmanufactured agricultural commodities falling within the practical exemption of section 203(b)(6) of the Interstate Commerce Act. Applicant accordingly requires authority to perform the transportation of such commodities. Since the fresh fruits and vegetables will presumably be transported in the same vehicles with the above nonexempt commodities, authority to perform such transportation is likewise required."

Commissioner Lee disagreeing with the majority, maintained that washed and cut-up vegetables were exempt agricultural commodities. In his dissent Commissioner Lee stated:

> "The record indicates that applicant proposes to transport only fresh fruits and vegetables including those which have been washed and cut up. For reasons set forth by me in 'Newton Extension of Operations--Frozen Foods, 43 M.C.C. 787,' I do not believe that any authority is required to transport fresh fruits and vegetables, which fall within the partial exemption of section 203(b)(6) of the act, if no other commodities are transported for compensation in the same vehicles at the same time."

Dunn Case 22/

Dunn operated as a for-hire motor carrier in intrastate commerce in Georgia under a certificate issued by the Georgia Public Service Commission; and his intrastate freight apparently included nonagricultural commodities. He also transported baled cotton from points in Georgia to points in adjacent States. The Interstate Commerce Commission sought to enjoin him from this interstate operation unless he received a certificate of public convenience and necessity or other authority from the Commission. Dunn claimed he was operating interstate under the agricultural exemption. The injunction was denied by the district court and the ICC appealed. The U. S. Department of Agriculture appeared before the Circuit Court of Appeals as 'amicus curiae' opposing the position of the ICC.

The question held to be at issue was the interpretation of the last phrase in Section 203(b)(6), "if such motor vehicles are not used in carrying any other property or passengers, for compensation." Dunn claimed exemption because

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22/ Interstate Commerce Commission v. Dunn (5 Cir. 1948), 166 F. 2d 116. Decided February 5, 1948.

the vehicles were not used in carrying in interstate commerce other property for compensation. The Commission invoking the "poisoned vehicle" doctrine, stated its position thus: "We contend that it makes no difference whether the 'other property' is carried 'at the same time,' at some other time, or whether it is moving in intrastate or in interstate commerce. The district court held that the trucks were exempt because "the vehicles used by defendant in carrying baled cotton in interstate commerce are not at the same time used in carrying any other property for compensation."

The Circuit Court of Appeals upheld the position of the district court. In so doing, it expressed its reasoning as follows:

> "What then do the words 'are not used in carrying any other property' mean? They are in the present tense, which ordinarily imports present action. They do not mean 'have not in the past been used and will not be used in the future'. We should not write this meaning into them without good reason. It is true that the present tense may signify habitual action, but that meaning is not contended for by the Commission. Its contention is that a single use at any time of a truck for the carriage of 'other property' for hire excludes the truck from the exemption, we suppose so long as its ownership is unchanged. This is so unreasonable and so crippling both to intrastate carriage for hire and to the free interstate carriage of the privileged commodities, and even contrary to the general policy of the legislation, that it cannot be the true legislative intent."

Harking back to the time prior to the amendment of 1938 when the word "exclusively" was still in the language of Section 203(b)(6), the court quoted from the Commission's own decision in Monroe Contract Carrier, 8 M.C.C. 183:

> "* * * we do not believe that a proper construction of the Act requires an interpretation which would destroy the exemption. * * * It is rare for a motor vehicle to be used for no other purpose than the carriage of agricultural commodities. Such carriage is usually seasonal or intermittent. At other times the owner of the truck will put it to other use. * * * If the word 'exclusively' were so strictly construed * * * the exemption provision would have little applicability."

Returning to the case in hand, the court thus summed up its objection to the "poisoned vehicle" interpretation which the Commission sought to apply:

> "Dunn in 1946 used his five trucks to make nineteen interstate hauls, less than four trips in a year for each truck. Are they all disqualified in 1947 from serving the privileged commodities in finding a market beyond the State under the exemption? Can they ever be purified from the taint of having hauled other property for hire? Did Congress intend to create any such taint? We do not think so."

Love Case 23/

In this case the Interstate Commerce Commission brought suit in Federal District Court to enjoin Chester Morton Love from operating as a motor common carrier in interstate commerce until he obtained a certificate from the Commission. He had been transporting fresh and frozen headless shrimp, whole fish, and potatoes. The question at issue was whether the term "fish (including shell fish)" as used in Section 203(b)(6) embraces fresh headless shrimp packed in ice and frozen headless shrimp.

It was shown that shrimp are transported only in a headless state, most of them being beheaded on the fishing boat before they are brought in to shore. The court ruled that:

> "Shrimp, as handled by the defendant, either fresh headless shrimp packed in ice, or frozen headless shrimp, continue to be shrimp in their natural state. They will remain, and continue to be known as, shrimp. If the Commission's holdings were followed, they would nullify the exemption accorded motor vehicles transporting shrimp, by virtue of the shrimp being beheaded, because no shrimp are transported to the market which are not beheaded. In this way, and through such an interpretation, the Commission has given no effect whatever to the exemption provided in the statute for fish, insofar as it affects the transportation of shrimp."

The court concluded that motor vehicles used exclusively in the transportation in interstate commerce, for compensation, of fresh or frozen headless shrimp are exempt from regulation by the Commission under Section 203(b)(6).

The ICC appealed the case and the United States Court of Appeals affirmed the decision of the lower court.

Monark Egg Case--No. 3 24/

After the decision of the District Court in the Love Case had been rendered, the Interstate Commerce Commission reopened the Monark Egg Case to determine the effect of the court's decision on the interpretation for administrative purposes of that portion of the agricultural exemption dealing with the transportation of fish. In this connection the Commission stated:

> "* * * Obviously, if other shellfish and fish are not transported to market in the form in which they are taken from the water a conclusion similar to that reached by the court in the Love case in respect of headless shrimp would be justified

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23/ Interstate Commerce Commission v. Love (E. D. La. 1948) 77 F. Supp. 63. Decided March 29, 1948. Decision affirmed (5 Cir. 1949) 172 F. 2d 224 on February 11, 1949.

24/ No. MC-89207, Monark Egg Corporation Contract Carrier Application, 49 M.C.C. 693. Decided September 23, 1949.

* * *

> "It seems obvious that for the purpose of application of the exemption, a distinction cannot be made between fresh and frozen headless shrimp and other species of fresh and frozen fish which, like shrimp, are never transported to the market in the form in which they are taken from the water. And we are persuaded that a sound distinction cannot be made between fresh and frozen headless shrimp and other species of fresh or frozen fish which are transported to market both in the form in which they are taken from the water and in other forms such as gutted fish, fillets, shucked oysters, et cetera."

On the strength of this reasoning the Commission found that:

> "* * * the term 'fish (including shell fish)' as used in section 203(b)(6) of the Interstate Commerce Act includes frozen, quick frozen, and unfrozen fish in the various forms in which it is shipped, such as live fish, fish in the round, beheaded and gutted fish, filleted fish, beheaded shrimp, and oysters, clams, crabs, and lobsters, with or without shells, including crab meat and lobster meat, but excluding fish in hermetically sealed containers or fish which has been otherwise treated for preserving such as smoked, salted, pickled, spiced, corned or kippered."

Commissioners Rogers and Patterson dissented from the majority opinion, invoking the "channels of commerce" principle. They contended that it was the intent of Congress to relieve farmers and fishermen of regulation for the movement of their products from the farm or dock to the point where the product first enters the ordinary channels of commerce. By their definition, many of these commodities had already entered the ordinary channels of commerce and were no longer entitled to the exemption.

Weldon Case 25/

The Interstate Commerce Commission sued in Federal District Court to enjoin Weldon from transporting raw, shelled peanuts in interstate commerce between points for which it claimed he did not hold a valid certificate. Weldon claimed (1) that raw shelled peanuts were an agricultural commodity within the exemption provision of Section 203(b)(6); and (2) that the certificate which he held should be construed as embracing the challenged operation.

The district court summarized the situation as follows:

25/ Interstate Commerce Commission v. Weldon (D. C. Tenn. 1950) 90 F. Supp. 873. Decided May 18, 1950. Weldon v. ICC (6 Cir. 1951) 188 F. 2d 367. Certiorari denied (342 U.S. 827) on October 8, 1951.

"Plaintiff * * * contends that the removal of the peanut from the shell by mechanical methods is a manufacturing process after which the peanut has undergone a change which renders it a manufactured item and one which under the exemption of section 203(b)(6) cannot be classified as an 'agricultural commodity or product.' * * *

"* * * the Court finds that Congress clearly intended, from the language, to exclude only 'agricultural commodities' in their natural state. This seems the only reasonable construction of which the phrase of the exemption in question is susceptible. So, if raw shelled peanuts may be classified as a manufactured commodity, or product, rather than an agricultural commodity or product in its natural state, the interstate transportation of them is subject to the terms of the Act therein.

"* * * There must be a time when peanuts cease to be products of the farm and are considered manufactured articles and it seems appropriate in dealing with the question here involved to say that peanuts are a manufactured product from the time same are sold by the farmer and shelled at the shelling plant.

"* * * Raw materials may be subject to successive processes of manufacture, each of which is complete in itself, but several of which may be required to make the finished product.

"The Court holds * * * /that/ the term 'agricultural commodities' appearing in the exemption under consideration do/es/not embrace the interstate transportation of raw shelled peanuts which are a manufactured product."

The district court granted the injunction sought by the ICC.

Upon appeal to the United States Court of Appeals, Weldon abandoned his first defense and relied on his contention that the operations in question were covered by a valid certificate. The Court of Appeals, therefore, did not have before it the question of the interpretation of Section 203(b)(6). The Court of Appeals affirmed the opinion of the Federal District Court and the United States Supreme Court denied Weldon's request that it review the case.

Service Trucking Co. Case 26/

The Service Trucking Co. carried dressed poultry from packing plants in Maryland to Chicago. As a return haul the same vehicles carried to Philadelphia loads of eggs, in the shell and packed in crates. The carrier held a

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26/ Interstate Commerce Commission v. Service Trucking Co., Inc. (E. D. Pa. 1950) 91 F. Supp. 533. Decided May 25, 1950. Decision affirmed (3 Cir. 1951) 186 F. 2d 400 on January 11, 1951.

certificate of public convenience and necessity for hauling poultry to Chicago, but none for the return haul of eggs.

The Interstate Commerce Commission brought suit in Federal District Court to enjoin the Service Trucking Co. from operating as a common carrier in interstate commerce unless it applied for and received a certificate of public convenience and necessity from the Commission covering the movement of eggs from Chicago to Philadelphia. The Commission conceded that eggs were an agricultural commodity and therefore exempt. It based its case on the fact that the same vehicles were used to carry dressed poultry (which it said was a manufactured product) and therefore all movements of those vehicles were nonexempt.

The Commission here was again invoking the "poisoned vehicle" doctrine which had been overruled by the U. S. Court of Appeals, Fifth Circuit, in the Dunn Case.

The defendant claimed (1) that dressed poultry was not a manufactured product and (2) even if it was, trucking eggs without a certificate was legal so long as both products were not carried in the same truck at the same time.

The district court declined to rule on the first question, stating:

> "* * * it need not be decided in this case because I am satisfied that the exemption applies unless the carrier who transports exempt commodities also transports nonexempt products at the same time in the same vehicle."

To support its rejection of the "poisoned vehicle" doctrine, the court cited the ruling in the Dunn Case, holding that, although the earlier case had involved both intrastate and interstate commerce, the question at issue was essentially the same.

In finding for the defendant, the court stated further:

> "The Court in the Dunn Case was undoubtedly aware of the rule for strict construction of exemptions and reached its conclusion nevertheless. The rule will not be applied to the extent of requiring an interpretation contrary to what appears to be the intent of the law."

The ICC appealed the decision to the U. S. Court of Appeals for the Third Circuit. The Department of Agriculture appeared as 'amicus curiae' in support of the Service Trucking Co.'s contention that dressed poultry was an agricultural commodity. The decision of the lower court was affirmed. The circuit court, too, refused to rule on whether dressed poultry was an exempt agricultural commodity within the meaning of Section 203(b)(6), on the ground that this question need not be considered in this case.

The court reiterated the language in the decision of the Dunn Case:

"We agree, however, that the interpretation sought by the appellant '* * * is so unreasonable and so crippling * * * to the free interstate carriage of the privileged commodities, and even contrary to the general policy of the legislation, that it cannot be the true legislative intent.'"

The Commission cited to the court a number of the ICC's own decisions giving an opposite construction to the agricultural exemption and claimed that great weight should have been given to them as "contemporaneous administrative rulings."

The Court of Appeals said:

"We think the Commission decisions interpreting 203(b)(6) of the Act are clearly wrong."

It cited the language of the district court:

"* * * where the question is one not wholly dependent upon matters within the expert, technical or statistical field in which the regulatory body is pre-eminently qualified to judge, but which primarily involves jurisdiction, the force of the administrative rulings is less than it would otherwise be."

It quoted a similar position taken by the U. S. Court of Appeals, Fifth Circuit, in the Dunn Case:

"* * * a settled construction by the Commission entitled to great weight /but/ even if there be such, we may not follow it if clearly wrong."

Determinations Case 27/

Because of the questions raised by the interpretations of the courts, the Interstate Commerce Commission, on its own motion, instituted an investigation on July 9, 1948, into the meaning of the term "agricultural commodities (not including manufactured products thereof)" as used in section 203(b)(6). At the same time, upon petition of the Department of Agriculture and others, it reopened the Harwood Case for hearing on a consolidated record with the investigation proceeding.

Evidence was submitted by the U. S. Department of Agriculture, many States, agricultural marketing associations, farmer organizations, shippers, growers, carriers, and others. The Department of Agriculture took the position

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27/ No. MC-C-968, Determination of Exempted Agricultural Commodities, 52 M.C.C. 511. Decided April 13, 1951.

that the exemption "should be construed by the Commission to exempt the transportation of all agricultural commodities on which some labor has been performed or mechanical skill applied in order to place such commodities on the consumer markets so long as such treatment does not clearly and by scientific analysis constitute manufacturing." In that connection it offered expert testimony of physical scientists on which forms of processing change a commodity from an unmanufactured state to a manufactured one.

The Commission concluded that:

> "* * * the term 'agricultural commodities' as used in section 203 (b)(6) embraces all products raised or produced on farms by tillage and cultivation of the soil, (such as vegetables, fruits and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry and bees (such as milk, wool, eggs and honey)."

It concluded further that:

> "* * * the term '(not including manufactured products thereof)' means agricultural commodities in their natural state and those which, as a result of treating or processing, have not acquired new forms, qualities, properties or combinations."

Most of the parties who opposed the above interpretation contended that the "channels of commerce" principle should control in determining whether the exemption should apply.

As noted above, in the second Monark Egg Case the ICC had applied the "channels of commerce" principle. The Commission now rejected this principle and referred to the intent of Congress in enacting the legislation.

> "Although the object of the partial exemption as originally framed was to aid the farmer in marketing his products, the substitution of the present language for the words 'unprocessed agricultural products' clearly resulted in a broadening of the exemption. That this is so was made plain by the chairman of the subcommittee sponsoring the amendment when he stated that pasteurized milk and ginned cotton were intended to come within the partial exemption. He also indicated that cottonseed would fall within the exemption. It must be assumed that Congress was familiar with the practices obtaining in the industry incidental to the marketing of these and other agricultural commodities. As hereinafter shown, the uncontradicted evidence in this respect is that the pasteurization, among other processing, and bottling of milk for sale to consumers, is customarily done at dairies in the larger cities throughout the country, and that the bulk of the cottonseed is sold by the farmer to the ginners. In the light of these practices and the clear intent of Congress that pasteurized milk was to be included in the partial exemption, irrespective of the fact that the milk was processed after entering the ordinary channels of commerce, or that

the cottonseed was sold to the ginner, it is difficult to conclude that Congress intended that other agricultural commodities, processed (but not manufactured) or packaged for consumer use, regardless of ownership, should be treated differently. Moreover, to hold that the place at which the commodities are predominantly processed or packaged is controlling of the applicability of the partial exemption would, in many instances, prevent the movement by exempt vehicle of items processed or packaged by farmers themselves, a result obviously not intended by Congress.

"* * * We conclude that the 'channel of commerce' principle is not appropriate for use in determining the applicability of the partial exemption."

The findings of the Commission include a list of those agricultural commodities which were determined, on the basis of the evidence presented, to be unmanufactured. This was not intended to be an exclusive list, but rather a guide to be used in judging the eligibility of other commodities for exempt status. The Commission said of it:

"Such classification, when considered in connection with the various treatments or processes discussed herein, may also serve as a guide for determining whether or not most, if not all, of the commodities not specifically considered herein would or would not fall within the partial exemption."

The decision in the Harwood Case was reversed.

Apart from that case, no cases in which a determination had been made as to whether specific commodities fall within the scope of the agricultural exemption had been reopened. The Commission ordered that, to the extent that the findings in those previous cases differed from the findings in this case, the previous decisions be overruled.

Monark Egg Case--No. 4 28/

The American Trucking Associations, Inc., the New England Rate Bureau, and the Refrigerated Carriers Association petitioned the ICC to reopen this proceeding for further consideration and oral argument. They argued that although the decision in the Love Case was binding insofar as it affected headless shrimp, the Commission had erred in extending the same doctrine to other species of fish and shellfish. The National Fisheries Institute and the U. S. Department of Agriculture agreed with the findings of the Commission in its third report in the Monark Egg Case.

28/ No. MC-89207, Monark Egg Corporation Carrier Application, 52 M.C.C. 576. Decided April 13, 1951 (concurrently with the Determinations Case).

The interveners who had filed the above petition invoked the "channels of commerce" principle. The Commission rejected this premise in the following language:

> "* * * As indicated in the cited case /Determinations Case/ the partial exemption is directed to the motor vehicles, not to the transportation of the commodities named therein, and it contains no limitation as to the points from and to which fish and shellfish may be transported. * * * Aside from this, the record discloses that the ordinary fisherman sells his catch at the pier, hence the benefits, if any, which would accrue to him, by reason of the partial exemption, would at most be indirect. We conclude that the 'channel of commerce' principle is not appropriate for use in determining the applicability of the partial exemption so far as fish and shellfish are concerned."

The representatives of the motor carriers subject to ICC economic regulation expressed the fear that this decision would result in irreparable damage to them through the loss of a large part of their traffic to exempt vehicles. The Commission answered this by saying:

> "The fact that some certificated carriers may be adversely affected by a proper interpretation of the statute is a matter which can be relieved only by Congress."

Commissioner Rogers dissented from the majority opinion again, this time with the concurrence of Commissioner Cross. They continued to adhere to the "channels of commerce" doctrine.

Yeary Transfer Case 29/

Yeary Transfer Co. was engaged in transporting redried leaf tobacco in interstate commerce. The Interstate Commerce Commission brought suit in Federal District Court to enjoin it from such transportation unless or until it obtained a certificate of convenience and necessity from the ICC authorizing such operation.

Yeary claimed this was an operation exempt under Section 203(b)(6) because redried leaf tobacco is an exempt agricultural commodity. The Department of Agriculture appeared as 'amicus curiae,' in support of that position.

It was shown that the purpose of redrying leaf tobacco (passing it through a redrying chamber where it was exposed to a temperature of about 200° F.) was

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29/ Interstate Commerce Commission v. Yeary Transfer Co., Inc., (E. D. Ky. 1952) 104 F. Supp. 245. Decided April 3, 1952. Decision affirmed (6 Cir. 1953) 202 F. 2d 151 on February 20, 1953.

to reduce moisture content and obtain uniform standardization of the moisture content in the tobacco leaf. The process speeds up the drying of tobacco which, in time, would take place by natural processes. There is no visible difference in the leaf which is about to be redried and that which has been redried. As a result of this process, tobacco leaf--which would deteriorate rapidly at normal moisture content--can be stored for 2 or 3 years prior to use in making tobacco products.

The district court held that, in view of the manner and purpose of redrying leaf tobacco, the redried leaf is an agricultural commodity and not a manufactured product thereof. The action was dismissed.

The U. S. Court of Appeals, Sixth Circuit, upheld the decision.

Florida Gladiolus Case 30/

Florida Gladiolus Growers Association was engaged in raising, shipping, and transporting cut gladiolus and gladiolus bulbs. They sought an injunction from a 3-judge Federal District Court to restrain the Interstate Commerce Commission from enforcing its order in the Determinations Case, which held that nursery stock, flowers, and bulbs were not agricultural commodities within the meaning of Section 203(b)(6). The Department of Agriculture intervened on behalf of the plaintiff.

Between the time that the suit was brought and the decision rendered, Public Law 472 (S. 2357) (June 9, 1952) was passed amending Section 203(b)(6) by adding "(including horticultural)" after "agricultural."

The court stated that there was no question that cut flowers and bulbs are "horticultural commodities." On the question of whether "horticultural commodities" are included among "agricultural commodities," the court ruled:

> "Although the institution of this suit antedated the passage of the statute above mentioned, the statute is merely declaratory of the general law as it existed when suit was brought. The courts have long defined the term 'agriculture' to include horticulture, which embraces, amongst other things, the raising and culture of nursery stock. /Citations/ Any doubt on the subject, however, is now conclusively settled by the above mentioned statute, so far as Sec. 203 of the Interstate Commerce Act is concerned."

The injunction was granted.

30/ Florida Gladiolus Growers Assn. et al. v. United States et al. (S.D. Fla. 1952) 106 F. Supp. 525. Decided July 23, 1952.

Kroblin Case 31/

Kroblin was engaged in transporting New York dressed and eviscerated poultry in interstate commerce without a certificate of public convenience and necessity. The Interstate Commerce Commission asked that he be enjoined from this operation, but Kroblin claimed that it fell within the scope of the exemption in Section 203(b)(6) and therefore required no certificate. The U. S. Department of Agriculture participated in the case as 'amicus curiae' in opposition to the Commission's views.

The issue to be decided was whether the interstate transportation by truck of New York dressed and eviscerated poultry is within the scope of the agricultural exemption--i.e., whether such poultry is an agricultural commodity or a manufactured product.

In the Determinations Case the Commission had construed dressed poultry to be a manufactured product. The Department of Agriculture, on the other hand, considered dressed poultry an agricultural commodity. Both agencies claimed "expertness" in this matter.

The court stated:

"In the present case, the only relevancy of administrative construction or interpretation is the matter of Congressional intent.

* * *

"In the present case, the matters of importance are what was the purpose of Congress in enacting Section 203(b)(6), and what commodities did it intend to include within its provisions? The parties are agreed that the purpose of Section 203(b)(6) was to benefit the farmers. The amendment was not necessary to relieve the farmers of the expense and trouble of complying with the regulations of the National Motor Carrier Act where they operated their own trucks to transport their produce or farm supplies. They were relieved of that trouble by Section 203(b)(4a) and Section 203(b)(9) of the Act. Section 203(b)(6) provided for exemption for commercial truckers transporting the commodities therein referred to. It is therefore clear that Congress concluded that the farmers would be benefited by having the commercial truckers engaged in hauling farm commodities exempted from the certificate provisions of the Act.

31/ Interstate Commerce Commission v. Kroblin (N.D. Iowa 1953) 113 F. Supp. 599. Decided June 30, 1953. Decision affirmed (8 Cir. 1954) 212 F. 2d 555 on May 11, 1954. Certiorari denied (348 U.S. 836) on October 14, 1954.

* * *

"In the present case it was claimed in oral argument by counsel for the defendant and the Secretary of Agriculture that the biggest benefit to the farmers of exempting commercial truckers engaged in hauling farm commodities from the certificate provisions of the Act was the flexibility of operations permitted such carriers.

* * *

"The Interstate Commerce Commission contends that the purpose and effect of the change in terms /from 'unprocessed agricultural commodities' to 'agricultural commodities (not including manufactured products thereof)'/ was to include ginned cotton and pasteurized milk within the scope of the exemption. The defendant and the Secretary of Agriculture claim that it was not the intent of Congress by the change in terms to limit the effect of the change to ginned cotton and pasteurized milk. It is the claim of the defendant and the Secretary of Agriculture that by the change in terms Congress manifested the intent that the mere fact that an agricultural commodity had been processed would not cause it to be outside of the scope of the exemption. It is their claim that Congress by the change manifested the intent that farm commodities could be processed without losing their status as an exempt commodity and that it was only when such commodities had achieved the status of manufactured articles that they lost their exempt status.

* * *

"It is the holding of the Court that New York dressed poultry or eviscerated poultry do not constitute 'manufactured' products within the intent and meaning of Section 203(b)(6). It is the feeling of the Court that an opposite holding would in reality constitute an attempt to accomplish by means of judicial construction that which Congress has steadfastly refused to allow to be accomplished by legislation."

The ICC carried the case to the U. S. Circuit Court of Appeals, where the decision of the lower court was upheld. On October 14, 1954, the U. S. Supreme Court denied the request of the ICC to review the case.

Frozen Food Express Case

Civil Action 8285 32/

Frozen Food Express Co., a certificated carrier, wanted to haul agricultural commodities (not including manufactured products thereof) for hire, to and from all points within the United States, irrespective of the limitations imposed by its own certificates.

The firm claimed that the ICC report in the Determinations Case, by excluding certain commodities from the exemption, deprived it of the right to do so. It brought action in the Federal District Court for the Southern District of Texas, Houston Division, to enjoin the Commission and the United States from enforcing or recognizing the validity of the report.

The Secretary of Agriculture appeared as intervening plaintiff.

A 3-judge Federal District Court decided that the report of April 13, 1951, (in the Determinations Case) was not subject to judicial review because the proceeding before the Commission was not an adversary one and the report did not have the force of an order.

This decision was appealed to the U. S. Supreme Court, which reversed the lower court and remanded the case back to the Federal District Court for a review of the report in the Determinations Case.

The Federal District Court at Houston reviewed the ICC's findings in the Determinations Case and declared a large number of agricultural commodities to be exempt that had undergone processing but had retained their original identity. Other agricultural commodities were considered nonexempt because they had acquired "a new identity, with new properties."

On April 4, 1957, the ICC announced that it would appeal to the United States Supreme Court the decision of the 3-judge Federal District Court with respect to certain commodities which had been declared exempt. The Commission said it would limit its appeal to dried egg powder, dried egg yolks, powdered milk, buttermilk, and quick frozen fruits and vegetables. The Commission said further that its limited appeal meant that it had accepted the court's decision with respect to the other commodities involved.

32/ Frozen Food Express v. United States of America and Interstate Commerce Commission (S.D. Texas 1955) 128 F. Supp. 374. Decided January 26, 1955. Decision reversed (351 U.S. 40) on April 23, 1956. Decided on remand (S.D. Texas 1956) 148 F. Supp. 399 on December 31, 1956.

Civil Action 8396 33/

A complaint was filed on December 23, 1953, with the ICC by 3 motor carriers, charging that Frozen Food Express was engaged in transporting fresh and frozen dressed poultry, fresh and frozen meats, and meat products, for hire, between points in interstate commerce not authorized by its certificate of convenience and necessity. Frozen Food Express admitted this, but claimed that these items were within the agricultural exemption.

The ICC found these products not to be within the exemption and ordered Frozen Food Express to cease this operation. The motor carrier requested the Federal District Court to review the order. The Secretary of Agriculture appeared here, too, as intervening plaintiff. This case was heard and decided by the 3-judge court concurrently with Civil Action 8285.

The court, citing the opinion in the Kroblin Case as precedent, concluded that fresh and frozen dressed poultry are "agricultural commodities," not "manufactured products thereof." The court further decided that fresh and frozen meat does not fall within the category either of "ordinary livestock" or of "agricultural commodities" and is therefore not within the exemption.

Frozen Food Express accepted the lower court's findings with regard to fresh and frozen meats, and meat products. However, the ICC, East Texas Motor Freight Lines, and Akron, Canton, and Youngstown Railroad appealed the decision on fresh and frozen dressed poultry. The Supreme Court concurred with the holding of the Federal District Court. The Court said, in part:

> "We agree with the District Court that the Commission's ruling does not square with the statute. The exemption of motor vehicles carrying 'agricultural (including horticultural) commodities (not including manufactured products thereof)' was designed to preserve for the farmers the advantage of low-cost motor transportation. * * * The victory in the Congress for the exemption was recognition that the price which the farmer obtains for his products is greatly affected by the cost of transporting them to the consuming market in their raw state or after they have become marketable by incidental processing.
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> * * *
>
> "It is plain from this change /from 'unprocessed' to '(not including manufactured products thereof)'/ that the exemption of

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33/ Frozen Food Express v. United States of America and Interstate Commerce Commission (S.D. Texas 1955) 128 F. Supp. 374. Decided January 26, 1955. East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express, Secretary of Agriculture, et al. (351 U.S. 49). Decided April 23, 1956.

'agricultural commodities' was considerably broadened by making clear that the exemption was lost not by incidental or preliminary processing but by manufacturing. Killing, dressing and freezing a chicken is certainly a change in the commodity. But it is no more drastic a change than the change which takes place in milk for pasteurizing, homogenizing, adding vitamin concentrates, standardizing and bottling. Yet the Commission agrees that milk so processed is not a 'manufactured' product, but falls within the meaning of the 'agricultural' exemption. 52 M.C.C. 511, 551. The Commission also agrees that ginned cotton and cottonseed are exempt. Id., 523-524. But there is hardly less difference between cotton in the field and cottonseed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cottonseed, as well as the dressed chicken, have gone through a processing stage. But neither has been 'manufactured' in the normal sense of the word. The Court in Anheuser-Busch Assn. v. United States, 207 U.S. 556, 562, in a case arising under tariff laws, said,

> "'* * * Manufacturing implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary, as set forth and illustrated in Hartranft v. Wiegmann, 121 U.S. 609. There must be transformation; a new and different article must emerge, "having a distinctive name, character or use."'

"A chicken that has been killed and dressed is still a chicken. Removal of its feathers and entrails has made it ready for market. But we cannot conclude that this processing which merely makes the chicken marketable turns it into a 'manufactured' commodity.

"At some point processing and manufacture will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been 'manufactured' within the meaning of Section 203(b)(6)."

Home Transfer and Storage Case 34/

Home Transfer and Storage Co. was hauling frozen fruits and vegetables between points in the States of Washington and California without ICC authorization. The ICC ordered the firm to cease and desist from this operation. The carrier contended that no operating authority was required because these products are exempt.

34/ Home Transfer and Storage Co. v. United States of America and Interstate Commerce Commission (W.D. Washington 1956) 141 F. Supp. 599. Decided May 7, 1956. Interstate Commerce Commission v. Home Transfer and Storage Co., Inc. (352 U.S. 884). Decided on November 5, 1956.

Home Transfer asked a 3-judge Federal District Court to set aside the ICC order. The court stated that this was the first time a court has been asked to determine the specific question: "Are frozen fruits and frozen vegetables agricultural commodities or manufactured products thereof?"

The court quoted the Supreme Court decision in the Frozen Food Express Case--rendered 2 weeks earlier--and based its own decision on the test of continuing substantial identity:

> "Although that Supreme Court decision of April 23, 1956, containing the above quoted statements did not involve frozen fruits and vegetables, as does this one, we think, in the absence of other Supreme Court action controlling ours, that the quoted statements of that Court in that case inescapably apply and guide us to similar conclusions on the facts of this case to our decision against the validity of the Commission's order under attack here.
>
> "The processing of fresh fruits for quick freezing in this case is essentially nothing but adding sugars, sirups, and as to peaches ascorbic acid, to better preserve the fruits and improve their color and taste. Nothing but slicing of the fruit affects its physical form. The processing of fresh vegetables for quick freezing is to heat them, in some instances after first splitting them to hasten heat action, sufficiently to kill the enzymes, and then to follow with the desired degree of freezing. Although this process may produce noticeable discoloration, or may divide a stalky variety into two or more parts, nothing is done to otherwise change the form of the vegetables. In other respects than those mentioned, these processed fruits and vegetables remain essentially in the same shape and form as nonprocessed fruits and vegetables.
>
> "Such results of the processing here make applicable to the facts of this case the above quoted Supreme Court statement in its April 23, 1956 decision that:
>
> > "'But where the commodity retains a continuing substantial identity through the processing state we cannot say that it has been "manufactured" within the meaning of Section 203(b)(6).'"

The ICC appealed the case to the U. S. Supreme Court, which affirmed the decision of the lower court.

Consolidated Case 35/

In the Determinations Case the Interstate Commerce Commission had found that raw shelled nuts were manufactured products, not agricultural commodities,

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35/ Consolidated Truck Service, Inc. v. United States of America and Interstate Commerce Commission (D.N.J. 1956) 144 F. Supp. 814. Decided September 28, 1956.

within the meaning of Section 203(b)(6). Consolidated Truck Service, Inc., with the U. S. Department of Agriculture as intervening plaintiff, brought suit in the U. S. District Court for New Jersey to set aside and annul this finding.

The 3-judge District Court applied the "substantial identity" test, citing the precedent established in the Frozen Food Express Case. The court said:

> "The substantial identity test of the East Texas Lines /Frozen Food Express Case in the U. S. Supreme Court/ decision is in keeping with the Commission's own determination that ginned cotton and pasteurized milk are not manufactured products albeit the legislative history of section 203(b)(6) * * * could permit of no other decision. In the case at bar the Commission takes the position, as it must, that it is in agreement with the substantial identity test laid down by the Supreme Court but maintains nonetheless that the raw shelled nuts do not retain a continuing substantial identity with the raw unshelled nuts.
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> * * *
>
> "We cannot agree with the Commission's contentions that the raw shelled nuts are manufactured products of agricultural commodities. The Supreme Court in its East Texas Lines decision emphasized the fact that the farmer won a victory in Congress by enactment of section 203(b)(6) * * * and that the enactment was recognition of the fact that the price obtained by the farmer for his product is greatly affected by the cost of transporting it to market whether in its raw state or after it has become marketable by incidental processing. True, the raw shelled nut can be shipped at a lower cost but that has nothing to do with its continuing substantial identity to a raw unshelled nut.
>
> "The shelling process by which the shell is removed from a nut adds nothing to the nut. It does not change the substantial identity of the nut. No new and different article or product emerges. After shelling, the nut is still a nut. The shelling of raw nuts does not convert these agricultural commodities into manufactured products thereof."

On the basis of this reasoning the court declared that the decision and order in the Determinations Case, insofar as it concludes that raw shelled nuts are not agricultural commodities within the meaning of Section 203(b)(6), is invalid and is therefore enjoined, annulled, and set aside. This was the same position which the 3-judge District Court in Houston was to take with reference to raw shelled peanuts when it reviewed the report in the Determinations Case for the Frozen Food Express Case on December 31, 1956.

APPENDIX

Reproduced below are portions of the debate on the floor of the House of Representatives on Wednesday, July 31, 1935, when Senate Bill 1629, An Act to Amend the Interstate Commerce Act, as amended, was under consideration. Included are substantial parts of leading statements for and against the bill, pointing up major issues involved, some bearing upon the question of the agricultural commodity and farmer cooperative exemptions. Hereafter all references to these exemptions are quoted; most discussion of other matters is omitted. Each such omission is indicated by asterisks. Also deleted are requests that the speakers yield and their agreements to do so. Five-figure numbers in parentheses refer to the pages of the Congressional Record, volume 79, part 11, on which the statements are reported.

The debate follows:

(12196) Mr. O'CONNOR. Mr. Speaker, I call up House Resolution 314, which I send to the desk and ask to have read.

The Clerk read as follows:

House Resolution 314

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 1629, an act to amend the Interstate Commerce Act, as amended, by providing for the regulation of the transportation of passengers and property by motor carriers operating in interstate or foreign commerce, and for other purposes. That after general debate, which shall be confined to the bill and continue not to exceed 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment, the Committee shall rise and report the same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, with or without instructions.

Mr. O'CONNOR. Mr. Speaker, I yield 30 minutes to the gentleman from Pennsylvania /Mr. Ransley/.

Mr. RANSLEY. Mr. Speaker, there is no opposition to the rule on this side.

Mr. O'CONNOR. Mr. Speaker, this is a rule for the consideration of the truck and bus bill, an open rule, providing for 2 hours of general debate. We hope sincerely the bill will be completed today in time to take up some other matters.

I yield 10 minutes to the gentleman from Ohio /Mr. Harlan/.

(12196) Mr. HARLAN. Mr. Speaker, I think we all agree that we would like to have as copious transportation facilities as can be easily handled. We want as much agricultural production as can be consumed and as much manufacturing as can be taken care of. But when there comes a time in our industrial organization that we get so much of any one of these three that the people who produce the facilities cannot make a living, and by throwing their commodity on the market deprive others of a legitimate way of making a living, we have found there must be some control. Production, transportation, and credit perform similar functions in our industrial machine to that of gasoline, oil, and air in an internal-combustion engine. When these three factors are in balance, the machine works. When we get too much of one the use of the other two is impaired.

About 15 years ago it was discovered with regard to the question of transportation that there must be some limitation placed upon the amount. So the States devised the system of certificates of necessity and convenience. It is not a new proposition by any means. It has been found by the States that requiring certificates of necessity and convenience is a very essential thing to supply in service in public transportation. We have an example here in the District of Columbia of the evil of not having that kind of control by the public, in our taxicab situation, where all the drivers are practically starving, where they do not have the facilities to keep their cabs in repair or keep them clean, and where, when we have a big convention, such as the Shrine convention, they go on strike to make up the losses that have been sustained in the past. We cannot give proper public service without some kind of control. We have had the railroads under control, and to a certain extent we have had the ships under control, but we have not made any Federal effort to control busses. The States have all done it, but the Federal Government has done nothing, and there is no coordinated system.

This bill provides, briefly, that the Interstate Commerce Commission, cooperating with boards representing utility commissions of the States in which such busses operate in interstate commerce, shall pass upon the question as to whether or not there is reasonable need for a bus in that particular line of traffic.

In other words, this bill gives the States a power over interstate commerce that they have never had before. Instead of being a bill centralizing power in the Federal Government, it gives the States additional power that they have never had. It also exempts the small private trucker, the man who operates a truck on his own farm or exclusively hauling farm commodities. I am told that out West a number of trucks haul oranges from the orange groves and do not do anything else except haul fruit and commodities from the place where the fruit is produced around to the different neighborhoods. It is a cheap method of hauling perishable goods. All trucks used exclusively in that kinds of work are eliminated from the operation of this bill.

Mr. ANDRESEN. Does that include trucks that haul dairy products?

(12196) Mr. HARLAN. As long as they are unprocessed. It would not include cheese and butter, but it would include milk.

Mr. ANDRESEN. Cream and milk?

Mr. HARLAN. Yes.

Mr. RANKIN. Did the gentleman say that this bill puts all trucks that handle butter and cheese and condensed milk at the mercy of the big truckers?

Mr. HARLAN. If they are engaged in interstate commerce--not intrastate commerce; not local in the States. This bill has nothing to do with that, also if they are in interstate commerce and handle livestock and unprocessed farm produce, this does not affect them.

* * *

Mr. CRAWFORD. Take a practical illustration. Suppose a truck is loaded at the farm with potatoes grown on the farm in Michigan, and it moves to New Orleans and picks up sweetpotatoes grown on a farm in Louisiana and moves them back to Detroit, Mich., for sale; will that movement come within the provisions of this law?

Mr. HARLAN. I will refer the gentleman to page 9 of the bill and he can read the clause there and he can interpret it as well as I can. As long as this is unprocessed farm produce, in my opinion it is not affected.

(12197) Now, Mr. Speaker, the remark has been made that this is a bill for the railroads. This bill is endorsed by every organization of truck carriers that we know of; at least, all the prominent organizations of truck carriers. It protects every interest in the truck business. It gives the States more rights to control intrastate commerce than they ever had before. It includes the provisions of the truckers' code which are now wiped out, maintaining labor hours and minimum rates. In fact, it is objected to by but very, very few people who really are informed on this business.

Mr. SNELL. Is there anything in this bill that affects unfavorably the individual farmer in the use of a truck in connection with the carrying of his farm produce to market?

Mr. HARLAN. Absolutely not.

Mr. SNELL. There is nothing in the bill that makes any additional expense to him?

Mr. HARLAN. In the first place it does not affect any trucks that are not in interstate commerce. All of that control is retained by the States.

Now, there is not anyone with a reasonable mind who would not like to see the highest type of transportation developed that it is possible to develop.

(12197) If trucks produce that high type of transportation let us have them and let us develop the trucks. If the railroads do it let us give them at least an even chance in handling these goods. The attitude of the Federal Government has been to tie the hands of the railroads; fix their rates and provide their safety appliances. They have to employ labor for hours that the Government fixes. Their income is fixed. We tie their hands and then turn the trucks loose to take the cream of their commerce and expect them to continue to offer service.

If we continue that policy, gentlemen, whatever your attitude toward the railroads is--and I am referring particularly to the gentleman from Mississippi--we are going to own the railroads before very long.

Mr. Speaker, what this country needs if we expect to get the perfect system of transportation is to put these different types of transportation on an even basis and let them compete for business and service--not tie the hands of one type of transportation while letting another type proceed to have undue advantage in the competition and fight for business. We will never get any place that way, and the natural consequence of that policy in the past has been to put most of our railroads on the verge of bankruptcy where we are going to own them before very long.

Mr. RANSLEY. Mr. Speaker, I yield 30 minutes to the gentleman from New York /Mr. Wadsworth/.

Mr. WADSWORTH. Mr. Speaker, at the outset let me say that having spent a good part of the winter as a member of the subcommittee of the Committee on Interstate Commerce charged with the duty of holding hearings on this bill and similar bills, having listened to the testimony of witnesses and taken part in executive sessions of the subcommittee and later of the full committee, I have come to the conclusion that I cannot support this legislation. I may be somewhat lonely in the House in this attitude because I imagine the bill is going to pass, but I do want to call attention to certain aspects of it which, I think, are important and to indicate the reasons for my opposition.

Make no mistake, Mr. Speaker, this is one of the most important and far-reaching bills this House has been called upon to consider in many a moon. It is printed in 64 pages. You will note it represents an effort to regulate and control an industry wide-spread over the country. I think it difficult to exaggerate the importance of this legislation, although, I suspect, Mr. Speaker, that a large proportion of the membership of the House has not given much attention to its details. Let me say something of its history.

The bill before us is a Senate bill introduced by the Senator from Montana. It passed the Senate something like 3 months ago. It is fair to say that that body paid little attention to it in debate upon the floor of the Senate. Prior to the time the Senate passed this bill the subcommittee of the Committee on Interstate Commerce, of which the gentleman from Alabama /Mr. Huddleston/ was chairman, and upon which I had the honor of serving, was put to work by the direction of the full committee in holding hearings. We

(12197) held extensive and exhaustive hearings and I think we learned a good deal about the trucking business. I am going to confine my remarks at this time, Mr. Speaker, to the trucking end of this problem rather than to the passenger side of it. We heard from all persons who could possibly be interested in this measure; and, as I say, I think we learned something about the immensity and complexity of the problem involved. The subcommittee, headed by the gentleman from Alabama, drafted a bill of its own, very much simpler than the bill before us, and submitted it to the full committee. After a brief executive session the full committee rejected the subcommittee's proposal in its entirety and decided to take up the Senate bill and use the Senate bill as the basis for legislation to be reported to the House. The Senate bill was thus reported with certain amendments, only one or two of them of first-class importance. I still believe that the subcommittee bill was the better measure, and I think I am violating no confidence when I say that the gentleman from Alabama /Mr. Huddleston/ entertains the same belief.

It is a curious thing, Mr. Speaker, that the shippers of the country are not asking for this legislation. No appearance of any importance before the subcommittee was made on behalf of any great shipping interest bringing complaints against the services rendered by trucks in transporting goods and merchandise on the highways.

Mr. RANKIN. Did any of those people who pay the freight ask for it?

Mr. WADSWORTH. I remember none of that category. It is not inaccurate to say that the influences behind this measure are centered largely amongst the railways, both the officials of the railroad companies and the members of the railway labor unions. I do not criticize the railroad influence back of this bill one little bit. The railroads are on a tough spot, generally speaking. The trucks are competing with the railroads, and doing it with exceeding efficiency. I think it not inaccurate to say that the railroads, anxious to preserve themselves--and no one is more anxious to preserve them than I--would be very, very glad indeed if there were fewer trucks in competition with them, and would be very, very glad indeed if the rates charged by trucks should be raised. If those two results do not come from this bill, then the railroads will be disappointed. I think there can be no doubt about that. A new type of transportation has been built up in this country which will always be able to compete successfully with steam railroads, for the simple reason it is more convenient for the small less-than-carload-lot shipper. The truck provides a door-to-door service. The railways cannot do that. The truck has come to stay. I believe within its field it will be supreme, unless, indeed, the Government itself steps in with regulations so severe and so unreasonable as to the rates to be charged by the trucks as to drive them out of business.

* * *

(12198) Mr. RANDOLPH. Is there an exemption made to the truck which is owned by the farmer who hauls his own products?

Mr. WADSWORTH. There is in this bill.

Mr. RANDOLPH. And the trucks of cooperative farmers?

(12198) Mr. WADSWORTH. Yes.

Mr. CRAWFORD. With reference to the question just asked, will section 204 impose the regulation of hours on those individual truck owners that have just been mentioned?

Mr. WADSWORTH. In the discretion of the Interstate Commerce Commission, the hours of labor of the driver of the private truck may be regulated.

Mr. CRAWFORD. Whether hauling agricultural commodities or otherwise?

Mr. WADSWORTH. Yes. Several million trucks in the United States will be regulated under this bill by the Interstate Commerce Commission with respect to hours of labor of the operator.

* * *

(12199) Mr. KVALE. Does the gentleman make the point that a farmer living in the western part of the State of Minnesota can drive 200 miles into South St. Paul with a load of hogs and not be subject to regulation under this bill, whereas a man making a 25-mile run from eastern Wisconsin and crossing a State border is subject to such regulation, because he is in interstate commerce?

Mr. WADSWORTH. Let me explain that. This bill specifically exempts from its provisions, with the exception of the safety provisions, all trucks used exclusively in the carrying of unprocessed agricultural products and in carrying livestock. How many trucks fall under that exemption no one in the world knows.

Mr. MICHENER. Does that include raw milk?

Mr. WADSWORTH. It does.

* * *

I am endeavoring, Mr. Speaker, to demonstrate and point out the extraordinary complexity of this problem. I think this bill goes too far. Remember that trucks carry an infinite variety of goods and under this bill these goods, if the Interstate Commerce Commission is to do a reasonable job or a logical job at regulating, will have to be grouped into freight classifications. Certainly, there will be one charge for hauling a ton of salt and another charge for hauling a ton of hay, and so on through an infinite number of classifications, just as is the case upon the railroads today. When you begin to regulate rates for 100,000 units in 80 or 90 different classifications on trucks that travel all over the United States from the forks of the creek down to New York, on all kinds of roads, in a widely varying climate, winter and summer, you have undertaken quite a task.

My complaint against this bill is that it should not attempt the regulation of rates, that we should be satisfied with a cautious start, and confine our regulations to safety on the highways and then see where we get.

(12199) That is the principal difference, may I say, between the subcommittee's bill, which was rejected by the Committee on Interstate and Foreign Commerce, and the bill now before us. The great difference is that this bill goes the whole length of regulation of rates, whereas the subcommittee's bill left the rate problem alone to see how the Commission would get along in regulating safety devices and hours of labor.

* * *

Mr. CHRISTIANSON. Here you have trucks that carry livestock to market and are engaged in carrying merchandise back. They would have to get a license in spite of the fact that their business was carrying livestock?

Mr. WADSWORTH. That would depend upon the interpretation of the language found on page 9, which exempts motor vehicles used exclusively in shipping livestock or unprocessed agricultural products. Of course, when farmers send stock to the Chicago, St. Louis, or Kansas City stockyards, they frequently ask the truckman to bring back a load of stock feed or some piece of agricultural machinery, and they get a special rate from that truckman. The farmer bargains with him. He calls his neighbor truckman over the telephone from his farmhouse and says, "I have a few animals here on my farm that are ready for sale. They are less than a carload lot, and I cannot send them by the railroad. Will you send your truck around here tomorrow morning and take them to Chicago, and how much will you charge?" The truckman states his price.

The farmer then says to the truckman, "Will you haul these animals of mine a little cheaper if I give you a return haul of some stock feed or something like that?" and he bargins over the telephone with the truckman, and they come to an agreement. Under this bill that bargaining has got to stop. Bargaining for loads on contract trucks has got to stop because every contract trucker who is not exempted under this bill must publish his minimum rates, and he is forbidden ever to go below them except upon notice. That is the purpose of the bill. Its purpose is to lessen competition, not only between trucks and railroads, but to lessen competition between the little trucker and the big trucker.

Mr. PETTENGILL. Does the gentleman think that the practice is defensible when one truck will deliver transportation for less than cost and thus drive another honest American, who cannot survive, to the wall?

Mr. WADSWORTH. That opens up a very wide question.

Mr. PETTENGILL. Is it not fair that somebody should have the right to fix the level below which he may not go?

Mr. WADSWORTH. That leads to a much larger question. It reaches the whole philosophy of government in its regulatory field. Have we come to the point in our economic development at which the Congress shall enact laws to (12200) prevent anybody's doing business at a loss? If so, most of us would do nothing at all during a depression.

(12200) Mr. GOLDEN. Is not there a fundamental difference in the regulation of a railroad which enjoys a monopoly of the traffic over its rails, and the traffic of a truck on a highway that is open to all, where competition is free?

Mr. WADSWORTH. I think that the two things are in different categories.

Mr. GOLDEN. I do, too.

Mr. HOLMES. The gentleman gave an illustration about a farmer wanting a load of cattle hauled to the market, and for the truckman to bring back a load of grain. The gentleman's contention is that the truckman has to file minimum rates for that service?

Mr. WADSWORTH. Unless engaged exclusively in carrying livestock.

Mr. HOLMES. As a matter of fact, if he is a casual operator he does not have to file a rate, and if he is engaged exclusively in carrying livestock or unprocessed agricultural products, he has not got to file a rate.

Mr. WADSWORTH. If he is a casual, that is true, but the truckman to whom I refer is a professional truckman. He is not a casual at all. He lives in the village and takes orders to carry goods in any direction he feels able to carry them and at the price he thinks is fair.

Mr. HUDDLESTON. These exemptions applicable to farm produce and other things are conditional, temporary, and last only so long as the Interstate Commerce Commission shall choose to allow them to last. When the Commission chooses to set them aside, there are no exemptions as to farm produce.

Mr. WADSWORTH. Not at all.

Mr. CRAWFORD. I assume from what the gentleman has said that what we are facing is a railroad problem rather than a national transportation problem.

Mr. WADSWORTH. The railroad problem is mixed in it, but this goes beyond that. It goes into every little highway and byway all over the country.

Mr. CRAWFORD. I am talking about the motive that brought the bill to consideration. Was it a railroad problem or a national transportation problem?

Mr. WADSWORTH. I can express merely my own judgment. I think without the desperation which lives in the minds of the railroad people we would not have this bill.

Mr. CRAWFORD. That answers it.

Mr. WADSWORTH. I am not blaming the railroads. They are in a difficult position; but I think if this bill passes they will be disappointed. Truck competition will still go on. It may cost the shipper a little more. I am wondering whether any government, the Interstate Commerce Commission or any

(12200) other commission, can regulate these thousands and thousands of units as to rates as well as all of their practices. I dread seeing a condition approximating that which existed when the Government tried to enforce the eighteenth amendment.

* * *

(12204) Mr. RAYBURN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 1629) to amend the Interstate Commerce Act, as amended, by providing for the regulation of the transportation of passengers and property by motor carriers operating in interstate or foreign commerce, and for other purposes.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 1629, with Mr. McCormack in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Without objection, the first reading of the bill will be dispensed with.

There was no objection.

Mr. RAYBURN. Mr. Chairman, I yield myself such time as I may desire.

I do not intend to take up the time of the Committee, because this bill was handled by a subcommittee who have gone into it very thoroughly and who understand the matter. I do think that after the alarm is over and these gentlemen who have worked on this problem so faithfully demonstrate to the House that in these matters of trucks and busses in interstate commerce, uncontrolled and unregulated at this time as to safety or anything else, when the Members find that this bill, in the regulation of matters in interstate commerce does not go as far as many of the States have gone in regulating matters of transportation by bus and truck in intrastate commerce, regulations that have been accepted from one end of the land to the other, with every State in the Union having some sort of regulation of busses and trucks, more than half of them very stringent regulations, I think the objections to this bill will practically vanish.

* * *

Mr. SADOWSKI. Mr. Chairman, the Interstate and Foreign Commerce Committee of the House has had under consideration the Motor Carrier Act since last January, approximately 7 months since the bill was introduced in the House.

* * *

(12204) In our hearings and investigations the sentiment of the public and the people engaged in transportation has been overwhelmingly in support of adequate regulation of interstate motor carriers. The subcommittee, of which Mr. Pettengill was chairman, after careful consideration of all of the amendments that were submitted, reported the bill as (12205) amended unanimously to the full committee. The full committee adopted two amendments to further strengthen the bill and reported it out to the House with practically no opposition in the committee.

I want to call your attention to the fact that the motor carriers had excellent codes of fair competition under which they were operating for a year prior to May 27, 1935. Considerable progress was made in self-regulation under these codes, which provided similar principles to those contained in S. 1629. The motor carriers want legislation to relieve the chaotic condition that exists today in the industry.

In addition to the endorsement of the Interstate Commerce Commission, the National Association of State Railroad and Public Utilities Commissioners, the American Trucking Association, the National Association of Motor Bus Operators, the Railroad Brotherhood Associations, the American Railway Association, and the American Bar Association (report of 1935), this bill has also the recommendations of thousands of honest shippers, who do not desire to take unfair advantage of the truck owner and abuse labor, but are compelled to do so by the chiseling and heartless tactics of their competitors who drive down rates below cost by playing one trucker against another.

It is now up to the House to pass this bill, which has already been passed by the Senate. The House committee has adopted a few amendments and now recommends the bill as amended to the House.

The bill provides as follows:

Section 202 sets forth the declaration of policy and vests jurisdiction in the Interstate Commerce Commission. I want to say in this connection that in reporting out this bill your committee has no intent to undertake to suppress or restrict in any way the proper development of motor-carrier transportation by responsible carriers for the good of the public interest. Nor do we want motor-carrier transportation subservient to or restrained or curtailed by any other transportation medium. The purpose of the bill is to provide for regulation that will foster and develop sound economic conditions in the industry, together with other forms of public transportation, so that highway transportation will always progress.

Section 203, after the definition of terms used in the bill, provides for exemptions from regulation, except for safety provision, certain carriers, namely: First, school busses; second, taxicabs; third, hotel cabs; fourth, busses used in national parks; fifth, trolley busses similar to street-railway service; sixth, busses or trucks used in zones commercially a part of a municipality or between contiguous municipalities when such transportation is under common control for a contiguous carriage or shipment; seventh, the casual or occasional or reciprocal operators; eighth, motor vehicles when used exclusively in carrying livestock or unprocessed agricultural products.

(12205) Mr. ANDRESEN. What is the definition of the committee with reference to "other unprocessed farm commodities"? What does that include?

Mr. SADOWSKI. Anything that has not been canned or manufactured or processed.

Mr. ANDRESEN. Would it take in cream and milk?

Mr. SADOWSKI. Everything that is not processed. Cream and milk, I imagine, would come under that.

Mr. ANDRESEN. Does the committee have any definite opinion on that?

Mr. SADOWSKI. No. We did not give any definition of the word "unprocessed."

Mr. RAYBURN. I think it is very well understood that milk is certainly an unprocessed agricultural product.

Mr. ANDRESEN. Does the gentleman consider cream unprocessed?

Mr. RAYBURN. I do.

Mr. ANDRESEN. Both milk and cream, in the gentleman's opinion, would be unprocessed?

Mr. RAYBURN. Yes.

Mr. BARDEN. I would like to ask if the gentleman's committee had any opinion from the legal department with reference to the definition as to what is covered in the term "unprocessed agricultural products"?

Mr. SADOWSKI. I cannot say, but that has been used previously in legislation. I imagine the courts may be called upon at some time to interpret that, but it is not for us at this time to go into a lengthy discussion, trying to define all agricultural products which are unprocessed. They would run into the thousands.

Mr. BARDEN. Is it not very vital, at this point, especially to truck areas? Is it not very important that we do have that established?

Mr. SADOWSKI. I think we ought to have that exemption; yes. Does the gentleman think we ought to define what it comprises?

Mr. BARDEN. Yes.

Mr. SADOWSKI. Well, I do not know. I think the courts have gone into that.

(12205) Mr. DINGELL. I think it is quite evident that canned milk is processed milk. Raw milk in cans, going to market, or separated cream, is not processed.

By that same method you will determine that beef in cans is processed and beef on the hoof is not processed. I think the question is plain beyond doubt and that there is a definite distinction between processed corn in cans and corn coming to the market on the ear.

Mr. ANDRESEN. This is a very important proposition the gentleman is on right now. It is clear, then, that it includes all farm commodities produced upon any farm in the raw state ready for market.

Mr. SADOWSKI. On the whole, that is the way the Commission will interpret it. Undoubtedly, the courts will give the same interpretation to it. I do not think we need discuss this further.

Mr. ANDRESEN. Is that the gentleman's opinion?

Mr. SADOWSKI. That is my opinion, too.

* * *

(12208) Mr. ANDRESEN. Assuming the case of a farmer who owns his own truck, hauls cattle to the market and takes back a load of manufactured commodities for some other farmer; would that man be a contract carrier and would he have to file a rate?

Mr. MERRITT of Connecticut. I think not, if it is only an occasional transaction.

Mr. ANDRESEN. Only an occasional transaction?

Mr. MERRITT of Connecticut. Yes; I think so.

* * *

Mr. ANDRESEN. The gentleman has studied this legislation. The gentleman is one of the brilliant men of the House and we have confidence in his judgment and I would like to ask the gentleman a question with respect to trucks engaged in the transportation of farm commodities. An apparent exemption exists in the bill which excludes trucks (12209) from the provisions of the bill if they are engaged in the hauling of unprocessed farm commodities or livestock.

Mr. WADSWORTH. Exclusively.

Mr. ANDRESEN. Exclusively, yes; but assuming a trucker hauls a load of livestock to market and brings back a load of feed or some other commodity to be delivered to a farm, would such trucker come within the provisions of the bill?

(12209) Mr. MAPES. The gentleman from New York discussed that thoroughly. I think, perhaps, it would depend upon whether he was an occasional carrier or engaged in reciprocal transportation. Personally, I think that exemption is illogical.

I do not see any reason why a man who is engaged exclusively in the trucking business, even though he is carrying farm products only, should not come within the provisions of this law just the same as any other trucker; and let me say further to the gentleman from Minnesota that I think the criticism or the feeling that this measure in some way is going to interfere with the average farmer is without any foundation at all. Except, perhaps, in a remote sort of way, for instance, if a man puts a driver on a truck and has him drive his truck an excessive numberof hours, he might eventually be regulated, as far as the safety provisions of the bill are concerned. Otherwise, I do not see how this legislation can affect the individual farmer at all, when he is trucking the products of his own farm and bringing back whatever he wants to bring back for the use of himself or for the use of his neighbors if he does it only occasionally.

Mr. ANDRESEN. If he does that with his own truck, of course, he would be exempt, but if he hired somebody to haul his livestock and bring it back again, it would be a different proposition.

Mr. MAPES. This bill exempts him, but, as I say, for myself I see no logic in that exemption. If such a man is engaged exclusively in the trucking business why should he not be regulated, even though he carries nothing but farm products?

Let me say further that this bill has the approval of the State commissions.

* * *

Mr. GILCHRIST. On page 9, in the first line, the word "reciprocal" is used. I do not know exactly what that means.

Mr. MAPES. That means if you and I are neighbors owning adjoining farms, and you go to market and bring back something for me and I pay you for it, and then 6 months later I go to market and bring back something for you and you pay me for it, that is a reciprocal transaction and would not come under this legislation.

(12212) Mr. HOLMES. Mr. Chairman, as a member of this subcommittee I have given a great deal of time and study to the bill before the committee at the present time.

As has been previously stated, the question of regulation of motor carriers is a subject that has been discussed by committees of this House for the past 15 years. In bringing this legislation before you today I can say that it provides about the least we can set up in the way of regulatory machinery to lay the foundation for further supervision and regulation of the motor-truck industry.

(12212) In our opinion and in the opinion of those who appeared before us at the hearing, at the request of the State utility (12213) commissions of the various States, including the trucking industry of the United States, we believe you will find that the minimum requirements we have set forth in these various sections will not in any way hamper or cripple the motor transportation industry or deprive anybody of the right to be on the highway or create any undue burden or impose any hardship on any individual owner or any common carrier or any contract carrier by motor vehicle.

Mr. GILLETTE. That being the case, what was the object in providing an exemption for carriers of livestock exclusively or farm products exclusively? Why not regulate that? What was the object of the exemption?

Mr. HOLMES. The object was to help the farmer and keep him out of any regulation whatsoever insofar as handling unprocessed agricultural products or livestock on the farm. As an individual owner he would be exempt anyway and would not come under the provisions of the bill.

Mr. GILLETTE. If regulatory measures were necessary, as were sought to be obtained in this bill, would it not be advisable to apply them to that class of carrier? Why would you exempt a man who is engaged exclusively in carrying livestock, and bring in a farmer who carries livestock on some trips and other materials on other trips?

Mr. HOLMES. The farmer who carries livestock on one trip and unprocessed agricultural products on another trip may combine them both and carry livestock and farm products or machinery and be exempt under the provisions of this bill.

Mr. GILLETTE. Not if he carries other freight.

Mr. HOLMES. The purpose of this exemption is that a man who may take a bag of beans or a bushel of potatoes or any other unprocessed agricultural commodity and put it on his truck cannot get exemption from regulation and then go into the general trucking business in competition with his neighbor who has a legitimate permit to operate as a contract carrier.

* * *

(12214) Mr. WHITE. Mr. Chairman, the thing that has impressed me in the legislation that has been adopted by the two Congresses of which I have had the honor to be a Member is the tendency to kill off competition. It seems that everything we have done has been designed to kill off competition and to give a monopoly or privilege to certain classes and groups. I hesitate to oppose the wishes of the railroad men.

I have been a railroad man, but I want to say that it seems to me this is simply a move in restraint of trade. If you go down here to the market in Washington today you will find that the people in Washington have the privilege of buying the products of the farms and enjoying things which they could not enjoy under the old system of transportation. I call attention to the fact that throughout this country there are undeveloped sections which the railroads

(12214) will never penetrate, which must rely on the trucks for transportation. Out in the Northwest they are proposing to build a road to make a short cut from the great irrigated potato-producing sections of my State of Idaho into Los Angeles. That short cut will only be used by the trucks. Potatoes produced in Idaho will be available to the great markets of southern California.

Mr. COOPER of Ohio. There is nothing in this bill that would prevent those farmers' trucks going to market. It does not embrace agricultural products that are not processed in any manner, shape, or form.

* * *

(12215) Mr. SNELL. * * *

I have taken special interest in this bill on account of the interest of the farmers in this legislation. I am convinced, from my study of the bill and from the statements of those in charge of the bill, that there is not a single word in this bill that is inimicable to the agricultural interests of the country or the transportation of farm products.

* * *

(12216) Mr. PIERCE. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I have watched the debate very closely. I wonder why this bill? I am a farmer, living 300 miles from tidewater. I raise wheat and stock. The only relief I have ever seen in my 40 years on that farm from the terrific confiscatory railroad freight rates was when the trucks came.

(12217) Every time we regulated them we hurt the chance we had to get our freight to tidewater at a lower rate than that charged by the railroads. The regulation of the rates the trucks and busses are to charge is the crux of the whole question. I believe in regulating them as far as safety devices are concerned. I do not believe we should give to the Interstate Commerce Commission in Washington, D. C., the power to fix the minimum rate that shall be charged to take a truckload of hogs from my farm to Vancouver, in another State.

Mr. MARTIN of Colorado. Then what right should the Interstate Commerce Commission have to fix the minimum rate on a railroad for hauling those hogs?

Mr. PIERCE. That is altogether a different situation. The railroad is a complete monopoly. The truck is not. The truck came into competition with the railroads when they were very heavily overcapitalized. The railroads are now trying to pay dividends and interest on that overcapitalization. It is the railroad influences and the Wall Street bankers that are behind this bill.

Mr. TRUAX. The gentleman speaks of "they" as being behind this bill. What does the gentleman mean by "they"?

Mr. PIERCE. I mean the railroads, the Wall Street railroads, controlled by about half a dozen big banking firms.

(12217) Mr. TRUAX. What about the big trucking interests--are they not back of this bill?

Mr. PIERCE. There are a few of them that want to monopolize the business.

Mr. TRUAX. I know they are in Ohio.

Mr. PIERCE. But the ordinary farmer is not behind this bill and the ordinary trucker is not behind it.

Mr. TRUAX. The ordinary farmer is opposed to the bill.

Mr. PIERCE. Absolutely, from beginning to end. This bill contains more dynamite for the Members on this side than anything we have had up this session. You put this over and put this bill into effect, and many Members will lose their seats on this very issue.

Mr. ZIONCHECK. In the State of Oregon did not the gentleman repeal the certificate of public necessity and convenience law and make it a law of license after an experience there?

Mr. PIERCE. Yes; we did. A certificate of public necessity and convenience is simple to create a monopoly; it just means a monopoly for the fellows that hold those certificates, valuable though they are.

Mr. ZIONCHECK. And the only way in which another person can come in and compete with one who has such a certificate is to come to Washington and make a showing that the person who has the certificate is not properly serving the public there, which is impossible.

Mr. PIERCE. Absolutely impossible.

Mr. TERRY. The gentleman is speaking now of the common carriers or the contract carriers?

Mr. PIERCE. I am speaking of the truckmen.

Mr. TERRY. But the gentleman understands there are common carriers and contract carriers.

Mr. PIERCE. It affects both of them.

The camel is certainly getting his nose into the tent, and this means the death of the motor transportation which the farmer has had and which has been the only relief that has come to him from the previous excessive railroad rates.

* * *

(12218) Mr. JONES. Mr. Chairman, the reason I want to rise now is because of a discussion in connection with exemptions. I expect to offer an amendment at the end of the next section, and I would like to read them to the Committee.

(12218) Among the exemptions I expect to offer the following:

Motor vehicles controlled and operated by any farmer and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farms; or motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended.

That amendment would do two things. It would permit the farmer hauling his crop to market to haul his supplies back home. In the second place, it would exempt cooperative organizations to comply with the Capper-Volstead Act, which is the standard definition of cooperative recognized since 1922.

Mr. SNELL. As I listened to the reading of the proposed amendment I think I am in sympathy with it, but I have been told many times today by Members supposed to know that every one of these exemptions is covered in the present bill.

Mr. JONES. If there is no difference then it will do no harm to adopt this amendment. I have read the bill rather hurriedly, but I am confident they are not included. In fact it seems plain to me that they are not.

Mr. HOLMES. Our committee took that matter up, and I will say that every truck operated by a cooperative organization is exempt.

Mr. JONES. I am sure the gentleman is in error. The recognized cooperative is defined by law; even though it complies with that definition it is still included. The cooperative is not exempted.

Now, I hope I may not be interrupted until I explain the reason for offering this cooperative amendment. This exemption is consistent with the purpose of the act to regulate the use of highways by persons and corporations who use them regularly as places of business and as the primary means of gaining a livelihood. Cooperative organizations do not act as moneymakers in transportation. The hauling is done as a means of reducing the marketing expenses of their members.

Especially in highly organized communities it is almost essential they do some hauling for nonmembers. Otherwise certain farmers who are only temporarily in the community and in some instances tenants might be left without transportation facilities. In some instances it reduces the expense of handling to combine some hauling for nonmembers. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition.

This principle has gained almost universal recognition. It has been written into both State and Federal laws. They should be permitted to operate as they have always operated under the restriction of the legal and accepted definition. Otherwise if they accepted any outside business they would become common carriers, and would be required to accept all commodities tendered to them. They are now given permission to handle not exceeding the same amount

(12218) for nonmembers that they handle for themselves. Under these terms they have operated for years. Without the proposed amendment the bill would make them common carriers, and prevent their continuing their present method of doing business.

As far back as 1922 this principle was recognized. It has been one of their cardinal tenets since that date. By it they have lived. Much of the bus and truck legislation in the various States has recognized these facts and practices, and by those statutes they have been exempted from the common-carrier provisions so long as they do not violate these limitations.

This is a practical proposition. Where this business that is done in trucks is not exempted they will be forced to refuse to take the merchandise of the tenants and transient farmers, who will be left without any proper transportation facilities.

(12219) Mr. JONES. This will not open the gate for a lot of men to go into the trucking business and thus escape, because the moment they haul more for outside people than they haul for their own members they will be out of the window so far as the exemption is concerned.

Mr. TERRY. Does not the gentleman feel that while it may be proper for the cooperatives to haul their own products and those of the membership, that whenever they go into the general trucking business they should be subject to these regulations?

Mr. JONES. If they go into the general trucking business, most assuredly they should be subject to the regulations. My amendment will not prevent that.

Mr. PETTENGILL. The gentleman is in favor of the cooperative movement among the farmers of America?

Mr. JONES. Yes.

Mr. PETTENGILL. Would he not favor legislation that would encourage people to join the cooperatives?

Mr. JONES. Yes.

Mr. PETTENGILL. Rather than to have cooperatives haul their stuff without regulation?

Mr. JONES. All busses and trucks must comply with necessary State and local laws as to speed and safety. That is another proposition altogether. The trouble is that your definition of common carrier would regulate them out of business. It is necessary to reach back into the definition that was written in the Capper-Volstead Act, passed in 1922. The cooperatives built their granaries and elevators, and they have taken the grain of the farmers and mixed it, and if they are not exempted, in their grain haulings and in their customer-hauling accommodation which they extend to a few of their neighbors, it would be

(12219) impossible to separate them entirely. They cannot go into the general transportation business when they cannot haul more for outside members than they haul for themselves. This is a reasonable provision. This would simply preserve the present exemptions under the law. With the present exemptions and the encouragement given to cooperatives, if we do not carry it through in this measure, we practically kill the benefits of the former measure.

Mr. SABATH. Might not the gentleman's amendment exempt the cooperatives from the entire act?

Mr. JONES. No; it will not. If they violate the Capper-Volstead provision, if they haul more for outside persons than they do for their own members; in other words, if they become common carriers, they lose all exemptions. They would be exempt from the regulations of the act if they simply hauled for themselves and not for profit.

Mr. TERRY. They would be in the nature of contract carriers?

Mr. JONES. They haul for their members. In a limited way they might be contract carriers, in a limited sense, when they haul for outside members. This is incidental to their main purpose of serving their membership.

The CHAIRMAN. The time of the gentleman from Texas has expired, and the Clerk will read.

The Clerk read as follows:

DEFINITIONS

Sec. 203, * * *

(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment, shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (5) trolley busses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of

(12219) equipment, apply to: (6) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous (12220) carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; or (7) the casual, occasional, or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business; or (8) motor vehicles used exclusively in carrying livestock or unprocessed agricultural products; or (9) motor vehicles used exclusively in the distribution of newspapers.

With the following committee amendments:

Page 7, line 13, after the word "part", insert "except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment."

The committee amendment was agreed to.

The Clerk read as follows:

Page 8, line 9, after the word "part", insert "except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment."

The committee amendment was agreed to.

The Clerk read as follows:

Page 9, line 4, strike out the period, insert a semicolon and the words "or (8) motor vehicles used exclusively in carrying livestock or unprocessed agricultural products; or (9) motor vehicles used exclusively in the distribution of newspapers."

Mr. PETTENGILL. Mr. Chairman, I offer the following amendment to the committee amendment just reported.

The Clerk read as follows:

Amendment to the committee amendment:

Page 9, lines 5 and 6, strike out the words "unprocessed agricultural products" and insert in lieu thereof "agricultural commodities not including manufactured products thereof."

(12220) Mr. PETTENGILL. Mr. Chairman, we have heard a good deal of discussion this afternoon as to what is a processed agricultural product, whether that would include pasteurized milk or ginned cotton. It was not the intent of the committee that it should include those products. Therefore, to meet the views of many Members we thought we would strike out the word "unprocessed" and make it apply only to manufactured products.

Mr. WHITTINGTON. In other words, under the amendment to the committee amendment, cotton in bales and cottonseed transported from the ginneries to the market or to a public warehouse would be exempt, whereas they might not be exempt if the language remained, because ginning is sometimes synonymous with processing.

Mr. PETTENGILL. That is correct.

Mr. TRUAX. Will the gentleman's amendment be in conformity with the wishes of the cooperative milk producers association? They say that unprocessed agricultural products in line 5, on page 9, are intended to cover milk and cream being transported from the farm to the country receiving stations or creamery.

Mr. PETTENGILL. We think it covers that.

Mr. TRUAX. Therefore, further amendment will not be necessary to strike raw milk from under that clause?

Mr. PETTENGILL. That is right.

The CHAIRMAN. The question is on agreeing to the amendment to the committee amendment.

The amendment to the committee amendment was agreed to.

The committee amendment as amended was agreed to.

Mr. BLAND. I offer an amendment to the committee amendment, Mr. Chairman.

The Clerk read as follows:

Amendment offered by Mr. Bland: Page 9, line 5, after the word "livestock", insert a comma and the following: "fish, including shellfish."

Mr. PETTENGILL. Mr. Chairman, the committee accepts the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia.

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the committee amendment as amended.

(12220) The committee amendment as amended was agreed to.

Mr. JONES. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jones: Page 8, line 3, after the semicolon, insert the following: "or (4a) motor vehicles controlled and operated by any farmer and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (4b) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended."

Mr. JONES. Mr. Chairman, I hope the committee will see fit to accept this amendment. It conforms absolutely to the same provisions that have been written into practically all laws which the National Government has enacted affecting these matters, and is almost identical with the provisions in a great many of the States which have enacted laws regulating busses and trucks. A great many of the States have these identical exemptions.

I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates. Practically all of the leading cooperative representatives have indicated that they would like to see this character of amendment. It has been carefully drawn. No concern could go into the general bus or truck business with this exemption. It simply enables the cooperatives to operate in a practical manner. They have fashioned all their business under all of the other acts, the elevator acts in the various States, to suit the handling of a small part of their business for nonmembers. Usually it does not amount to anything like 50 percent. That is the absolute limit. It probably would be less than that. But there are certain accommodations which they can extend, not as a money-making proposition, but in order to enable them to work in a practical manner, especially in communities where they have good organization without this small amount of outside business. I do not think the gentleman would find any harm done by accepting this amendment.

Mr. PETTENGILL. Will not the adoption of the gentleman's amendment be a further encouragement to men not to join the cooperative?

Mr. JONES. No, no; not in any sense.

Mr. PETTENGILL. He can have his stuff hauled by the cooperative.

Mr. JONES. He would have to pay for having it hauled. As a matter of fact, where the cooperatives are really making a success, the members are benefited. In addition the tenant or one temporarily in the community, the joint owner or the neighbor may profit by these activities, even though he may not feel like becoming a regular member.

(12220) Mr. WHITTINGTON. On the contrary, the purpose of the cooperative being authorized to operate for others to the extent of 50 percent, is to encourage the cooperatives because they bear the expense?

Mr. JONES. Of course. This makes it possible for that encouragement to continue. The cooperatives themselves would not want this amendment if it were going to hurt them.

Mr. TRUAX. Does not the gentleman's amendment meet and conform with the contentions of the Cooperative Milk Producers Association?

Mr. JONES. I understand so.

(12221) Mr. TRUAX. And this will make the legislation acceptable to them?

Mr. JONES. At least this part of it; yes.

Mr. CRAWFORD. If this amendment is adopted will it tend to do away with a great deal of the apparent opposition which the farm-cooperative associations have toward this legislation?

Mr. JONES. I think it would go a long way toward doing it; at least to this portion of it.

Mr. COLE of Maryland. What is the attitude of the Farm Credit Administration?

Mr. JONES. I have gone over this matter with them. They make the loans to the cooperatives. They said this was absolutely essential if they were able to carry on their credits to those organizations which have these exemptions in the other acts.

Mr. COLE of Maryland. I want to say to the distinguished gentleman who heads the Committee on Agriculture of this House that as one member of this committee I favor the gentleman's amendment.

Mr. JONES. I thank the gentleman very much. I hope the other members will see fit to accept it.

Mr. TERRY. Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman, this amendment offered by the gentleman from Texas was considered by the full Committee on Interstate and Foreign Commerce. It was thoroughly discussed, and it was voted down. The Committee is entirely in sympathy with the problems of the farmers and the agricultural interests, and in order to protect those interests, the exemptions that are now shown in the bill were placed there. No farmer is subject to this bill who does his own trucking. No farmer is subject to the bill who engages in casual, occasional, or reciprocal transportation of passengers or property in interstate commerce. If he does not do it in interstate commerce he is not subject to it at all. If he does it on a casual, occasional, or reciprocal basis for his neighbor in interstate commerce, this seventh section excludes him.

(12221) The committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or reciprocal transportation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision, and also under subsection 8.

Mr. FULMER. Does the bill attempt to regulate hours of employment of the employee of the farmer driving the farmer's truck?

Mr. TERRY. The bill does not. This is an exemption from that. The hours of the driver engaged in this exemption are not covered. I think safety regulations would be covered, though.

Mr. WHITTINGTON. Do I understand the gentleman's argument to be that the exemptions in the proposed amendment of the gentleman from Texas are already in the bill?

Mr. TERRY. That is very generally true. The farmer's operations are included in the exemptions that are in the bill. Every bit of trucking they do in transporting their own property is exempt; and the committee, after full consideration, felt that where the cooperatives go into the regular trucking business as such, that they should come within the provisions of the bill as to reasonable regulation.

Mr. WHITTINGTON. I would like to ask the gentleman this: If the bill covers the matters that are intended to be covered by the proposed amendment, then the acceptance of the amendment would be merely a clarification of the bill, because many commissions are rather hesitant as to the meaning of the word "casual." They have held, for instance, that if a man hauls once a month or twice a month it is more than casual. If it be the intention of the committee to make the very exemption sought by the gentleman from Texas, then there can be no objection to adopting the gentleman's amendment. It will certainly clarify the bill and effectuate the very intent the gentleman has expressed.

Mr. TERRY. The definition at the bottom of page 8 under exemptions refers to the casual, occasional, or reciprocal transportation by any person not engaged in the transportation by motor vehicle as a regular occupation or business. Now, no farmer who is engaged in farming would be included in this bill.

Mr. JONES. If the gentleman will notice lines 10, 11, and 12 and the qualifications and maximum hours of service fixed in lines 6, 7, and 8, he will see that these qualifications would apply to what the gentleman refers to.

Mr. TERRY. If the gentleman from Texas will allow me, I will say that the committee, after full consideration, believes that the highways of the country should be protected so far as the safety of the citizens of the country is concerned, and we see no reason why farmers or any other groups of citizens should be exempt from reasonable requirements as to safety.

(12221) Mr. HOLMES. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I want to call attention to the definition of private carrier found on page 6, line 11:

The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle."

Mr. BARDEN. Will the gentleman state the difference, in his opinion, between a contract carrier and a casual or an occasional carrier?

Mr. HOLMES. There is a tremendous amount of difference between the two. A contract carrier is one who is engaged in carrying as a regular business. A casual carrier is a farmer or an individual owner of a truck who may casually enter into interstate commerce.

The definition of "person", on page 3, line 15, reads:

The term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

These persons are exempt from the provisions of this bill unless they are actually engaged as common carriers or contract carriers of merchandise in interstate commerce.

Mr. HOPE. Can the gentleman say that a cooperative organization which transported goods for nonmembers is not a contract carrier under the definition of this bill?

Mr. HOLMES. They are not a contract carrier under the definitions of this bill. I will read further:

Who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

In other words, the department stores in Washington that may sell a bill of goods to be delivered in Philadelphia, New Jersey, or Massachusetts, do not come under the provisions of this bill because they are private owners of motor vehicles.

* * *

(12222) Mr. RANKIN. Mr. Chairman, this is probably the only opportunity I will have to register my protest against this bill, which in its present form should be defeated by all means.

* * *

(12222) I wonder if anybody has read into the Record the letter I have here from the National Grange?

Mr. Chairman, I ask unanimous consent to extend my remarks in the Record by including therein a letter from the Washington representative of the National Grange, one of the great agricultural organizations, condemning this measure in no uncertain terms and asking for its defeat.

The CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

* * *

(12223) The letter referred to by Mr. Rankin follows:

The National Grange
Washington, D. C., July 26, 1935.

Hon. Sam Rayburn,
Chairman Committee on Interstate
and Foreign Commerce
House of Representatives, Washington, D. C.

Dear Sir: The report of the special subcommittee which has been considering S. 1629, the Motor Carrier Regulatory Act, contains a statement which is so erroneous that it must not go unchallenged. That statement declares that the bill in its present form has the support of "the majority of shippers and many other national organizations."

This is directly contradicted by testimony of shipper groups before both the House and the Senate committees. It is a self-evident fact that "the majority of shippers", burdened as they are now by excessive transportation costs, would not deliberately support a bill which would inevitably take more money from their pockets for the benefit of the railroads and the common-carrier truck operators who are the principal supporters of this measure.

The testimony before the House and Senate committees shows conclusively that the bill is objectionable to substantially all of the shipping groups represented at the hearings on the bill.

Speaking for the National Grange, I wish to state positively and definitely that the amendments purporting to exempt from the operation of the bill trucks which are used exclusively in hauling agricultural products do not change the attitude of the National Grange toward this proposed legislation. Neither have these amendments withdrawn the opposition of the other agricultural groups, according to my information.

In the hearings on the bill the only organization which I would call a "shipper group" that supported the measure was one composed largely of commission

(12223) merchants who sought to stop the operations of the itinerant peddler. I think it is safe to assume that the exemptions above referred to would make even that one group at least luke warm in its support.

The National Industrial Traffic League favored the regulation of rates and services of motor trucks, but objected to a number of the provisions of S. 1629. My understanding is that several of their principal objections have not been cured, although, of course, I have no authority to speak for that organization.

The record shows that the bill in its present form has not met the objections of the following organizations which registered opposition to it in the committee hearings:

The National Grange.
American Farm Bureau Federation.
Farmers Educational and Cooperative Union of America.
American Cotton Cooperative Association.
American National Livestock Association.
National Cooperative Milk Producers Federation.
American Association of Creamery Butter Manufacturers.
American Ports Cotton Compress and Warehouse Association.
Eastern Apple Growers Council.
National Industrial Traffic League.
National Woolgrowers' Association.
National Dairy Union.

In view of the clearly expressed opposition of these organizations, and considering the admitted fact that the shipping public will not willingly assume the burden of increased transportation costs, I fail to see that there is any basis whatever for the statement quoted at the outset of this letter.

It should be remembered, however, that the opposition of a number of the groups mentioned above does not extend to Federal regulation of passenger busses, providing such regulation is divorced from truck regulation.

At a time like the present, when transportation costs represent such a great percentage of the value of farm and factory products, I believe it would be a very grave mistake for Congress to make possible, by passing this bill, increased profits for large common-carrier truck operators and railroads at the expense of every shipper and consumer in America.

The National Grange is still unalterably opposed to the enactment of this bill.

Very respectfully yours,

The National Grange,
Fred Brenckman,
Washington Representative.

* * *

(12224) Mr. TRUAX. Mr. Chairman, I move to strike out the last word. Mr. Chairman and members of the Committee, the gentleman from Mississippi mentioned a letter received from the National Grange opposing this bill. I want to state that the National Farmers' Union is unalterably opposed to this also.

A few moments ago I talked with the secretary of the national organization, Edward Kennedy, and he informed me that the Farmers' Union was opposed to this bill, because its ultimate object was to elevate rates, both for freight and for passenger busses; that the object was to secure that elevation to a basis equal and comparable to the freight and passenger rail rates, and then perpetuate those rates.

Mr. RANKIN. And to raise them all.

Mr. TRUAX. The gentleman from Mississippi is right, to raise them all.

* * *

(12225) Mr. WHITTINGTON. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment by Mr. Whittington: Strike out on page 8, line 6, after the word "nor", all of said line, and lines 7, 8, and line 9 down to and including the word "except."

Mr. WHITTINGTON. Mr. Chairman, I ask the attention of the chairman of the committee to this statement. Subparagraph (b) on page 7 provides that-

Nothing in this part * * * shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to and from school; nor (2) taxicabs, or other motor vehicles * * * or (5) trolley busses operated by electric power.

Then there is a provision before the casual operators or farm trucks mentioned by the gentleman from Arkansas are inserted:

nor, unless, and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202, shall the provisions of this part apply to the casual, occasional reciprocal transportation of passengers or property in interstate or foreign commerce.

In other words, I propose to strike out that language that would give the Interstate Commerce Commission power to nullify the exception which both the Committee of the Whole and this committee here have approved in this bill. If that language, which by this amendment I propose to eliminate, remains, then it will be possible for the Interstate Commerce Commission to nullify the

(12225) exception that grants a privilege to the farmer, the occasional operator of a truck, to haul his produce to market. That is the purpose of the amendment; and unless there should be reason to the contrary, I cannot see why it should not be stricken out.

Mr. STEFAN. The gentleman's amendment would help this farmer who hauls occasionally a load of livestock to market, located in another city, and comes back with merchandise for his neighbor.

Mr. WHITTINGTON. As I understand it, the members of this committee in charge of this bill agree that he is excepted. I maintain that inasmuch as they have substantially agreed to that statement, unless the language I mention is stricken from the bill, that exception in favor of the farmer is nullified, because the Interstate Commerce Commission would have the power to nullify it.

Mr. STEFAN. And the gentleman wants to make sure that he is going to be protected?

Mr. WHITTINGTON. Exactly. That is the purpose of my amendment.

Mr. SADOWSKI. Mr. Chairman, I rise in opposition to the amendment. The committee put that provision in giving discretionary power to the Commission because it felt the Commission ought to have some discretionary power in relation to these four exemptions, 6, 7, 8, and 9. Part 6 deals with the zones, the municipalities bordering upon State lines. No. 7 deals with casual and occasional and reciprocal transportation. No. 8, of course, deals with agricultural products. We felt that the Commission itself ought to have some power there to interpret this act according to section 202, wherein we set down the policies to be carried out in the bill. It should have the power to interpret those three remaining exemptions in connection with section 202 so that we would not have somebody coming in by subterfuge, chiseling in, using these last three exemptions to break down the very things that we are trying to correct.

Mr. FORD of Mississippi. Does not the gentleman think it would be better for the Congress to decide what should be exempted rather than to leave it in the hands of the Commission that might nullify the entire intentions of Congress?

Mr. SADOWSKI. We do that very thing. The Commission can only consider this in reference to the policy set down by the Congress in section 202. They have to take into consideration the policy of Congress.

Mr. WHITTINGTON. Is it not true that the language that I propose to strike out is language that was in this bill as passed by the Senate and is not an amendment of the House committee?

Mr. SADOWSKI. Yes.

Mr. WHITTINGTON. And is it not true, in the second place, that the House committee inserted paragraph 8, permitting motor vehicles carrying livestock and agricultural products?

(12225) Mr. SADOWSKI. That is correct.

Mr. WHITTINGTON. In order to make that provision effective, this language ought to be stricken out, because it has never been the intention of anybody who has spoken here to give the Interstate Commerce Commission any discretion with respect to farm products.

(12226) I call the gentleman's attention to the fact that this amendment is necessary to make effective the amendment that you yourself, in behalf of the farmers, inserted in this bill.

Mr. RAYBURN. The gentleman from Mississippi does not want to exempt all? The gentleman wants this exception in to apply to this amendment. He does not want to strike that out above. He can put in some amendment here that will protect what he is seeking to do, but I am afraid the gentleman has not read the page just under that. I do not think he wants to go as far as his amendment goes.

Mr. WHITTINGTON. I will assume that the committee meant what it said, that it wanted all of these eight sections excepted.

Mr. RAYBURN. If the exception applies down to eight, then I would be perfectly willing, so far as I am concerned.

Mr. WHITTINGTON. That is my main purpose. Otherwise the committee amendment would not be effective.

Mr. PETTENGILL. Mr. Chairman, I offer as a substitute for the amendment offered by the gentleman from Mississippi /Mr. Whittington/, to put sections 8 and 9 on page 9, after the word "service", on line 6, page 8.

That makes the exemption absolute rather than discretionary with reference to subsections 8 and 9.

Mr. WHITTINGTON. I ask that the amendment be reported, Mr. Chairman.

Mr. PETTENGILL. And in addition to that, then renumber 6 and 7 to conform.

Mr. WHITTINGTON. I think the amendment is satisfactory, but I ask that it be reported.

The CHAIRMAN. The Chair suggests that the gentleman from Indiana send the amendment to the desk in writing.

Mr. PETTENGILL. I have not had an opportunity to prepare it, but I can restate it. I think there is a great deal of merit in what the gentleman from Mississippi /Mr. Whittington/ says, that we want the provisions of sections 8 and 9 to be absolutely exempted, the same as 1, 2, 3, 4, and 5, but we do not want to exempt section 6, which is a complicated subject. Therefore, Mr. Chairman, as a substitute, I move that we insert clauses 8 and 9, on page 9, after the word "service", on line 6, page 8, and then renumber 6 and 7 to conform.

(12226) Mr. GILCHRIST. Why not put 7 in there? Seven and 8 and 9 ought to go together.

The CHAIRMAN. The gentleman from Indiana /Mr. Pettengill/ offers a substitute amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. Pettengill: On page 8, line 6, after the word "service", insert subsections 8 and 9 as found on page 9 beginning in line 4; and strike out the amendment on page 9, and renumber subsections 6 and 7 to conform.

Mr. WHITTINGTON. Is that offered as a substitute to the amendment I proposed?

Mr. PETTENGILL. Yes.

The CHAIRMAN. Does the Chair understand that the gentleman from Mississippi agrees to the substitute amendment?

Mr. WHITTINGTON. That is satisfactory to me, Mr. Chairman.

The CHAIRMAN. The gentleman from Mississippi /Mr. Whittington/ asks unanimous consent to withdraw his amendment. Is there objection?

There was no objection.

The committee amendment was agreed to.

* * *

Mr. GILCHRIST. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gilchrist: In the committee amendment now transposed to page 8, after the word "service", in line 6, strike out the word "exclusively" and insert in lieu thereof the word "primarily."

* * *

Mr. GILCHRIST. In the amendment which has just been discussed, providing exemptions for livestock and agricultural products, you will find the word "exclusively." It refers to (12227) motor vehicles that are used "exclusively" in carrying livestock or unprocessed agricultural products. Now, there is no such an animal--no such a motor vehicle in the United States, because no motor vehicle is ever used exclusively for that purpose. I live in a community that is highly agricultural and that has many motor vehicles, and I challenge any man on the floor to show me a motor vehicle that is used exclusively for that purpose.

(12227) Mr. CRAWFORD. It was my thorough understanding that the amendment offered by the gentleman from Texas /Mr. Jones/ would correct that for all farmers, including those who were members of cooperatives.

Mr. GILCHRIST. But his amendment did not include a contract carrier; it would not include that class of motor vehicles.

Mr. CRAWFORD. I understood that it would include contract carriers hauling farm products in the raw to market and bringing back from the market any kind of product the farmer uses.

Mr. GILCHRIST. I do not so understand the amendment.

Mr. CRAWFORD. I may be in error.

Mr. GILCHRIST. It applies only to farmers and to cooperatives. Now, I have just talked to a gentleman from Maine. In that State they carry their potatoes to market and bring back fertilizer. The farmers in my section of the country send their livestock or produce to market, and the trucks then carry back feed or some other commodity. There is not a single motor vehicle in the United States that at some time in the year does not carry something besides livestock and unprocessed agricultural products. I dare say that you never saw one, and never will see one. Once a year--one violation in a year would take that motor vehicle outside of the exemption of the bill.

Mr. PETTENGILL. I think the gentleman is entirely mistaken in his last statement, because one transaction would be a casual or occasional transaction.

Mr. GILCHRIST. Either section 8 is in the bill for some purpose or for no purpose. If what the gentleman says is true, we might as well take section 8 out of the bill entirely.

Mr. PETTENGILL. Such a truck would be entitled to exemption under two or three provisions.

Mr. GILCHRIST. Once a year he may carry feed or fertilizer back. The gentleman now admits by his statement that if such a thing occurs once a year section 8 would not be needed at all but it would come under section 7. Section 7 is not going to protect this situation at all, even under the amendment offered by the gentleman from Mississippi. Section 7 can be lifted out of the bill at any time by the simple action of the Interstate Commerce Commission. That is the way the bill now stands. So in order to make this thing really mean what is intended and what is argued, section 8 ought to include language which would remedy the defect. To do this I have inserted the word "primarily." I do not care what word is used provided it makes clear what is really intended.

Let us write the language so it will apply to something. As it stands now it does not apply to anything on earth. I want the bill clarified accordingly. Take this provision out of the bill entirely or else make it

(12227) mean something, or make it apply to something. Perhaps a majority wants the whole clause stricken. If so, all right. But do not leave any jokers in the bill. Make it mean something or else take it out entirely.

* * *

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa /Mr. Gilchrist/.

The question was taken; and on a division (demanded by Mr. Gilchrist) there were--ayes 28, noes 45.

So the amendment was rejected.

* * * * * *

At this point all debate on the agricultural exemption was concluded and the House proceeded to consideration of other phases of the bill.

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