1315.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO—$165,000.00.

COLUMBUS, OHIO, August 3, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1316.

APPROVAL, BONDS OF HUDSON TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—$3,000.00.

COLUMBUS, OHIO, August 3, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1317.

APPROVAL, BONDS OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHONING COUNTY, OHIO—$17,850.00.

COLUMBUS, OHIO, August 3, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1318.

INTERSTATE COMMERCE—MOTOR BUS USED THEREIN SUBJECT TO ATTACHMENT AND LEVY OF EXECUTION LAWS OF THIS STATE—TRANSPORTATION OF PASSENGERS BY FOREIGN CORPORATION.

SYLLABUS:

1. *The general attachment and levy of execution laws of this state are broad enough to cover foreign interstate motor bus carriers.*

2. *A motor bus actually being used in interstate commerce is subject to attachment and to levy of execution issued by a state court.*

COLUMBUS, OHIO, August 4, 1933.

HON. LYMAN R. CRITCHFIELD, JR., *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"I have been requested by the Sheriff of Wayne County to ask

your opinion as to the legality of a levy made upon a motor bus engaged in transporting passengers in inter-state traffic.

The particular case involved in this is a proposed levy upon one of the buses of a bus company which maintains a regular schedule through this county and whose buses stop at the Bus Terminal in Wooster, Ohio.

I will appreciate any information you can give me as to the law relating to this subject."

It is assumed for the purpose of this opinion that the motor bus in question is used solely in interstate commerce and is so engaged at the time the proposed levy is to be made. It is also assumed that the motor bus company is a foreign corporation. Your inquiry therefore, resolves itself into the question of whether or not a motor bus as an instrumentality of interstate commerce is immune from seizure under judicial process issued by a state court while actually engaged in interstate commerce.

It is difficult to ascertain from your inquiry whether the proposed "levy" is one of attachment or a levy of execution subsequent to a judgment obtained against the particular interstate bus company, so my opinion is in regard to both. In reference to the attachment angle, I assume that the motor bus company is a foreign corporation engaged in interstate commerce, that this is an action for the recovery of money, and that because the defendant is a foreign corporation this is the ground for attachment.

Section 11655, General Code, provides for the subjecting of a judgment debtors' property to the payment of his debts. There is no express provision under the Ohio laws exempting a motor bus being used in interstate commerce from seizure under judicial process.

Section 11819, giving the grounds for attachment in an action for the recovery of money, allows such against the property of the defendant where the defendant or one of the several defendants is a foreign corporation, although it excepts foreign corporations which, by compliance with the law therefore are exempted from attachment on this particular ground. Those foreign corporations excepted are found in Section 8625-17, General Code, but under Section 8625-3, General Code, those foreign corporations excepted from attachment on this ground do not include transportation companies engaged in interstate commerce in Ohio. *Bigalow Fruit Co.,* vs. *Armour Car Lines,* 74 O. S. 168.

I can find no express provisions in the Ohio laws exempting a motor bus being used in interstate commerce from attachment or from levy of execution. Such a motor bus is analogous in this respect to rolling stock of a railroad company. At common law the rolling stock of a railroad was regarded by some authorities as essential to the exercise of its franchise, and therefore, not subject to attachment or levy of execution. The reasoning of these authorities was that such a corporation would be disabled from performing its public duties if its property essential in so doing could be seized and sold away from it, and the public would suffer great harm. On the other hand, to exempt so much property cripples the power of the law to enforce payment of debts, and exempts from its scope a great mass of property. Elliott on Railroads, Volume 2, Section 520, says there seems to be no reason why such property of a railroad corporation not essential to the enjoyment of its franchise should not be subjected to the payments of its debts. In *Wall* vs. *N. & W. Railway Co.,* 52 W. Va. 485 (1904) the court concluded that at common law rolling stock was exempt from levy, unless there was a specific statutory or state constitutional provision allowing

such levies. See 64 A. L. R. 501. But in Ohio the common law rule was construed differently, and there need be no express statutory or constitutional provision covering rolling stock of a public utility to include it within the general attachment and levy of execution statutes. In 17 O. Jur, p. 893, it is stated:

> "The common law exemption from execution which pertains to the franchise of a railroad or street railway company does not extend to its cars, trucks, and similar property, although they may be proper or even necessary to its operation under its franchise." (Citing *Coe* vs. *Columbus, P. & I. R. Co.,* 10 O. S. 372. The levy was upon two steam locomotives and tenders attached, four passenger cars, a baggage car, and a number of freight cars. And see cases cited in 64 L. R. A. 501 note and 3 Pick (Mass.) 368 involving stagecoach.)

Thus, a motor bus used in interstate commerce, if exempt from seizure under judicial process issued by a state court, is exempt only on the grounds that to permit such seizure would be an unreasonable interference and unreasonable burden on interstate commerce contrary to the Federal Constitution.

I find no judicial decision directly in point as to whether or not a motor bus, owned and operated by a foreign corporation, actually engaged in interstate commerce is immune from seizure under judicial process issued by a state court. Moreover, for the purposes of analogical reasoning there is a paucity of decisions with regard to the rolling stock of railroads. Consequently this question is clothed with much doubt.

A motor bus transportation company operating busses over the public highways solely in the transportation of interstate passengers occupies a rather unique position under the present laws. Article 1, Section 8, Clause 3 of the Federal Constitution, grants to Congress the power to regulate commerce among the several states. Although there have been several bills proposing to regulate interstate motor transportation introduced before Congress, to date Congress has taken no action regulating this phase of interstate commerce. Even where Congress has not acted, the Federal Constitution provision of its own force precludes the states from making any direct regulation of interstate commercial intercourse which is of such a nature as to demand that regulation should be prescribed by a single authority. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions, until Congress sees fit to act. It is my opinion that attachment, garnishment, and execution laws and their operation as in the facts presented, are not of this "uniform" nature. The general rule as to the jurisdiction of the states over motor vehicles used in interstate transportation over the public highways is stated in 42 Corpus Juris, 645:

> "But in the absence of federal legislation upon the subject, and to the extent that interstate commerce is only incidentally and indirectly involved, motor vehicles moving in interstate commerce are subject to such state regulations as are reasonably necessary for public safety and order, in respect of the operation of such vehicles upon the state highways, unless the language of the particular regulation indicates that it was not intended to apply to such vehicles. This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens,

and it does not constitute a direct and material burden on interstate commerce. The reasonableness of the states action, however, is always subject to inquiry in so far as it affects interstate commerce, and in that regard it is likewise subordinate to regulations by Congress of the same matter * * *."

It cannot be said that subjecting the instrumentalites of interstate commerce to the general laws of the state which provide for attachment, and levy of executions on judgment debtor's property for the payment of his debts, is a direct attempt on the part of the state to regulate interstate commerce.

In regard to the Commerce Clause where Congress is "silent" it has been said:

"The frequent resort in recent years to the Commerce Clause as a source of regulatory power by Congress has blurred its historic purpose and its continued use as a veto power on obstructive and discriminatory State action. *It is a reservoir of Federal Power and not a dam against State action.* The experience which evolved the Commerce Clause, its contemporaneous construction, and the course of judicial decision, compel the conclusion that the States are not excluded from dealing with interstate commerce as long as Congress has not legislated, provided that the State action neither discriminates against interstate commerce nor unreasonably hampers it. These provisos are not self-enforcing conditions. They imply a process of adjustment by the Supreme Court between State and national interests. * * *

Where a State law conflicts with an act of Congress regulating interstate commerce, the State law must, of course yield; there is then no difficulty except in occasional difference of opinion as to the existence of a conflict. But when Congress has not passed an act in execution of its power to regulate commerce, much more complicated considerations come into play. The decision turns as Marshall made clear from the beginning on 'all the circumstances of the case.' (2 Pet. 245, 252). The 'circumstances' at bottom are the practical adjustments of State and national needs, interests, and capacities. * * * Extremely practical considerations, it cannot too often be insisted upon, decide the fate of State, legislation, when challenged merely by the *dormant* power of Congress." (Italics the writer's.)

('The Compact Clause of the Constitution,' Frankfurter and Landis, 34 Yale L. J. 685, at 719, et seq.)

Since I am unable to find cases involving motor busses engaged in interstate commerce, probably for the reason that the phenomenal rise to prominence of motor vehicle transportation for interstate travel is of comparatively recent vintage, a review of the leading cases involving railroad rolling stock engaged in interstate commerce will be given. The principles for such decisions must be closely scrutinized. Throughout the discussion it is essential to bear in mind that motor transportation companies are not amenable to the regulations of the Interstate Commerce Commission as are railroads. Section 5258, U. S. (R. S.) 45, section 84, required steam rairoad companies to contract with connecting lines for the continuous transportation of freight and passengers to the place of destination. Courts in a number of cases have held that an interference with cars over this

continuous route by the state was an obstruction of interstate commerce contrary to the spirit of this act of Congress. This section does not apply to motor transportation companies engaged in interstate commerce. The railroads are under the fostering guardianship of the Interstate Commerce Commission, while interstate motor carriers have been left to free competition in their economic struggle for rivalry with railroad transportation.

Prior to the leading case on the subject, *Davis* vs. *Cleveland,* 217 U. S. 157 (1910), there were very few cases which had considered the attachment laws in relation to interstate commerce. With one exception (*Wall* vs. *N. & W. Ry. Co.,* 52 W. Va. 485), these cases did not suggest that a domestic attachment of cars running on their own line would be unconstitutional even though the cars were engaged in interstate business. They jump to a consideration of the extra burden upon the defendant of meeting a suit in a foreign jurisdiction, and the burden upon the garnisheed connection carriers with the consequent discouraging effect upon the forwarding agreement, finding that the whole proceeding is *contrary to the intent of Congress expressed in the statute* (Section 5258, U. S. (R. S.) 45, Section 184) authorizing carriers in different states to arrange for continuous carriage.

In one of these cases, *Michigan Central Ry. Co., etc.,* vs. *The Chicago & Michigan Lake Shore Railroad,* (Ill. App. 399 (1878), the court did not allow attachment, reasoning that the words "all persons" in the Attachment Act did not include rolling stock of a railroad engaged in interstate commerce, assuming that the legislature intended a more restricted application of the statute than the language employed would seem to import. The court said that a railroad company, even though it was a private corportion, in so far as it performed the functions of a common carrier, its duties were public, and that the same considerations which exempted public officers and agents in the discharge of their official duties from the operation of the statute should be extended to the case of common carriers. It said that if the statute was allowed such operation as to include such railroads, it would interfere with the transportation of freight by railroad, as each railroad, instead of constituting a separate line, is only a part or number of the general system. Furthermore, it reasoned, that if a car as soon as it passed from the line of road of its owner to the line of another company, became subject to process of attachment and garnishment, no company could, without exposing itself to the annoyance of continual litigation, receive the loaded cars of other companies for transportation to their place of destination.

The above case was decided prior to the Interstate Commerce Act of 1887, but obviously the reasoning on which it is based is not applicable to interstate motor bus carriers, as they do not transport cars of other companies, and because as pointed out, supra, Ohio does not exempt rolling stock of public utilities from attachment and from levy of execution on any public policy ground.

Connery vs. *Q. O. & K. C. Railroad Co.,* 92 Minn. 20 (1904), decided prior to the "Davis" case, held as disclosed by the syllabus:

> "A railroad car of a foreign company sent into this state with freight to be delivered here and there, within a reasonable time necessary for its return, reloaded, and in the customary and usual course of business forwarded to the state from which it came, is not liable to attachment issued in an action in our courts."

However, the decision was rested squarely on the ground that the federal gov-

ernment had expressly required that the movement of railway cars should not be stopped at the point where lines of railway companies cross the borders of states, or at the point where the carriers deliver the cars to the next connecting carrier; but that shipments should go forward from the originating point to their destination in the cars in which they were first loaded, citing R. S. U. S., Section 5258 (3 U. S. Comp. St. 1901, p. 3564), and the provision of the Interstate Commerce Act providing that the carriage of freight should be continuous from the place of shipment to the place of destination, 24 St. L., 382, c. 104.

The remaining case before the "Davis" decision was *Wall* vs. *N. & W. Ry. Co.*, 52 W. Va. 485, (1904). This decision was rested both on the Commerce Clause *and* the Interstate Commerce Act so that its force as a precedent for the interstate motor bus carrier in question is considerably weakened.

In *Southern Flour and Grain Co.* vs. *Northern P. R. Co.*, 127 Ga. 626 (1906), although it was decided that the contracting right of use of a car by the garnishee was superior to the right of an attaching creditor, the court expressly said that garnishment of railroad cars was not a violaton of the Commerce Clause. This point was carefully considered. One of the contentions of the garnishee was that such car was being employed in interstate commerce, and that the impounding of such car was such interference with interstate commerce as to be in violation of the Commerce Clause, and Section 5258 of the revised statutes of the United States. The court stated that inasmuch as a ruling on such point was desired by counsel and their briefs, they would deal with such contention. They stated that the principle of only "incidentally affecting" interstate commerce was applicable, saying at pp. 632, 633:

> "There is no purpose of these attachment laws except the enforcement of payment of debts. Such purpose is not only legitimate, but essential to the maintenance of the commercial and industrial welfare of the State. * * * the plaintiff should not be precluded from collecting his debt by impounding the car in the manner attempted, because of the incidental effect it may have on the general use of the car in the matter of transporting interstate freight. * * * To hold otherwise would in effect be to render immune from the payment of debts all property of railroads employed in interstate traffic. Such a proposition does not rest upon sound reason." (See also *Southern Ry. Co.* vs. *Brown,* 131 Ga. 245; *Of. Siebels* vs. *N. C. Ry. Co.,* 61 S. E. 435 (S. C.).

The only case involving a similar fact situation to reach the Supreme Court of the United States is *Davis* vs. *Cleveland,* 217 U. S. 157 (1910). This involved an attachment of idle cars of a foreign railroad company. The contention of the defendant in this case was that the *Acts of Congress* by reason of their provisions for continuity of transportaton constituted a declaration of exemption of railroad property from attachment and execution, *not that the Commerce Clause of its own force exempted the cars from attachment.* The defendant's counsel further argued their contention on the basis that there was an incompatibility between the obligations a railroad had to its creditors and the obligations it had to the public.

Referring to state attachment laws the Supreme Court at p. 177 stated:

> "It is very certain that there is no conscious purpose in the laws of the States to regulate, directly or indirectly, interstate commerce. We may put out of the case, therefore, as an element an attempt of the State

to exercise control over interstate commerce, in excess of its power."
In regard to the acts of Congress the court stated at p. 177:

"The questions in this case, therefore, depend for their solution upon the interpretation of Federal laws. May the laws of the States for the enforcement of debts (laws which we need not stop to vindicate as necessary foundations of credit and because they give support to commerce, state and interstate), and the Federal laws which permit or enjoin continuity of transportation, so far incompatible that the latter must be construed as displacing the former? We do not think so."

The case of *Pullman Co., et al.,* vs. *Link,* 203 Fed. 1017 (1913) demands close scrutiny. It held that a sleeping car as an instrumentality of interstate transportation while actually employed in interstate commerce was immune from attachment under process issuing from a state court. The court, at page 1019 in the opinion, cites the "Davis" case as holding at page 176, the following proposition:

"But when there is incompatibility between the obligations an interstate carrier has to its creditors and the obligations it has to the public, *either from the nature of its services* or under the acts of Congress, the instrumentalities of interstate commerce transportation are, for the time being, 'immune from judicial process,' and are 'put apart in a kind of civil sanctuary,' being, under such circumstances, exempt from attachment and, of course, from execution as well, by reason of the provisions of such acts for continuity of transportation and avoidance of trans-shipment of freight and passengers." (Italics the writer's.)

In my opinion this is a misinterpretation of the language of the "Davis" case. At p. 176 of the "Davis" case upon which the above proposition was rested, the court really said that the *contention* of the defendants was that the Acts of Congress constitute a declaration of exemption of railroad property from attachment, and of course from execution as well by reason of their provisions for continuity of transportation, and the United States Supreme Court in that case summarily disposed of such argument. *At p.* 176, the court in the "Davis" case stated:

"In our discussion we may address ourselves to the *contention* of defendants. They do not contend that the laws of the State have the purpose to interfere with the interstate commerce, or are directly contrary to the Acts of Congress. They do *contend, however,* that to 'permit the instrumentalities used in the interchange of traffice by railway common carriers to be seized on process from various state courts does directly burden and impede interstate traffic within the inhibition of the Acts of Congress.' In other words, that the Acts of Congress constitute a declaration of exemption of railroad property from attachment, and, of course, from execution as well, by reason of their provisions for continuity of transportation.

This can only result if there is incompatibility between the obligations a railroad may have to its creditors and the obligations which it may have to the public, either from the nature of its services or under the Acts of Congress.

Obligations it surely will have to its creditors, inevitable even in providing equipment for its duties—inevitable in its performance of them.

It would seem, therefore, that the contentions of the defendants are but deductions from the broader proposition that all the property of the railroad company is a kind of a civil sanctuary. And one case (*Wall* vs. *Railroad Company, supra*) seems to give this extent to the exemption. * * * A still broader proposition under the *contention* might be urged. *If* the property have such character that all obligations of the company must yield to the public use or to the obligations imposed by Congress, the railroad company, itself, it might be contended, cannot burden its property and that its property is taken from it as an asset of credit, the means, it may be, of performing the very duties enjoined upon it, and the anomoly will be presented of the duties it is to perform becoming an obstacle to acquiring the means of transforming them. Indeed, the further consequence might be said to follow that the rolling stock of a railroad is exempt from taxation, at least so far as taxation might be attempted to be enforced against the rolling stock. We realize that a proposition may be generally applicable and yet involve embarrassment when pushed to a logical extreme." (Italics the writer's.)

At p. 178, referring directly to such *contention,* the court said:

"* * * may it be said that such result follows from the use of property in the public service? A number of cases may be cited against such contention. We have already pointed out what might be contended as its possible if not probable consequences."

The "Link" case was thus rested on the *contentions* of the defendants in the "Davis" case, which contentions the court certainly did *not* approve, and yet the court in the "Link" case cites the "Davis" case at p. 157 for holding such a proposition.

It is true that in the "Davis" case, the court said the attachment laws must not be exaggerated. However, this warning note was sounded evidently because of the Acts of Congress providing for continuity of such transportation, and not because of the Commerce Clause in and of itself without such action by Congress.

It is difficult to ascertain the precise basis on which the "Link" case was decided. At p. 1020 it is said:

"The impounding of the car delayed (briefly though it was) the transportation of all the passengers, both in the car and on the train to which it was to be attached, and in *disregard* of *their rights and the policy of Congress* favoring continuous lines and continuous carriage (section 5258, R. S. U. S. U. S. Comp. St. 1901, p. 3564), and enforced the transshipment of interstate passengers." (Italics the writer's.)

This would seem to indicate that because Congress had *acted* the attachment was invalid, and not because of the force of the Commerce Clause in and of itself. However, there is other language in the opinion which seems to indicate that the Commerce Clause itself is sufficient to invalidate the attachment. This language is construable as only dicta, and because of the misinterpretaton of the language of the "Davis" case, it is thought that this opnion is not entitled to much weight for the purpose of deciding whether or not a motor bus used solely in interstate commerce, and so engaged at the time of the proposed attachment or levy of execution, is immune from judicial process.

7 O. Jur. pp. 771, 772, referring to the above cases states:

"The Acts of Congress relating to interstate commerce were not intended to abrogate the attachment laws of the state. But, while ordinarily, cars owned by a foreign railway company which have temporarily come into the state in the course of interstate transportation, through the agency of other carriers, are subject to attachment undert he state laws, despite the provisions of the Interstate Commerce Act and of U. S. Rev. Stat. Section 5258, U. S. C. 45, Section 84, *securing continuity of transportation,* a sleeping car waiting with its passengers at a junction in Ohio to be picked up by a through interstate train is an instrumentality of commerce and an attachment issued thereon under the state law is invalid, *since the impounding of the car* under the attachment delays the transportation of passengers in disregard of the policy *of Congress favoring continuous carriage.*" (Italics the writer's.)

While the line as to whether rolling stock may be validly attached, or levied upon an execution of a judgment seems to be drawn at whether or not the rolling stock is *actually engaged at the time* in interstate transportation, this would seem to be because Congress has acted in passing the statute for continuous transportation and not because of force of the Commerce Clause alone. Since Congress has not acted with relation to interstate motor bus carriers, no such line could be drawn as to them.

Chief Justice Hughes, in the Minnesota Rate Cases, 230 U. S. 352, which contains the most careful consideration of the Commerce Clause to be found in our law, states:

"It is within the competency of a State to create and enforce liens upon vessels for supplies furnished under contracts not maritime in their nature, and it is no valid objection that the state law may obstruct the prosecution of a voyage of an interstate character. The Winnebago, 205 U. S. 354. It may also create liens for damages to property on land occasioned by negligence of vessels. *Johnson* vs. *Chicago Elevator Co.,* 119 U. S. 388, *Martin* vs. *West,* 222 U. S. 191.

Cars employed in interstate commerce may be seized by attachment under the state law in order to compel the payment of debts. *Davis* vs. *C. & C. & St. L. Ry. Co.,* 217 U. S. 957."

In 5 R. C. L. it is said:

"The question of the operation of the attachment and garnishment laws of the state, so far as their enforcement may be said to be a burden on interstate commerce or its agencies, is one upon which different views have been taken by the state courts. The question has been before the Supreme Court in some of its main aspects, though not in all, and it is settled that cars owned by a foreign railway company, which have temporarily come into the state in the course of interstate transportation, through the agency of other carriers, and the sums due to such foreign carrier from other carriers as the former's share of freight on interstate shipments, are subject to attachment and garnishment."

In 22 R. C. L. 1167 this statement is found:

"There are decisions to the effect that *the Commerce Clause* of the Federal Constitution *does not operate to exempt the cars of foreign railroads from attachment or garnishment.*" (Italics the writer's) (and see *De Rochemont* vs. *New York Cent. R. Co.,* 75 N. H. 158 and note 29 L. R. A. (N. S. 529).

In *McKinney* vs. *Kansas Natural Gas Co.* 206 Fed. 772, decided after the "Link" case, at page 779, it is said:

"It must be recognized that interstate commerce corporations may incur obligations, contractural and other, and that such obligations can only be enforced by the action of some court; that if it be a public service corporation, it may also owe certain duties to the public, but *that there is no necessary incompatibility between the enforcement of the first class of obligations and the discharge of those duties* * * * the appointment of a receiver by a state court of the property of a foreign corporaton engaged in interstate commerce does not amount to an unlawful interference with the right of such corporation to transact interstate commerce. *Palmer* vs. *Texas* 212 U. S. 118." And see *Koontz* vs. *B. & O. R. Co.,* 220 Mass. 285 (1915).

Two Supreme Court cases involving vessels engaged in interstate commerce demand consideration. In *Johnson* vs. *Chicago & Pacific Elevator Co.,* 119 U. S. 388 (1886) the facts were these: The jib boom of a vessel towed by a steam tug, in the Chicago River, struck a building on land, through the negligence of the tug and caused damage to it. A state statute gave a lien on the tug for the damage, to be enforced by a suit in personam against the owner, with an attachment against the tug.

It was argued by counsel that the inferior courts had no jurisdiction to enforce the lien on a vessel engaged in domestic commerce between the states, and that the Illinois statute violated the Federal Constitution.

Mr. Justice Blatchford, in the course of his opinion upholding the statute, made the following statement at p. 400:

"There is no more valid objection to the attachment proceeding to enforce the lien in a suit in personam, by holding the vessel by means of mesne process to be subjected to execution on the personal judgment when recovered, *than there is in subjecting her to seizure on the execution. Both are evidences of a common law remedy.* This disposes of the objection that, the vessel being engaged in commerce among the states, and enrolled and licensed therefor, no lien could be enforced by attachment in the State Court. The proceedings to enforce the lien, in this case, was not such a regulation of commerce among the states as to be invalid, because an interference with the exclusive authority of Congress to regulate such commerce, any more than regulations by a State of the rates of wharfages for vessels, and of remedies to recover wharfage, not amounting to a duty of tonnage, are such an interference because the vessels are engaged in interstate commerce. *Cannon* vs. *New Orleans,* 20 Wall 577, 582; *Packet Co.* vs. *Catlettsburg,* 105 U. S. 559; *Transportation Co.* vs. *Porkersburg,* 107 U. S. 691."

In the other case, *Martin* vs. *West,* 222 U. S. 191 (1911), a state statute gave a lien upon all vessels whether domestic or foreign, and whether engaged in inter-

state or intrastate commerce, for injuries committed to persons and property within the state and provided that such lien for non-maritime torts should be enforced in State Courts. It was held by the Supreme Court of the United States that since such statute was not in conflict with any Act of Congress, that it did not offend the Commerce Clause of the Constitution and that it only incidentally affected the use of the vessel engaged in interstate commerce.

The basic reasoning for this opinion was that since the statute embraced all vessels, whether domestic or foreign, it could not be said that its purpose was to "regulate" the latter. The court said that its enforcement might occasionally *interrupt* or interfere with the use of a vessel in interstate commerce, as in the particular case at issue, but that such an interference was incidental only, and was almost inseparable from the compulsory enforcement of liabilities of the class in question, and that it did not, therefore, offend the Commerce Clause.

Property which is subject to attachment is also subject to execution and vice versa. 23 C. J. p. 324.

With reference to the interstate motor carrier industry, in Vol. 140, I. C. C. Reports, Docket No. 18300, 695 at 741, it is stated:

> "With no law regulating interstate commerce on the public highways, such commerce can now be, and is, carried on by as many as desire, regardless of financial responsibility and free from the slightest control or regulation as to routes, fare, schedules, public convenience and necessity, and comfort or safety of passengers. Operators engaged in such business are not required to report to any authority and, save for the police regulation of states and municipalities, are subject to none. They may operate at their pleasure and may cease operation temporarily or permanently as they choose."

Summarizing:

1. *If* there is a line of distinction in cases of rolling stock of railway cases between cars *actually* being operated in interstate commerce, such not being subject to attachment and levy of execution at such time, while idle cars, even though used in interstate commerce, are subject to attachment, and levy of execution after judgment rendered, it is because of the fact that Congress has provided acts for continuity of transportation, and because of the Interstate Commerce Act, and *not* because of the force of the Commerce Clause in and of itself.

2. There is no action by Congress under the Commerce Clause securing "continuity of transportation" of interstate motor bus carriers, and until such action, the States are free to enforce their attachment, and levy of execution subsequent to judgment, laws, on busses actually engaged in interstate commerce.

3. The position of interstate busses under the present law is more akin to that of vessels engaged in interstate commerce, than to rolling stock of railroads engaged in interstate commerce.

4. State attachment and levy or execution laws have no purpose except the enforcement of the payment of debts. Such purpose is not only legitimate, but essential to the commercial and industrial welfare of the State. They are not for the purpose of "regulating" interstate commerce nor do they have such effect. The enforcement of such payment of debts not only is a necessary foundation of credit but also gives support to commerce, both state and interstate.

5. There is an essential factual difference between the operation of railroad rolling stock and busses engaged in interstate commerce, and these differences

enter into the decisions on rolling stock of railroads, making such inapplicable to interstate motor bus carriers, i.e., there are no connecting lines in interstate bus transportation as in the railway cases where the connecting lines haul freight and passengers for the original carrier in the original carrier's own rolling stock. Consequently, there is not the difficulty of connecting carriers being subject to the annoyance of continual litigation because of another carrier's property. Moreover, an interstate bus is not a part of a general system of transportation as is an interstate railway carrier.

It is my opinion that:

1. The general attachment and levy of execution laws of this state are broad enough to cover foreign interstate motor bus carriers.

2. A motor bus actually being used in interstate commerce is subject to attachment and to levy of execution issued by a state court.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1319.

APPROVAL, BONDS OF EAST CLEVELAND CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—$15,000.00.

COLUMBUS, OHIO, August 4, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1320.

APPROVAL, NOTES OF SHALERSVILLE RURAL SCHOOL DISTRICT. PORTAGE COUNTY, OHIO—$1,778.00.

COLUMBUS, OHIO, August 4, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1321.

APPROVAL, NOTES OF RANDOLPH RURAL SCHOOL DISTRICT. PORTAGE COUNTY, OHIO—$4,765.00.

COLUMBUS, OHIO, August 4, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.