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Thus the state law is superseded. Upon a further strict construction of this act, it might be held that if North Carolina, for instance, should so modify its prohibition laws as to permit the importation and sale of beverages which might qualify in law as intoxicating liquors (e.g., beer of greater than 3.2 per centum alcohol), the importation of same would be prohibited by the Reed Amendment unless the manufacture as well as sale thereof were made lawful. It is noteworthy that the Twenty-first Amendment in contrast merely prohibits the transportation or importation into the state for use or delivery therein of intoxicating liquors "in violation of the laws thereof." Since there is now a strong constitutional guarantee of protection against the transportation into dry states contrary to the laws of those states, the Reed Amendment might well be repealed. In the event of such repeal, the dry states would again be able to have a modified form of prohibition (e.g., permitting the bringing in, and possession of, small quantities for personal use) without subjecting their citizens to punishment for a federal offense contrary to the spirit of the Twenty-first Amendment.

THOMAS H. LEATH.

Constitutional Law—Validity of Municipal Ordinance Excluding Personal Sureties in Requirement of Bond for Operation of Taxicabs.

As a condition precedent to the operation of public service automobiles on the streets of Charlotte, North Carolina, an ordinance required the deposit with the treasurer of the city of either liability insurance with a responsible company authorized to do business in the state, or cash or securities in lieu thereof. In a recent case the jury found that the defendant had met all state and municipal requirements for the operation of taxicabs, except compliance with the ordinance. The trial court's verdict of not guilty of any offense was affirmed by the supreme court on the ground that since the ordinance made no provision for bonds with personal sureties, it was unconstitutional, in that

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1 An ordinance to regulate the operation of cabs, taxicabs, and for-hire cars, adopted by the city of Charlotte, October 27, 1933:—"Section one: No. person, firm, or corporation shall operate... cabs, taxicabs, or for-hire cars... upon the streets of Charlotte... unless (A) said operators shall have filed with the treasurer of the city of Charlotte... policies of liability insurance with a responsible company authorized to do business in North Carolina, indemnifying licensees... (in stated sums)... in any action wherein said driver may be held liable. (B) In lieu of such insurance... operators may deposit like amounts... in cash or securities." Section two prescribes penalties.

2 State v. Sasseen, 206 N. C. 644, 175 S. E. 142 (1934).
it tended to create "separate emoluments" and "monopolies" by turning the surety business to companies. The court agreed with the contention of the defendant that the ordinance conflicted with a statute which showed the legislative intent to allow personal sureties, but it declined to use that ground as a basis for the decision.

From other jurisdictions there is practically no authority in accord with the instant decision, and the only North Carolina case cited by the court in support of its holding is clearly distinguishable. In the principal case the court takes the position that the municipal ordinance, since it excludes individual sureties, is unconstitutional because it accords special privileges to surety companies by giving them business denied personal sureties. But in the case cited to sustain this view, a statute applicable only to Buncombe County is held unconstitutional because building contractors were required to file bonds, executed by

The court said the ordinance violated the following: N. C. Const. Art 1, §7 ("No men or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services"); id. §31 ("Perpetuities and monopolies are contrary to the genius of a free state and ought not to be allowed"); id. §29 ("A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty").

The defendant claimed the ordinance contravened N. C. Laws 1931, c. 116 ("An act to promote safe driving on the highways and to force the collection of judgments against irresponsible drivers of motor vehicles." The act makes no distinction between operators of private and of public service vehicles. It provides that failure of any operator of an automobile to pay tort judgments within thirty days after rendition authorizes suspension of drivers license until said judgments are satisfied, or until said operator gives proof of ability to respond in damages as to future accidents, said proof of ability to respond as to future accidents to consist of the deposit of a bond with surety company or with "two individual sureties.")

Though the court agrees with the defendant, it says, "We are not now called upon to decide whether the ordinance in question antagonizes the state law, and whether the state law covers the entire field.

The few cases in which parts of like ordinances have been held invalid for any reason are clearly distinguishable: Jitney Bus Ass'n v. City of Wilkes Barre, 256 Pa. 462, 100 Atl. 954 (1917) (wherein the ordinance was held unreasonable in so far as it required continuing liability of obligors after payment of the full sum set out in the bond, and provided only for corporate sureties although there was proof that they could not be secured without tremendous difficulty); State v. Dillon, 82 Fla. 276, 89 So. 558 (1921) (where ordinance was held unconstitutional because of the continuing liability objection). However, in People v. Martin, 203 App. Div. 423, 197 N. Y. S. 28 (1922), an ordinance requiring continuing liability in the bond was upheld.

Plott v. Ferguson, 202 N. C. 446, 163 S. E. 688 (1932). Only this case is cited to support the contention of the unconstitutionality of the ordinance, on which ground alone the decision rests. The court refers to two other decisions on this point, but only as dicta: Fleming v. Asheville, 203 N. C. 810, 167 S. E. 77 (1933); s. c. 205 N. C. 765, 172 S. E. 362 (1934).

See supra, note 3.

N. C. Laws 1927, c. 613 (Providing that in Buncombe County, if private builders required bonds from contractors, said bonds must contain a provision saving the builder harmless, must be executed with corporate sureties, and must include provisions required by N. C. Laws 1927, c. 151 relative to bonds covering municipal building by towns and cities.) (N. C. Laws 1927, c. 151 provides that the surety on the bond contracts not only to indemnify the creditor against loss,
surety companies, which in Buncombe County imposed obligations on such surety companies and granted privileges to the citizens of that county, not required of surety companies nor accorded citizens of the ninety-nine other counties of the state.  

The general rule that in the exercise of the police power, cities and states can impose reasonable regulations upon the operation of vehicles for hire is based on the principle that a person has no inherent right to use the public streets for private business.  

Equally well founded is the rule that in case of conflict between statute and ordinance relative to the same subject, the statute of course will prevail; but municipal requirements are not necessarily in conflict with those of the state merely because the former are more stringent than the latter.  

One of the conditions precedent to the operation of public service vehicles which is everywhere admitted to be reasonable is the requirement of a bond to cover damages caused by negligence.  

And not only does the power to require bond include the power to stipulate that it be issued by a bonding company as surety, but also such requirement by ordinance or statute is not unconstitutional because it fails to provide for any other kind of surety.  

Nor will the fact that the operators of vehicles for

but also to guarantee payment for labor and materials furnished under the building contract).  

Supra, note (8). N. C. Laws 1927, c. 151 was held invalid because in effect it provided that corporate sureties in Buncombe County, irrespective of the contract of indemnity, must, in private construction work, not only hold the creditor harmless, but also see laborers and materialmen paid. This placed a burden on corporate sureties in Buncombe not borne by the same kind of sureties in other counties, hence violating both due process, by impairment of freedom of contract, and equal protection of the laws guaranteed by the Federal constitution. It also gave laborers and materialmen in Buncombe separate emoluments and privileges not enjoyed by the citizens of other counties, hence violating the N. C. CONST. Art 1, §7.

Huston v. City of Des Moines, 176 Iowa 455, 156 N. W. 883 (1916); Harris v. Atlantic City, 73 N. J. L. 251, 62 Atl. 995 (1906) (regulating wheel chairs for hire on the streets); Dallas Taxicab Co. v. City of Dallas, 68 S. W. (2nd) 359, (Tex. 1934); 1 Pond, PUBLIC UTILITIES (4th. ed. 1932) §87.

Ellington Co. v. City of Macon, 177 Ga. 541, 170 S. E. 813 (1933); Denny v. Brady, 201 Ind. 59, 163 N. E. 489 (1928); North Star Line v. City of Grand Rapids, 259 Mich. 654, 244 N. W. 192 (1932). However, there is a strong presumption that the city ordinance is consistent with the state law; hence to invalidate the ordinance, conflict with a statute must be clear and unmistakable.


State ex rel Dillon, 82 Fla. 276, 89 So. 558 (1921); Transylvania Cas. Ins. Co. v. City of Atlanta, 35 Ga. App. 681, 134 S. E. 632 (1926).

Lutz v. New Orleans, 235 Fed. 978 (E. D. La. 1916); Hester v. R. R. Com., 172 Ark. 90, 287 S. W. 763 (1926); Ex Parte Cardinal, 170 Cal. 519, 150 Pac. 348 (1915); Sprout v. City of South Bend, 198 Ind. 563, 153 N. E. 504 (1926); Fletcher v. Bordelon, 56 S. W. (2nd) 313 (Tex. 1933); State v. Seattle Taxi Co., 90 Wash. 416, 156 Pac. 837 (1916) (These decisions are all flatly contra to the instant case); 2 BERRY, AUTOMOBILES (6th. ed. 1929) §1966; 1 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW (1st. ed. 1927) 157.
hire are unable to provide such bond invalidate the statute or ordinance.\(^{16}\)

The argument of the court that the exclusion of individual sureties makes the ordinance unconstitutional is entirely untenable because no particular groups of people nor specific companies are chosen to enjoy the surety business under grants of "separate emoluments" or "monopolies," but the ordinance simply makes reasonable classifications for the protection of the public.\(^{16}\) Furthermore, important North Carolina statutes, requiring bonds issued by companies or corporations as sureties, and making no provisions for individual sureties, have never been held unconstitutional by the supreme court.\(^{17}\) Although there is just as much reason for condemning these statutes as for holding void the ordinance in the principal case, yet, in view of the weight of authority on the subject, it is believed the supreme court will construe the statutes to be valid.\(^{18}\)

The contention that the ordinance conflicts with the statute, though not used as a basis for the instant decision, is also unsound, both because the subject matter is not identical, and because even if it were, the mere fact that the ordinance is more stringent than the statute, would not alone make the former invalid.\(^{19}\)

Also for practical considerations the present holding is to be re-

\(^{16}\) New Orleans v. Le Blanc, 139 La. 113, 71 So. 248 (1915); Puget Sound v. Grassmeyer, 102 Wash. 482, 173 Pac. 504 (1918).

\(^{17}\) Hester v. Arkansas R. R. Com., 172 Ark. 90, 287 S. W. 763 (1926); ex Parte Cardinal, 170 Cal. 519, 150 Pac. 348 (1915), cited supra note 14, (wherein the court, in upholding an ordinance that excluded personal sureties from bonds, said "We know of no constitutional right that one has to give any particular kind of surety"). In the instant case, since the ordinance allows any and all persons who are willing to meet the requirements set for becoming surety companies to enjoy the surety business, there is nothing exclusive about the ordinance.

\(^{18}\) N. C. Code Ann. (Michie, 1931) §218 (c) (Requiring the commissioner of banks to file bond executed by surety company as surety thereon); id. §221 (m) (the same as to bank employees); id. §225 (j) (the same as to employees of industrial banks); id. §232 (a) (same relative to bonds from officials of the state). See: Guaranty Co. v. Hood, Comr. of Banks, 206 N. C. 639, 175 S. E. 135, (1934) (wherein the constitutionality of N. C. Code Ann. (Michie, 1931) §1334 (70), requiring bonds with surety companies to the exclusion of personal sureties seems to be taken for granted).

\(^{19}\) Supra notes 14 and 15; Dallas Taxicab Co. v. City of Dallas, 68 S. W. (2nd) 359 (Tex. 1934).

Cases cited by the court to sustain its argument do present instances of clear conflicts: State v. Taylor, 88 N. C. 692 (1883) (Wherein a statute which removed from the jurisdiction of the city cognizance of the crime of selling liquor on Sunday, was held to be contravened by an ordinance giving the city jurisdiction of that crime); State v. Stallings, 189 N. C. 104, 126 S. E. 187 (1925) (holding an ordinance void because it required drivers to stop at intersections, irrespective of traffic conditions, in the face of a statute which allowed drivers to cross at ten miles per hour). But in the instant case there is no conflict, because the ordinance merely regulates public service automobiles as such, concerning which subject the statute makes no attempt to deal. See notes 1 and 4, supra.
gretted, because (a) in the interests of the public it is desirable that public service vehicles be more strictly regulated than private vehicles;\textsuperscript{20} (b) under the general law applicable to all automobile drivers alike, it is possible for injured parties to be entirely unable to collect amounts awarded by any judgments for "first offenses" rendered against operators of for-hire vehicles;\textsuperscript{21} (c) in view of the corporate surety's greater responsibility, and of the power of the creditor to sue such surety directly, the desireability of corporate over individual sureties is recognized in business and law.\textsuperscript{22}

JOE L. CARLTON.

Contracts Induced by Fraud—Election of Remedies in North Carolina.

A plaintiff who has been induced to enter a contract through fraud of the defendant is faced with the perplexing problem of making a choice of remedies. From the point of view of selection of rights he may affirm the contract or may rescind. If he chooses the former, his remedy is an action on the contract or an action for deceit. But if he chooses the latter, his remedy is to seek a restoration of the \textit{status quo} by bringing a bill for rescission or suing at law on the basis of a complete rescission.\textsuperscript{1} Thus, the plaintiff is faced with a choice between two inconsistent positions in regard to his substantive rights. In practical effect this usually means an election between the two remedies already mentioned. To this situation is applied the much discussed doctrine of election of remedies with the result that the choice of one among inconsistent remedies bars recourse to others.\textsuperscript{2} It has been pointed out\textsuperscript{3} that the historical evolution of this doctrine has proceeded in at least three stages: first, a period in which the doctrine was applied for the recognized purpose of preventing a double satisfaction; second, a period in which the doctrine was cast in terms of formal logic and its real purpose overlooked in the following of logical consistencies; and third, a period in which, it being recognized that logical consistency as an end in itself often led

\textsuperscript{20}See: Eastern Ohio Transportation Corp. v. Village of Bridgeport, 44 Ohio App. 433, 185 N. E. 891 (1932); Notes 10 and 14 \textit{supra.}
\textsuperscript{21}Comment, (1931) 9 N. C. L. REV. 384; see note 4, \textit{supra.}

\textsuperscript{1}Day v. Broyles, 222 Ala. 508, 133 So. 269 (1931); Fields v. Brown, 160 N. C. 295, 76 S. E. 8 (1912) (If rescission does not restore the \textit{status quo}, damages may be a cumulative and not an inconsistent remedy).
\textsuperscript{3}Note (1923) 36 \textit{HARV. L. REV.} 593.