

File No. 13715 Continued.

dinance, rule or regulation requiring of any owner or operator of a motor vehicle any license or permit to use the public highways, or excluding or prohibiting any motor vehicle from the free use of such highways, or in any way affecting the use of the public highways contrary to or inconsistent with the provisions of the Act. It further expressly enacts that all ordinances, rules or regulations then in force are of no validity or effect, and that all acts and parts of acts inconsistent with the "Motor Vehicle Law" or contrary thereto so far as they are inconsistent or contrary are repealed.***** The Appellant contends that the ordinance in question does not require a license or permit to use the public streets of ***** Buffalo. The so-called tax is imposed 'For the privilege of operating, driving or propelling the same (vehicles) along or upon the public streets, avenues, highways and other public places in *****Buffalo'.***** The distinction between a license or license tax as a police regulation, and a tax for raising revenue is in the fact that one is intended for regulation and the other for revenue.*****The purpose of the ordinance in question to restrain the use of motor vehicles in the public streets of Buffalo is so obvious that very little weight can be given to the fact that it is called a tax instead of a license. (Underscoring).

The case of Ayres vs. City of Chicago, 239 Ill. 237, decided February 19th, 1909, at first view seems to establish a different doctrine from that set forth in the Buffalo case, just cited, but upon a closer inspection such does not appear to be the case.

In that case the State Wide Motor Vehicle Law became effective July 1st, 1907, and the 13th section thereof provided as follows:

"No owner of a motor vehicle who shall have obtained a certificate from the Secretary of State as hereinbefore provided shall be required to obtain any other license or permit to use or operate the same, nor shall such owner be required to display upon his motor vehicle any other number than the number of the registration seal issued by the Secretary of the State, or excluded or prohibited from, or limited in the free use of his said motor vehicles, nor limited as to speed upon any public street, avenue, road, turnpike, driveway, parkway, or any other public place, at any time when the same is or may hereafter be opened to the use of persons having or using other vehicles, nor be required to comply with other provisions or conditions as to the use of said motor vehicles except as in this Act provided", etc., etc.

An Amendment to the general "City and Village Act" became effective December 31st, 1907, and provided substantially, as follows:

"*****To direct, license and control all wagons and other vehicles, conveying loads within the city, or any particular class of such wagons, and other vehicles, and prescribe the width and tire of the same, the license fee when collected to be kept as a separate fund and used only for paying the cost and expense of alley improvement or repair".

Subsequent to the enactment of the above amendment the City of Chicago passed what was known as the "Wheel Tax Ordinance" which imposed upon the owners of automobiles a license fee graduated according to their carrying capacity, and also imposed licenses upon other enumerated kinds of vehicles.

A bill was filed to enjoin the City from the enforcement of this ordinance, and the chief reason assigned was that it was inconsistent with Section 13 of the "Motor Vehicle Law" above quoted.