

Highways and Toll Roads

Hugh Peter Mullen

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In the *Fire Association of Philadelphia* case it appeared that it was the custom of the patrons of the defendant's parking lot to park their cars wherever space permitted without advising the defendant thereof, and to get them without notifying him except when necessary to move a car before they could make their exit. It was also the custom of the patrons to leave their keys either in the cars or upon a keyboard in an office adjacent to the parking yard. The plaintiff car owner who was familiar with this custom, except that he denied knowledge of the keyboard, parked his car in the defendant's lot and left the keys in it. The car was stolen. The defendant lot owner was found to be a bailee.⁴⁷ The court found that inasmuch as the keys were left in the car, the defendant lot owner had a right to exercise physical control over the car at his discretion, and, therefore, the requirement of a change of possession had been met. The court, however, did not consider the lot owner's consent to said change in possession. Seemingly, however, the defendant lot owner's consent could be inferred from the fact that he knew of the custom of his patrons to leave their keys in the cars, and made no objection.

A review of the cases in the various jurisdictions discloses that though the courts are ready to find the necessary delivery of a patron's car to the lot owner with the latter's consent, still the mere presence of the car in the parking lot is not, in itself, a sufficient delivery to constitute the lot owner a bailee. Since, however, the cases indicate that in the majority of instances the parking lot owner either requests the patron to leave the keys in the car or gives the patron a claim check, statements to the effect that the parking lot owner is a bailee,⁴⁸ though not technically correct, are practically speaking, a fair statement of his status.

WILLIAM F. PODESTA.

HIGHWAYS AND TOLL ROADS.

A short time ago the New York Court of Appeals, by a three-to-four decision, declared illegal a toll placed by the County of Westchester on the Hutchinson River Parkway.¹ The parkway, the court held, is part of our highway system, and a toll on a public highway is violative of Section 54 of the New York Vehicle and Traffic Law.²

⁴⁷ The court in the *Fire Association* case refused to hold the defendant liable, however, on the ground that the plaintiff owner was contributorily negligent in leaving the keys in the car.

⁴⁸ See note 7, *supra*.

¹ *People v. Westchester*, 282 N. Y. 224, — N. E. (2d) — (1940).

² N. Y. VEHICLE AND TRAFFIC LAW § 54 provides: "Except as otherwise provided in this chapter, local authorities shall have no power to pass, enforce and maintain any ordinance, rule or regulation requiring from any owner of a

The county, however, nonplussed by this setback, now collects a toll on the Cross-County Parkway, a connecting highway, which is used by the majority of motorists to reach the Hutchinson River Parkway.³ In this manner, the county authorities still retain the greater part of this source of income.

I. *Methods of Road Taxation.*

The public is accustomed to the unhampered use of the roads and highways.⁴ The vast network of our highway system will take the traveler from coast to coast without toll, tariff or tax charge of any kind for its use.⁵ But the problem of providing and financing these roads, which cost from \$10,000 to \$100,000 a mile, carries with it perplexing legal, as well as financial and engineering, problems. The equitable apportionment of the cost of highways sufficient in strength to bear the traffic of today, and which wend their way through sparsely populated regions from city to city, is a problem of nice legal and political aspects.

The early solution of the problem was by the compulsory labor of the inhabitants of the immediate neighborhood.⁶ Later there came into being turnpike companies. These companies were licensed by the state to build and repair roads, and were allowed in return for their labor and expense to charge a reasonable toll for passage over the road.⁷

The early roads were little more than footpaths which grew wider with the introduction of carts and carriages. The road was the path by or over a man's land taken by him and his neighbors to the nearest village or church. Since neighbors used paths through each other's lands, it was felt that it was their collective duty to maintain these paths.⁸ In England, surveyors were appointed in each parish

motor vehicle or motor-cycle, or from any operator or chauffeur to whom this chapter is applicable, any tax, fee, license or permit for the use of public highways * * *"

³ It is estimated that 60% of the traffic on the Hutchinson River Parkway comes from the Cross-County Parkway.

⁴ Spenser's stanza illustrates the age-old attitude of the public toward tolls:

"And dayly he his wrongs encreaseth more;
For never wight he lets to passe that way,
Over his bridge, albee he rich or poore,
But he him makes his passage-penny pay:
Else he doth hold him backe or beat away."

(*The Faerie Queene*, bk. 5, canto 2, stanza 6, ll. 1-5.)

⁵ Motor vehicle registration fees are not considered tolls, *Carley v. Snook*, 281 U. S. 66, 50 Sup. Ct. 204 (1930), nor are gasoline taxes. See Note (1937) 111 A. L. R. 193.

⁶ COPNALL, *THE LAW RELATING TO HIGHWAYS* (2d ed. 1912) 2.

⁷ *Northam Bridge Co. v. London and Southampton Ry.*, 6 M. & W. 428, 151 Eng. Rep. 479 (1840); *Austerberry v. Oldham Corp.*, L. R. (1885) 29 Ch. Div. 750; *Midland Ry. v. Walton*, L. R. (1886) 17 Q. B. Div. 30.

⁸ See 6 HOLDSWORTH, *HISTORY OF ENGLISH LAW* 310.

to see that the highways were kept in repair. The labor was by the members of the community or parish. When this labor became compulsory by the Act of 1555 it was termed "statute duty". It bore this name until 1835 when it was replaced by a charge on the parochial rates.

The increase in trade and the resultant increase in traffic both accelerated the demand for passable roads and placed a heavier burden on the road itself. As the work of building and maintaining the road grew more burdensome on the population it became customary in the 17th century for the Parliament by local acts to create turnpikes or toll roads. These toll roads were usually under the management of trustees who were appointed for a certain number of years to collect the toll and use it as a fund for the maintenance and improvement of the road. By the beginning of the 18th century, most of the main or trunk roads in England were turnpike roads.⁹

The character of a road as a turnpike road did not, however, relieve the population from their obligation of "statute duty" and if the trustees became insolvent or permitted the road to fall into disrepair, the duty of maintenance devolved upon those who would have been liable for such repair had there been a free road.¹⁰ In 1878 turnpikes were abolished altogether in England.¹¹

II. Road Finance in New York.

The history of road finance in New York has followed a similar course. Street surveyors were appointed as early as 1647¹² and provision was made for the regulation of toll roads and toll rates in 1661.¹³ In the Duke's Laws, conscription of highway labor was provided for and this system continued until the end of English rule.

⁹ See note 6, *supra*.

¹⁰ This seems to be the law even today. "It is the duty of the citizens to maintain the road, and in compelling the performance of this duty by authorizing the turnpike company to collect toll the legislature simply changes the method of collecting from the citizens the expense of maintaining the road and does not, so it is adjudged, impose upon them any additional burden." 1 ELLIOTT, ROADS AND STREETS (4th ed. 1926) 103.

¹¹ ENGINEERING AND LOCOMOTIVE ACT 1878. (But many continued to exist even after the passage of this Act and in 1930 there were still 55 toll roads in England. 33 LAW NOTES 199 Ja. 1930.)

¹² LAWS AND ORDINANCES OF NEW NETHERLANDS 1638-1674.

¹³ "In order to prevent such damage, a proper and swinging gate shall be erected at the commencement of the road at the cost of all interested parties, and always kept closed by a person to be appointed thereto expressly by the Schout and commissaries; which person shall for the opening and shutting of the gate receive from each Bouwery according as he might agree with the proprietors or occupants, at the discretion of the commissaries, and from others who pass only now and then through the gate, and therefore do not agree with him, one stiver for each opening, two stivers for each freight or pleasure wagon, and one stiver for each person who sits therein." LAWS AND ORDINANCES OF NEW NETHERLANDS 1638-1674.

The law of 1760 provided that every male over 21 was subject to work on the highways.¹⁴

The new status of New York as a sovereign state rather than an English Colony in 1777 produced little change in the system of highway administration. But at this time the idea of monetary rather than labor contributions to the upkeep of the highway system had taken root, and that trend evidenced itself in several legislative enactments of those days.¹⁵ About this time, too, a system of financing state roads by lotteries was tried.¹⁶

The inadequacy of local roads for through travel, led to the erection of a system of turnpike roads which became the first important combination of improved roads in New York. The toll road flourished from 1750 to 1850 reaching its peak about 1830 when competition and financial distress combined to cause its downfall.¹⁷ Many, however, survived until the beginning of the 20th century. Today there are few toll roads, probably not more than a few hundred of the three million miles of highways in the United States.¹⁸

The expense of highway construction and maintenance is now borne according to a ratio between the local and state government.¹⁹ At an early date it was realized that the system of maintaining the highways by local labor and local taxation was inequitable in that it burdened the inhabitants of villages with the support of busy inter-city highways, which were of little benefit to the local community. In 1898 the Higbee-Armstrong Act providing for a state highway system and state aid to towns was passed.²⁰ The New York State Department of Highways was established in 1908²¹ and today with the exception of acquiring the right of way the entire cost of constructing state highways is borne by the state.²² But the building and maintenance of highways is nevertheless still a serious burden on the local community. For the average of rural towns in New York more than one-half of the taxes are for highway purposes. And in spite of various grants from the state in 1930 approximately sixty-three per cent of the expenditure of a number of rural counties was for highway purposes.²³

¹⁴ COL. LAWS OF NEW YORK c. 1144.

¹⁵ An example is the schedule adopted by Albany County in 1772.

¹⁶ N. Y. Laws 1798, c. 26.

¹⁷ The panic of 1837 and the consequent lessening of trade was an important factor in the downfall of the toll road.

¹⁸ Some of them are listed in note 64, *infra*.

¹⁹ See note 28, *infra*.

²⁰ N. Y. Laws 1898, c. 115.

²¹ N. Y. Laws 1908, c. 330.

²² The right of way is acquired at the expense of the county.

²³ CURTIS, DEVELOPMENT OF HIGHWAY ADMINISTRATION AND FINANCE IN NEW YORK (1937) 3.

III. People v. Westchester.

Of the various attempts by the local governments to find a solution of this problem perhaps the most novel and the most interesting is that devised by the authorities of the County of Westchester. The county government being merely an arm of the state has until recently been considered of only minor importance as a unit of highway administration.²⁴ Although laws passed in 1893²⁵ and 1908²⁶ provided for county roads, it was not until 1914²⁷ that a workable system was provided. The Law of 1929²⁸ governs the present county road system.

Under the Westchester plan, the county, through its Park Commission, purchased a strip of land from Pelham Bay in New York to the Connecticut border and built thereon a parkway.²⁹ The parkway is laid out on virgin territory and was built without state or federal aid. It is so constructed that it does not cross at grade any highway or other public road or the right of way of any public utility. A ten-cent toll was charged for the use of this parkway in accordance with a local statute.³⁰ The local statute was enacted by the county under the Home Rule Provision of the State Constitution³¹ and the provisions of the Westchester County Charter.³² Section 54 of the New York Vehicle and Traffic Law provides that "Except as otherwise provided in this chapter local authorities shall have no power to pass, enforce and maintain any ordinance, rule or regulation requiring from any owner of a motor vehicle or motor-cycle, or from any operator or chauffeur to whom this chapter is applicable, any tax, fee, license, or permit for the use of public highways, or exclude such owner, operator or chauffeur from the free use of such public highways * * *"

The county contended that this section was not applicable to the Hutchinson River Parkway for two reasons: first, Section 17 of the Park Commission Act provides that "The Park Commission shall, notwithstanding any provision in any general or special law to the contrary have the exclusive power to adopt and enforce rules, regulations or ordinances governing the use of said park or parks as defined

²⁴ *Blood v. Woods*, 95 Cal. 78, 30 Pac. 129 (1892).

²⁵ N. Y. Laws 1893, c. 333.

²⁶ N. Y. Laws 1908, c. 330.

²⁷ N. Y. Laws 1914, c. 61.

²⁸ N. Y. Laws 1929, c. 362.

²⁹ The section of the parkway upon which toll was charged is 16 miles in length.

³⁰ Local Law No. 5. "An act providing for the collection of tolls on the Hutchinson River Parkway between the Boston Post Road and Westchester Avenue in the County of Westchester, authorizing the installation of the necessary toll stations and equipment in connection therewith, and providing for the disposition of the tolls collected."

³¹ N. Y. CONST. art. IX, § 4.

³² N. Y. Laws 1937, c. 617, §§ 3, 4, 69.

herein and traffic in and through the same"; second, the Vehicle and Traffic Law applied only to highways and not to parkways.

IV. *The Nature of a Parkway.*

The distinction between a highway and a parkway is at most a slender one. A parkway, although usually under the control of the park commission, is not generally regarded as a park³³ but is more in the nature of a boulevard or highway through a park.³⁴ However, the distinction is of great importance here, for had the court decided that this parkway was not a highway the right of the county to collect the toll would have been upheld.³⁵ A municipal corporation in operating park facilities acts in a proprietary and not in a governmental capacity, and a charge for the use of such facilities is common.³⁶

The name given to a road is immaterial. Its nature is determined by its real effect and not by its name.³⁷ If the public has the right to use the way at pleasure and indiscriminately it is held to be a public one.³⁸ The fact that a statute provides for its construction and maintenance by a private person is not conclusive against its being for public use.³⁹ Section 2 of the New York Vehicle and Traffic Law as amended in 1930 defines a public highway as follows: " 'Public highway' shall include any highway, road, street, avenue, public driveway or any other public way."

This is not the first time the Court of Appeals has been called upon to determine the nature of this parkway. In *Matter of County of Westchester (Hutchinson River Parkway)*⁴⁰ the court held that the Hutchinson River Parkway was not a "street, avenue, highway or road" within the meaning of Section 90 of the Railroad Law which provides, in part, that "where a new street, avenue, highway, or road * * * or a state or county highway * * *, shall hereinafter be constructed across a steam surface railroad * * * (it) shall pass over or under such railroad wherever such construction is practicable. Notice of intention * * * shall be given such railroad corporation by the

³³ *Municipal Securities Corp. v. Kansas City*, 265 Mo. 252, 177 S. W. 856 (1915); *Kupelian v. Andrews*, 233 N. Y. 278, 135 N. E. 502 (1922); *Village of Grosse Pointe Shores v. Ayres*, 254 Mich. 58, 235 N. W. 829 (1931).

³⁴ *Bouis v. City of Baltimore*, 138 Md. 284, 113 Atl. 852 (1921); cf. *Chaplin v. Kansas City*, 259 Mo. 479, 168 S. W. 763 (1914).

³⁵ "Once it becomes manifest that the Hutchinson River Parkway is a public highway, then a reading of § 54 of the Vehicle and Traffic Law indicates that the passage of any such law as Local Law No. 5 is proscribed." Conway, J., in *People v. Westchester*, 228 N. Y. 224, 231, — N. E. (2d) — (1940).

³⁶ *Augustine v. Town of Brant*, 249 N. Y. 198, 163 N. E. 732 (1928).

³⁷ *Sherman v. Buick*, 32 Cal. 242 (1867); *Logan v. Stogsdale*, 123 Ind. 372, 24 N. E. 135 (1890).

³⁸ *Chesapeake Stone Co. v. Moreland*, 126 Ky. 656, 104 S. W. 762 (1907); *Welton v. Dickson*, 38 Neb. 767, 57 N. W. 559 (1894); *Cozard v. Kanawha Hardwood Co.*, 139 N. C. 283, 51 S. E. 932 (1905).

³⁹ *Fanning v. Gilliland*, 37 Ore. 369, 61 Pac. 636 (1900).

⁴⁰ 246 N. Y. 314, 158 N. E. 881 (1927).

municipal corporation etc.": No definition of "street, avenue, highway, or road" is given in the Act. The court held that these words meant conventional streets in cities or villages and did not apply to a parkway. A parkway is included within the term park in the Westchester Park Act. With this in mind the court said "It is a park."⁴¹ In *Westchester Electric Railroad Co. v. Westchester County Park Commission*⁴² the court repeated these words with approval. That was an action to enforce an agreement between the Park Commission and a railroad company whereby the Commission agreed to reimburse the railroad company for the expense of removing and relocating its structures when the removal was made necessary by the construction of this parkway. The question was whether or not the Park Commission had the power to make such a contract. Such authority was found in a statute the headnote of which reads, in part, "An act to provide for the location, creation, acquisition and improvement of parks, parkways, and boulevards in and by the county of Westchester."⁴³ The validity of the agreement was decided upon the basis of this statute and the reference to the parkway as a park was not necessary to the determination of the case.

In *People v. Westchester*,⁴⁴ however, the parkway was held to be a public highway under Section 2 of the Vehicle and Traffic Law. The court reasoned that since such a road was expressly made a highway under this section before the 1930 amendment⁴⁵ it was certainly one within the broader phrasing of the statute since the amendment⁴⁶ and that "Landscaping the right of way does not make an ordinary park out of what is essentially a highway."⁴⁷ * * * "The test", the court continued, "would appear to be whether the public has a general right of passage in motor vehicles. If it have, then that is the measuring rod to be applied under the statute in determining the right of the public to the free use of all public passages or ways, however they may be termed."⁴⁸

These decisions are not inconsistent, and one does not overrule the other. Taken together they stand for the proposition that where a statute uses the word highway to mean "conventional streets in cities and villages" it does not include a parkway; but where a statute defines the term highway to include "any public way", a parkway is a highway within its terms.

In its endeavor to distinguish the cases, the court takes pains to

⁴¹ *Id.* at 318, N. E. at 882.

⁴² 255 N. Y. 297, 174 N. E. 660 (1931).

⁴³ N. Y. Laws 1922, c. 292, § 5.

⁴⁴ 282 N. Y. 224, — N. E. (2d) — (1940).

⁴⁵ "Public highway" shall include any highway, county road, county highway, state highway, state road, public street, avenue, alley, park, parkway or public place in any county, city, borough, town or village in this state."

⁴⁶ "Public highway" shall include any highway, road, street, avenue, alley, public place, public driveway or any other public way."

⁴⁷ 282 N. Y. 224, — N. E. (2d) — (1940).

⁴⁸ 282 N. Y. 224, 231, — N. E. (2d) — (1940).

point out that at the time *In Matter of the County of Westchester (Hutchinson River Parkway)* and *Westchester Electric Co. v. Westchester County Park Commission* were decided the road extensions had not been added to the northerly and the southerly ends of the parkway. And that "The language of the opinion (*Matter of County of Westchester*) did not establish or fix the then conditions so as to make them unchangeable and may not now be held applicable to entirely different ones." It is submitted, however, that the court by this language did not intend to weaken the ruling of *Sebring v. Quackenbush*,⁴⁹ *Matter of Central Parkway*,⁵⁰ *Brooklyn Park Commissioner v. Armstrong*,⁵¹ and other such cases which hold that where a park has been lawfully created its legal character cannot be changed by diverting it to other uses except by legislative warrant. But rather the court meant that the parkway, although included in the term "park" under the Westchester Park Act, was, nevertheless, at all times, a highway under Section 2 of the Vehicle and Traffic Law.

V. Power to Collect Toll on a Public Road.

It has been held that all roads which the Legislature has the power to lay out and establish are public roads.⁵² But had the road been laid out by a private person the decision would probably have been no different. It is generally held that a turnpike cannot be created even wholly on private land without a franchise from the state if the road is available to the use of the general public upon the payment of the toll.⁵³ The reasons for this use have not been made clear. It has been held that the establishment of a road plus the offering of its use indiscriminately upon the payment of the toll, effect a dedication of the road to the public and that the easement of the public is entire and not subject to the toll.⁵⁴

It has been submitted that there might be a dedication subject to a toll. At one time there seems to have been considerable doubt on this point. In *Austerberry v. Oldham Corporation*⁵⁵ the court said, per Cotton, L. J., "Now I here give no opinion as to whether there can be a dedication by an individual of a road as a highway subject to a toll without the aid of an Act of Parliament. Authorities were cited containing some passages apparently to the effect that this might be done",⁵⁶ and per Lindly, L. J., "I think it is very doubt-

⁴⁹ 120 Misc. 609, 199 N. Y. Supp. 245 (1923), *aff'd*, 214 App. Div. 758, 209 N. Y. Supp. 918 (1925).

⁵⁰ 140 Misc. 727, 251 N. Y. Supp. 577 (1931).

⁵¹ 45 N. Y. 234 (1871).

⁵² *Sherman v. Buick*, 32 Cal. 242 (1867).

⁵³ "Turnpike roads established by a corporation, under authority of law, are public highways, and the right to exact toll from those using them comes from the state creating the corporation." *Covington & L. Tpk. Co. v. Sandford*, 164 U. S. 578, 594, 17 Sup. Ct. 198 (1896).

⁵⁴ 26 R. C. L. (1920) p. 1401, § 7.

⁵⁵ L. R. (1885) 29 Ch. Div. 750.

⁵⁶ *Id.* at 770.

ful, but it is unnecessary to decide whether it is possible to dedicate to the public a highway subject to a toll. I do not say it is not, but I am very far from saying that it is. But whatever doubt there may be upon that point, which, if we had to decide it, I should like to investigate further, it appears to me impossible to hold that a highway is dedicated to the public subject to a toll which may fluctuate from day to day. This highway was constructed under a trust deed giving the trustees a power to levy tolls if they liked, and to change them whenever they liked; and it appears to me quite impossible not to see that this is not a dedication to the public—it is liberty to such of the public as chose to pay the toll to use the road—that is all.”⁵⁷ Later the law became well settled that such a dedication could not be made and a learned jurist in upholding the doctrine that there could be no such dedication said, “For no greater evil could well be imagined than the unrestrained power on the part of individuals to exact from the traveler, who cannot brook delay or stipulate for terms, whatever cupidity might dictate.”⁵⁸

A turnpike differs from a public highway only in that while a highway is constructed at public expense, the turnpike is constructed at the expense of individuals and the cost of construction and maintenance is reimbursed by a toll levied by the state.⁵⁹ The acceptance of a franchise effects a dedication of the road to the public.⁶⁰ The public character of the easement is more clearly seen when the statute provides for the condemnation of property to obtain the right of way. A *dictum* in *Matter of Westchester (Hutchinson River Parkway)*, to the effect that the paths and driveways may be changed from time to time, or such paths and driveways may be wholly closed as in the judgment of the officials in charge of the park may seem desirable, would seem to be overruled by *People v. Westchester* and it is submitted that such power could not be exercised by the officials in view of the holding of this later case.

VI. Power of a County to Collect a Toll.

At common law a county had no right to levy a toll on a public road without a state franchise, and even under the Home Rule Provision of the State Constitution this power is not granted.⁶¹ The county in its argument to the Court of Appeals relied upon the case of *Robia Holding Co. v. Walker*.⁶² There the court held that although no express grant of power to the City of New York to levy tolls on

⁵⁷ *Id.* at 779.

⁵⁸ *Tuckee & T. Turnpike Road Co. v. Campbell*, 44 Cal. 89 (1872); *Bartram v. Central Tpk. Co.*, 25 Cal. 283 (1864). HALE, DE JURIS MARIS, c. 3: “No man can take a settled or constant toll, even in his own private land, for a common passage, without the King’s license.”

⁵⁹ See note 7, *supra*.

⁶⁰ 26 R. C. L. (1920) p. 1401, § 7.

⁶¹ *People v. Westchester*, 282 N. Y. 224, — N. E. (2d) — (1940).

⁶² 257 N. Y. 431, 178 N. E. 747 (1931).

the Triborough Bridge had been given, such power was granted by implication to the city under its Home Rule power. Although the court in *People v. Westchester* does not attempt to distinguish these cases a distinction is to be noted. The *Robia* case differs from *People v. Westchester* principally in that there is no law in the State of New York restricting the placing of toll on bridges similar to Section 54 of the Vehicle and Traffic Law.⁶³

The decision in *People v. Westchester* does not preclude a county from charging toll for the use of its roads but holds that the county has no right to collect a toll without obtaining a franchise from the state. Therefore, in the case of the Cross-County Parkway where such franchise has been obtained the county may continue to collect its toll.⁶⁴

Were a franchise to collect a toll on the Hutchinson River Parkway to be obtained from the Legislature, such grant would be valid and the county could collect the toll, even though the public had been using the road as a free highway before the power was conferred, for the law is well settled that the State Legislature may impose a toll on existing roads and that it may delegate that power to a private individual,⁶⁵ a municipal corporation,⁶⁶ or a road district.⁶⁷

The only exception to the right of a state to impose such a toll is under Section 9 of the Federal Highway Act where federal aid has been granted.⁶⁸

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⁶³ N. Y. GEN. CITY LAW § 79 is so limited by § 80 as not to apply.

⁶⁴ Other parkways upon which toll is now authorized are the Jones Beach, Pelham Bay-Port Chester, and Hendrick Hudson Parkways (N. Y. Laws 1933, c. 68, § 3(10); c. 70, § 3(10); N. Y. Laws 1934, c. 138, § 3e).

⁶⁵ *Blood v. McCarty*, 112 Cal. 561, 44 Pac. 1025 (1896).

⁶⁶ *Robia Holding Co. v. Walker*, 257 N. Y. 431, 178 N. E. 747 (1931).

⁶⁷ *State v. Overseas Road & Toll Bridge Dist.*, 125 Fla. 481, 170 So. 109 (1936).

The cases of *Blood v. Woods*, 95 Cal. 78, 30 Pac. 129 (1892) and *Blood v. McCarty*, 112 Cal. 561, 44 Pac. 1025 (1896) are here in point. In *Blood v. Woods* it was held that the board of supervisors of a county had no authority to grant a franchise to collect tolls upon a free public road. A state act was then passed which provided that the county board of supervisors should have jurisdiction and power to grant licenses and franchises for taking tolls on public roads or highways "whenever, in their judgment, the expense necessary to operate and maintain such roads or highways as free public highways is too great to justify the county in so operating or maintaining them". In *Blood v. McCarty* the statute was attacked as an unconstitutional delegation of power. The court upheld the statute saying, "The power of the legislature over the highways of the state is adequate to secure their establishment, maintenance, and discontinuance, and this power may be exercised through the instrumentality of subordinate bodies such as the county board of supervisors. If the legislature may allow the taking of tolls as compensation for building a road, it seems necessarily to follow that it may allow a like franchise as compensation for keeping it in repair, which is the purport of the statute now under view, and such is the rule, although the result may be to take away a previous right in the public to pass toll free."

⁶⁸ 42 STAT. 214 (1921), 23 U. S. C. A. § 9 (1927).