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determination of guilt cannot be demanded as a matter of right. It rests in sound judicial discretion."[13] In explaining this conclusion, Justice Jackson reviewed the unpublished history of Rule 46 (a) (2), and concluded: "It is apparent that the language of the rule was not casual or loose and that the basis for claming bail as a matter of right was deliberately eliminated."[14]

In Wyoming, Section 3-5414 of the 1945 Wyoming Compiled Statutes gives the *right* to bail pending appeal: "The judge of the trial court, or any justice of the supreme court in any criminal cause shall, on such appeal being perfected, admit the defendant to bail in sum such as shall be deemed proper in all bailable cases, and the district court, after conviction, shall also stay the execution of the judgment or sentence pending the taking of the appeal, and in bailable cases, admit the defendant to bail." There are no decisions expressly construing this statute. In the case of *State v. Sorrentino*, where the only question on appeal was the length of imprisonment of the defendant, bail was denied, but the court strongly implied that the right exists as stated in the statute in all other cases.[15]

The court, in the instant case, for all practical purposes, disregarded any construction of Rule 46 (a) (2), stating what it regarded as the guiding principle on the subject. It arrived at this "guiding principle" largely by following the quotation in *Hudson v. Parker*, above, and thus unduly enlarged the effect of all statutes granting bail generally, as distinguished from statutes expressly granting bail after conviction. However, by the weight of authority, bail, after conviction and pending appeal, does not exist as a matter of right in the absence of a statute. Perhaps the court was led to declare it a right by a reluctance to provide propaganda for the Communists by imprisioning Bridges before the final determination of his case. If so, the same result could have been reached, without the seeming error, by granting bail on discretionary grounds. It was not necessary to declare that bail was a matter of right,. and thus rest the decision on unstable grounds and a definitely minority viewpoint.

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THE STATE OF SPECIFIC COMMODITY HAULERS AND THE MOTOR CARRIER ACT

The expressed objectives of Wyoming's Motor Carrier Act are "The promotion of the safety of the highways, the collection of a fair and adequate compensatory fee for the commercial use of highways constructed

13. Williamson v. United States, 184 F. (2d) 280 (2d Cir. 1950).
14. Williamson v. United States, 184 F. (2d) 280 (2d Cir. 1950).
15. 32 Wyo. 410, 233 Pac. 142 (1925).

with public moneys, and the maintenance of a sound, well-regulated transportation structure for the people of the state. . . ."[1] To forward these objectives the legislature provided an administrative agency with broad powers to create its own rules and regulations.[2] With the development of the state the demand for more and better transportation agencies increased, and with the growth of the trucking industry the regulating laws were likewise revised and expanded.[3] Whether these laws, with their principal objective to provide a well-regulated transportation structure for the people of the state, are now adequate is brought in question by this writing, with the primary emphasis being placed upon determing the sufficiency of the law respecting transportation of commodities directly concerned with Wyoming's two major industries, livestock and oil field development.

The Motor Carrier Act has defined three classes of intrastate carriers to be regulated by the Commission—the private carrier, the contract carrier, and the common carrier.[4] These carriers are the nucleus of the transportation system contemplated by the legislature, and the granting and denying of permits and certificates and the policies and regulations formulated for these respective carriers become the foundation for the transportation system within the state. A common carrier is defined as "Any person who undertakes for hire or reward, to transport, by motor vehicle on or over the highways of the state, persons or property of those who choose to employ him and who holds himself out as being willing to undertake for hire such transportation from place to place, over regular routes with fixed termini."[5] By the same statute a contract carrier is said to be any motor carrier who engages in the transportation of property for hire other than a common carrier, while the private carrier is one who uses the highways for the transportation of property in the furtherance of his own business or enterprise.

The livestock and oil field development industries have been provided with common carries for their respective transportation needs. There are over fifty common carriers of livestock[6] and some five certificates in full force and effect for the hauling of oil field equipment.[7] But whether these certificates of public convenience and necessity have been issued with

1. Wyo. Comp. Stat. 1945 sec. 60-1301.
2. Wyo. Comp. Stat. 1945 sec. 64-103.
3 The development in Wyoming motor-carrier legislation took the following steps: Wyo. Sess. Laws 1927 c. 98 was the original Act, followed by Wyoming Sess. Laws 1929 c. 123 which amended and reenacted sections 1, 3, 4 and 8 of chapter 98 of the laws of 1927. Next followed Wyo. Sess. Laws 1933 repealing the laws of 1927 and 1929 and enacting secs. 72-501 to 72-537 of Wyo. Rev. Stat. 1931. Chapter 65, Laws of 1935, and Chapter 121, Laws of 1937 are the basis of our present Motor Carrier Act.
4. Wyo. Comp. Stat. sec. 60-1302 (n) (o) (p).
5. Ibid. (n).
6. Wyoming Intrastate Motor Freight Tariff No. 3 in its completed form as of July, 1950.
7. Wyoming Instrastate Motor Freight Tariff No. 4 in its completed form as of July, 1950.

statutory authority should here be considered. It cannot clearly be contended, when contemplating the objectives of the Motor Carrier Act, that a sound transportation system for the state does not require common carriers for the transportation of livestock and oil field equipment, and in view of the certificates issued by the Commission and now outstanding for the transportation of these commodities, the evidence is strong that the Commission, considering the demands of the shipping public, deemed common carriers of livestock and oil field equipment essential components for an ample and well-regulated transportation structure. Yet the statutes define a common carrier as one who operates between fixed termini and over regular routes, and respecting the two types of carriers here being considered, it should be noted that these carriers have been granted state-wide authority for the hauling of these authorized commodities. It becomes obvious then that whether such state-wide authority can be granted within the statutory definition of a common carrier is a question of vast significance in determining the adequacy of our present "motor carrier" laws.

The authoritative language of many of the certificates here in question is brief and clear. "SERVICE AND ROUTES AUTHORIZED: Livestock, between all points and places located on state or federal highways in the State of Wyoming, over regular routes."[8] These certificates on their face do not comply with the statutory requirement that a common carrier operate between fixed termini, and even when the authoritative clause enumerates specifically all the state and federal highways within the state of Wyoming[9] over which the carrier has authority to operate, the requirement that he haul between fixed termini is not met on the face of the certificate. That the statutory definition of a common carrier was not considered by the Commission as determinative of their power to grant certificates is even more greatly emphasized by Certificate No. 169 which grants operating rights over *irregular routes* between points and places within the State of Wyoming, for the transportation of oil field equipment, and again, on August 7, 1946, the Commission issued Certificate No. 129 which authorized a partnership to perform common motor carrier services in Wyoming intrastate commerce of livestock between points and places in the state over irregular routes.[10] These certificates ignore the express requirement that a common carrier must operate between fixed termini. But the last certificate of public convenience and necessity to be granted by the Commission for the transportation of livestock was issued in 1948,[11] and since that year no applications have been considered by the Commission respecting these commodities. In that same year the Commission

8. Matter of Sowers, Dkt. M-16514, March 6, 1950 (An application for the transfer of a certificate); Matter of Herman, Dkt. M-14491, August 25, 1948; Matter of McKelvey, Dkt. M-14251, November 3, 1950 (An application for transfer of certificate.)
9. Certificate No. 138.
10. Matter of Herman, Dkt. M-14491, August 25, 1948, paragraph one.
11. Biannual Report of the Public Service Commission, 1948. Since the issuance of a number of certificates for the hauling of livestock enumerated in this report, no further applications have been considered by the Commission for the transporting of this commodity.

issued several orders denying certificates for the hauling of livestock with the following language: "The movement of livestock by motor vehicle in Wyoming intrastate commerce ordinarily requires certain auxiliary service such as loading and unloading thereof. This traffic generally originates at points, such as ranches, far off the route of a common carrier and in some instances such traffic is destined to points beyond the termini of such carriers. It is primarily an irregular route operation."[12] With this apparent change in policy in 1948, followed other orders by the Commission granting contract permits for the transportation of livestock over the protests of the common carriers for the same commodity.[13] Such contract permits cannot be granted if it be shown that the proposed operations will unduly burden and compete with the common carrier unless the operations proposed by the applicant are shown to be over irregular routes.[14] But by these orders the Commission, recognizing its language in the above-quoted order, deemed the proposed transportation service of the contract applicant to be over irregular routes and consequently not in competition with the protesting common carrier.

The change of policy, which has been considered and which has been followed to the present, presents an obvious dilemma, for the Commission has expressly recognized that by the very nature of the operations contemplated with respect to the commodities here in question, the carrier cannot comply with the statutory definition of a common carrier and that they are "primarily irregular route operations." Yet over fifty common carriers for the transportation of livestock and five carriers for the transportation of oil field equipment exist under statutes which require regular route operations.[15] It has been further noted that livestock carriers have been granted statewide authority, and that such existing authoritative language cannot comply with statutory definition of a common carrier which requires his operations to be between fixed termini. With respect to the latter objection, even if on the face of the certificate the carrier is authorized to transport commodities between specifically designated termini and over regular routes, if the operations in fact are not those of a true common carrier, he cannot be so considered, for whether a transportation agency is a common carrier or not does not depend on its charter or declared purposes, but on what it does.[16] Today, contract carriers, who have

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12. Matter of Cure, Dkt. M-17364, July 22, 1948.
13. Matter of Hoyer, Dkt. M-17383, July 23, 1948; Matter of Kelso, Dkt. M-18199, Oct. 10, 1949; Matter of Saunders, Dkt. M-18416, August 29, 1949, Matter of Willard, Dkt. M-13092, June 11, 1949; and others.

    To the same effect: contract permits were issued to oil field equipment applicants on the grounds that they would not, by reason of the nature of their operations, be in competition with the common carrier. Matter of Harvey, Dkt. M-18126, October 12, 1948; Matter of Downing, Dkt. M-17130, November 1, 1948. Likewise, see Matter of K. V. K Bus Line, Dkt. M-19164, August 29, 1949, in which the certificate was revoked and cancelled on the grounds that the operations of the line had ceased to be over regular routes.
14. Wyo. Comp. Stat. 1945 sec. 60-1312.
15. See footnotes 6 and 7 supra.
16. McKay v. Public Utilities Commission, 104 Colo. 402, 91 P.(2d) 965 (1939); U.S. v. Brooklyn Eastern District Terminal, 249 U.S. 296, 304, 39 Sup. Ct. 283, 63 L. Ed. 613, 6 A.L.R. 527 (1919).

obtained authority for the hauling of livestock on the grounds that their operations would not compete with those of the common carrier, (since they are "primarily irregular route operations") exist side by side with the common carrier who does not comply with the statutory definition of a common carrier, but who nevertheless should be entitled to protection against undue competition by virtue of his status as a common carrier. It will go without saying that this dilemma was not the object of the legislature's intent.

Our statutes for the regulation of motor carriers are, in general, not unlike the vast majority of motor carrier laws, but unlike the laws of most states, our statutes require the common carrier to operate between fixed termini and over regular routes. By Wyoming law, the irregular route carrier cannot be considered a common carrier, while other jurisdictions either make an express provision for the irregular route common carrier or stipulate no requirement at all respecting fixed termini or regular routes,[17] and it is well established by either statute or decision that the only true test for a common carrier is whether he holds himself out in common to all persons who might choose to employ him.[18] The Supreme Court of Wyoming has so held.[19]

With the enactment of the Wyoming Motor Carrier Act the basic test of the common carrier was abrogated. If the decision of the Commission is accurate that all livestock and oil field equipment carriers are primarily irregular route operators, then under existing Wyoming law there is no authority for the granting of common carrier certificates for the transportation of livestock and oil-field equipment. On the other hand, if it is possible for livestock haulers to operate over regular routes—over certain designated highways with the off highway operation to and from ranches considered merely a pick-up and delivery service in conjunction with the regular route highway haul—then the livestock and oil field hauler may find authority for his transportation service as a common carrier provided his certificate sets out fixed termini—specifically designated points of departure and destination within which he may carry his authorized commodities. Nevertheless, the present law, restrictive by nature, serves no obvious useful objective in its definition of a common carrier by limiting a common carrier to something other than one who holds himself out to the public to serve all who may apply to him for his carriage.

17. Among those states which set up special provisions for irregular route carriers are North Dakota and Montana, N.D. Rev. Code 1943 sec. 49-1801; Mont. Rev. Code. 1935, sec. 3847.2, and North Dakota sets up special provisions for "agricultural haulers." Colorado, California, New York and New Mexico are among the states who make no restrictions requiring that the carrier operate between fixed termini and regular routes. Colo. Stats. Ann. 1935, sec. 300; Cal. Civil Code 1935; Laws of N. Y. 1910, Chapter 480, Art. 1, sec. 2; N.M. Stat. 1941, sec. 68-1302.
18. Koppers Connecticut Coke Co. v. James McWilliams Blue Line, 18 F. Supp. 992 (E.D. N.Y. 1936), affirmed 89 F.(2d) 865; Beatrice Creamery Co. v. Fisher, 10 N.E. (2d) 220, 291 Ill. App. 495; Phillips v. Public Service Commission, 191 A. 641, 127 Pa. Super. 341.
19. Weaver v. Public Service Commission of Wyoming, 40 Wyo. 462, 278 Pac. 542 (1929).

The existing dilemma offers no single obvious solution. The considerations at hand are many, with great and persuasive resistance always disfavoring a basic change in any system upon which men have placed their faith, and more, their money. Such a reform could not be justified merely on the grounds that it will replace order and consistency in a system plagued with uncertainty and contradiction. Rather, before a change by the legislature can be sanctioned validly, it must be shown that as a result, the people of the state will enjoy a well-regulated transportation structure, and such a well-regulated structure must not merely rest upon fluid administrative processes, but the reform must be solidly founded upon a policy that will forward the best interest of both the shipping public and the trucking industry.

It has been submited that the transportation of the commodities here considered demand no regulation at all. But to this, the first to cry out in strong objection is the trucking industry itself, for although business generally does not hesitate to display its disdain for governmental control, the trucking industry has thrived on regulation, and without it, it would soon be reduced to a competitive field of even greater uncertainty. The granting of franchises which carry with them, in most cases, the protection of a regulated monopoly, have to some degree assured the trucker an operation unimpeded by the contingencies of competition. And the purpose of granting such franchises has not ignored the public need. For without the regulated monopoly in the field of transportation the public would have no assurance of a continued dependable servant which must be ready, willing and able at all times to render adequate service at a rate established to be reasonable. Whether such regulation with its respective effects is necessary for the hauling of livestock and oil-field equipment is a question demanding these and other considerations. Although the primary concern of the legislature, in enacting any system is the public welfare the legislature, in forming such a system must direct some consideration for the instrumentalities that will satisfy the public need. Without adequate concern for the welfare of the trucking industry the legislature cannot hope to establish a sound transportation system for the people of the state.

Other alternatives present themselves. The legislature may alter its definition so that the statutes codify the general rule which defines the common carrier as one who holds himself out to the public to serve all who may apply to him for his carriage. With this, and nothing more, for the basic determination of who may qualify for a certificate, the foregoing objections involved in the regulation of livestock and oil-field equipment carriers will be eliminated. In such an event, grandfather rights should be awarded the holders of certificates prior to the new law, and with the change of definition a vast overhauling of the authorized areas of operations would be required to gain the coordination necessary for adequate protection on the part of the trucker and adequate service on the part of the shipper. This proposal, in light of the accepted and generally applied rule of common carriers, is best equipped to satisfy the present need for regulated transportation and to erase existing inconsistencies in such regulation.

A step in the middle of the two extremes above discussed would have all common carriers removed from these fields, and in their stead would be created a contract carrier over which regulation respecting rates would be established, but such regulation would not entail a limiting of the number of haulers that might choose to participate there.[20] Although this proposal would afford a means by which the ambiguity and resulting conflict of logic could be discarded, the substantial benefit which might emerge for either the public or the truckers is questionable. Growing out of this proposal would be a vast number of individual truckers with intermingling rights and authority, and from this proposed change there could be no assurance to the public that adequate service could be had at any time upon demand.

With these alternatives in mind, the legislature should consider the existing law that has been stretched and contorted until it has become too weak and too old to continue to bear the objectives it was commissioned to accomplish. A system harboring discord and uncertainty cannot long support instrumentalities of public service which must be the foundation of a well-regulated transportation structure for the people of the state.

G. L. SPENCE.

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20. The rates of the contract carrier in Wyoming cannot be less than those that are established for the common carrier. Thus, by necessity, the rates of the contract carrier are virtually the same as those set for the common carrier. Without establishing a rate for the contract carrier to follow in the event that common carriers were abolished, there would be no purpose for any regulation at all unless the contract carrier were given a free hand to set his own rates but was limited to a particular territory for his operations. In this case, there would actually be established a system of franchises for individual carriers, entailing enforcement for the protection of existing carriers in that area. This system would resolve itself to one in which, in effect, a regulated monopoly obtains without a regulation as to rates charged to the public—which, of course, is incompatible with public interest. If both rates and territories are regulated the carrier is not a contract carrier at all, but rather a common carrier. Therefore, if there are to be only contract carriers here, the only available means of regulation is that of regulating rates only.