rights of Herbring himself in conducting the business of an insurance agent, is without merit.

2. The appellant also urges in argument, that "if the statute be regarded as a corporate regulation, rather than as an individual prohibition, it is unconstitutional, in that it is unreasonable, arbitrary and capricious" and cannot be sustained under the police power of the State. In other words, he seeks in argument to challenge the validity of the statute on the ground that it is an infringement of the Company's constitutional right to appoint an additional agent. The Company itself is not here insisting that the statute constitutes an impairment of its own right; it raised no such question before the Commissioner, and for aught that appears acquiesced in that officer's view of the validity of the statute.

It may well be that under the facts in this case Herbring's individual interest in this question is not direct but merely collateral and remote and not such as would have entitled him to challenge the constitutional validity of the statute on the ground that it is an impairment of the Company's own rights. But, however that may be, there is no assignment of error here which challenges the validity of the statute on that ground; and the question which Herbring seeks to raise in argument, is not before us for decision.

The judgment is

Affirmed.

SILVER v. SILVER.

APPEAL FROM THE SUPREME COURT OF ERRORS OF CONNECTICUT.

No. 24. Argued October 25, 1929.—Decided November 25, 1929.

1. Where the record does not disclose the federal grounds on which a state statute was challenged in the state court, review will be

limited to those which were considered in the state court's opinion. P. 122.

2. The Constitution does not forbid the abolition of old rights recognized by the common law, to attain a permissible legislative object. P. 122.
3. A state statute providing that no person carried gratuitously as a guest in an automobile may recover from the owner or operator for injuries caused by its negligent operation, is not in conflict with the equal protection clause of the Fourteenth Amendment because of the distinction it makes between passengers so carried in automobiles and those in other classes of vehicles. P. 122.
4. A statutory classification may not be declared forbidden as arbitrary unless grounds for the distinction are plainly absent. P. 123.
5. Conspicuous abuses, such as the multiplicity of suits growing out of the gratuitous carriage of passengers in automobiles, may be regulated by the legislature without regulating other like, but less conspicuous, examples. P. 123.

108 Conn. 371, affirmed.

APPEAL from a judgment of the Supreme Court of Errors of Connecticut affirming a judgment for the defendant in an action to recover for injuries caused by negligence in the operation of an automobile.

Mr. Thomas R. Robinson, with whom *Messrs. David M. Reilly, Herman Levine,* and *Arthur B. O'Keefe* were on the brief, for appellant.

The classification made by such a statute must have a reasonable and adequate relation to the object of the legislation. *Atchison, T. & S. F. R. Co.* v. *Vosburg,* 238 U. S. 56; *Fountain Park Co.* v. *Hensler,* 199 Ind. 95; *Chicago, M. & St. P. R. Co.* v. *Westby,* 102 C. C. A. 65; *People* v. *Beakes Dairy Co.,* 222 N. Y. 416; *Quaker City Cab Co.* v. *Pennsylvania,* 277 U. S. 389; *Southern R. Co.* v. *Greene,* 216 U. S. 400; *Gulf, C. & S. F. R. Co.* v. *Ellis,* 165 U. S. 150; *Louisville G. & E. Co.* v. *Coleman,* 277 U. S. 32; *Power Mfg. Co.* v. *Saunders,* 274 U. S. 490; *Barbier* v. *Connolly,* 113 U. S. 27; *Missouri, K. & T. R. Co.* v. *May,* 194 U. S. 267.

The distinctions attempted to be made between corporations, domestic and foreign, in *Southern R. Co.* v. *Greene,* 216 U. S. 400, and *Power Mfg. Co.* v. *Saunders,* 274 U. S. 490; between a corporation doing no business in a State and those doing business therein in *Royster Guano Co.* v. *Virginia,* 253 U. S. 412; between corporations and individuals in *Quaker City Cab Co.* v. *Pennsylvania,* 277 U. S. 389; and *Frost* v. *Corp'n Comm'n,* 278 U. S. 515; between mortgage loans of varying terms in *Louisville G. & E. Co.* v. *Coleman,* 277 U. S. 32; between gifts *inter vivos* made at different times before death in *Schlesinger* v. *Wisconsin,* 270 U. S. 230; between railroads as defendants and other defendants in *Gulf, C. & S. F. R. Co.* v. *Ellis,* 165 U. S. 150, and *Atchison, T. & S. F. R. Co.* v. *Vosburg,* 238 U. S. 56; between the relation of former employer and employee and persons not in such relation in *Truax* v. *Corrigan,* 257 U. S. 312; between telegraph companies and others using similar equipment in *Vigeant* v. *Postal Telegraph Co.,* 260 Mass. 335; between motor vehicles of varying weights and uses in *Lossing* v. *Hughes,* 244 S. W. 556; *Consumer's Co.* v. *Chicago,* 298 Ill. 339; *Franchise Motor Freight Ass'n* v. *Seavey,* 196 Cal. 77, and *Kellaher* v. *Portland,* 57 Ore. 575; and between miners and manufacturers and other persons in *State* v. *Goodwill,* 33 W. Va. 179, are all of a more substantial nature than the classification attempted by this statute.

Messrs. David E. Fitzgerald, Wm. L. Hadden, Ellsworth B. Foote, and *Benjamin Slade,* were on the brief for appellee.

Assuming, as we must, the power of the legislature to regulate the operation of motor vehicles, it includes the power to enact legislation affecting the reciprocal rights and duties of all who use them, whether he be owner, operator or occupant, where these rights and duties arise out of such operation. *Buelke* v. *Levenstadt,* 190 Cal.

684; *Hartje* v. *Moxley,* 235 Ill. 164; *West* v. *Asbury,* 89 N. J. L. 402; *Opinion of the Justices,* 251 Mass. 569; *Packard* v. *Banton,* 264 U. S. 140; *Minnesota Iron Co.* v. *Kline,* 199 U. S. 593.

Since motor vehicles have come into general use they have been classified separately from other methods of transportation, and the power of the legislature to impose upon their owners and operators duties different from those of owners and operators of other vehicles has been generally upheld. Berry, Automobiles, Vol. 1, § 30; *Garrett* v. *Turner,* 235 Pa. St. 383; *Westfall* v. *Chicago,* 280 Ill. 318; *Hendrick* v. *Maryland,* 235 U. S. 615.

The fact that the law applies only to motor vehicles does not create an unreasonable classification of vehicles using the road, is not an unlawful discrimination against a particular class, and does not deny the equal protection of the law guaranteed by the Fourteenth Amendment. *Christy* v. *Elliott,* 216 Ill. 31; *Hendrick* v. *Maryland, supra; State* v. *Mayo,* 106 Me. 62; *State* v. *Swagerty,* 203 Mo. 517.

There is nothing arbitrary or unreasonable in applying a different standard of duty toward a gratuitous passenger in a motor vehicle as distinguished from one being transported for compensation—hence the exception of the common carrier by the statute is valid. *Massalette* v. *Fitzroy,* 228 Mass. 508; *Giblin* v. *McMullen,* L. R. 2 P. C. 317; *Moffatt* v. *Bateman,* L. R. 3 P. C. 115.

One owning and operating a motor vehicle upon the highways of the State of Connecticut is exercising a privilege and not a right, and it is competent for the legislature to prescribe the conditions upon which said privilege shall be exercised. *Commonwealth* v. *Kingsbury,* 199 Mass. 542; *People* v. *Fodera,* 33 Cal. App. 8; *People* v. *Rosenheimer,* 209 N. Y. 115; *Ruggles* v. *State,* 120 Md. 553.

The legislature of the State of Connecticut may prohibit altogether the use of motor vehicles upon the highways

within its borders. *Doyle* v. *Continental Ins. Co.*, 94 U. S. 535; *State* v. *Mayo*, 106 Me. 62; *Stone* v. *Mississippi*, 101 U. S. 814; *Otis* v. *Parker*, 187 U. S. 606; *People* v. *Rosenheimer*, 209 N. Y. 115.

The deprivation of a common law right does not make the Act unconstitutional, for a legislature may suspend the operation of general law. *Buelke* v. *Levenstadt*, 190 Cal. 684; *Carrozza* v. *Finance Co.*, 149 Md. 223.

In a classification for governmental purposes, there cannot be an exact exclusion or inclusion of persons and things. *Orient Ins. Co.* v. *Daggs*, 172 U. S. 562. Technical inequalities do not offend against the equal protection clause of the Fourteenth Amendment. *Louisville & N. R. Co.* v. *Melton*, 218 U. S. 52; *Lindsley* v. *Gas Co.*, 220 U. S. 78.

MR. JUSTICE STONE delivered the opinion of the Court.

This is an appeal under § 237 of the Judicial Code, as amended by Act of February 13, 1925, from a judgment of the Supreme Court of Connecticut upholding the constitutionality of a state statute. Chapter 308 of the Public Acts of Connecticut of 1927 (printed in the margin [1])

[1] Chapter 308. *An Act releasing owners of motor vehicles from responsibility for injuries to passengers therein.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

Sec. 2. This act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger being transported by such public carrier or by such owner or operator.

provides that no person carried gratuitously as a guest in an automobile may recover from the owner or operator for injuries caused by its negligent operation. The appellant brought suit in the Superior Court of New Haven County against appellee, her husband, for injuries so sustained. Judgment for the defendant was affirmed by the Supreme Court. Both courts ruled that the statute barred appellant, a guest carried gratuitously, from recovery for injuries caused by ordinary negligence in the operation of the car, and the Supreme Court, by divided bench, held that the statute did not deny to appellant the equal protection of the laws guaranteed by the Fourteenth Amendment.

As the record does not disclose the constitutional grounds on which the appellant challenged the validity of the statute, our review will be limited to the single question arising under the Federal Constitution which was considered in the opinion of the court below. *Saltonstall* v. *Saltonstall*, 276 U. S. 260. We need not, therefore, elaborate the rule that the Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object. See *Louis Pizitz Dry Goods Co.* v. *Yeldell*, 274 U. S. 112, 116; *New York Central R. Co.* v. *White*, 243 U. S. 188; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Wilmington Mining Co.* v. *Fulton*, 205 U. S. 60, 74.

The use of the automobile as an instrument of transportation is peculiarly the subject of regulation. We can not assume that there are no evils to be corrected or permissible social objects to be gained by the present statute. We are not unaware of the increasing frequency of litigation in which passengers carried gratuitously in automobiles, often casual guests or licensees, have sought the recovery of large sums for injuries alleged to have

been due to negligent operation. In some jurisdictions it has been judicially determined that a lower standard of care should be exacted where the carriage in any type of vehicle is gratuitous. See *Massaletti* v. *Fitzroy,* 228 Mass. 487; *Marcienowski* v. *Sanders,* 252 Mass. 65; *Epps* v. *Parrish,* 26 Ga. App. 399. Whether there has been a serious increase in the evils of vexatious litigation in this class of cases, where the carriage is by automobile, is for legislative determination and, if found, may well be the basis of legislative action further restricting the liability. Its wisdom is not the concern of courts.

It is said that the vice in the statute is not that it distinguishes between passengers who pay and those who do not, but between gratuitous passengers in automobiles and those in other classes of vehicles. But it is not so evident that no grounds exist for the distinction that we can say *a priori* that the classification is one forbidden as without basis, and arbitrary. See *Clarke* v. *Deckebach,* 274 U. S. 392, 397.

Granted that the liability to be imposed upon those who operate any kind of vehicle for the benefit of a mere guest or licensee is an appropriate subject of legislative restriction, there is no constitutional requirement that a regulation, in other respects permissible, must reach every class to which it might be applied—that the legislature must be held rigidly to the choice of regulating all or none. *Patsone* v. *Pennsylvania,* 232 U. S. 138, 144; *Miller* v. *Wilson,* 236 U. S. 373, 382, 384; *International Harvester Co.* v. *Missouri,* 234 U. S. 199, 215; *Barrett* v. *Indiana,* 229 U. S. 26, 29 (1913). In this day of almost universal highway transportation by motor car, we cannot say that abuses originating in the multiplicity of suits growing out of the gratuitous carriage of passengers in automobiles do not present so conspicuous an example of what the legislature may regard as an evil, as to justify

legislation aimed at it, even though some abuses may not be hit. *Carroll* v. *Greenwich Ins. Co.*, 199 U. S. 401, 411; *Bryant* v. *Zimmerman*, 278 U. S. 63, 73. It is enough that the present statute strikes at the evil where it is felt and reaches the class of cases where it most frequently occurs.

Affirmed.

BROMLEY *v.* McCAUGHN, COLLECTOR OF INTERNAL REVENUE.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 27. Argued October 31, 1929.—Decided November 25, 1929.

1. The tax imposed by Revenue Act of 1924, §§ 319–324, as amended by Revenue Act of 1926, § 324, upon transfers of property by gift, is not a direct tax within the meaning of the Constitution, but an excise on the exercise of one of the powers incident to ownership, and need not be apportioned. Const., Art. I, §§ 2, 8, 9. P. 135.
2. The uniformity of taxation throughout the United States enjoined by Art. I, § 8, is geographic, not intrinsic. P. 138.
3. The graduations of the tax, and the exemption of gifts aggregating $50,000, gifts to any one person that do not exceed $500, and certain gifts for religious, charitable, educational, scientific and like purposes, are consistent with the uniformity clause, and with the due process clause of the Fifth Amendment. *Id.*
4. The schemes of graduation and exemption in the statute, by which the tax levied upon donors of the same total amounts may be affected by the size of the gifts to individual donees, are not so arbitrary and unreasonable as to deprive the taxpayer of property without due process. P. 139.

ANSWERS to questions certified by the Circuit Court of Appeals upon review of a judgment for the Collector in a suit by Bromley, a resident of the United States, to recover a tax alleged to have been illegally levied upon gifts made by him.