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New Jersey Supreme Court.

ATLANTIC COAST ELECTRIC RAIL- WAY COMPANY, <i>Prosecutor,</i>	} On Certiorari.
<i>vs.</i>	
BOARD OF PUBLIC UTILITY COM- MISSIONERS AND BOROUGH OF BRADLEY BEACH, <i>Defendants.</i>	

WRIT OF CERTIORARI.

(Returnable March 14, 1916.)

10

(Filed March 14, 1916.)

NEW JERSEY, *ss.*—The State of New Jersey, to the
“Board of Public Utility Commissioners”
[L. S.] of the State of New Jersey, and Borough
of Bradley Beach, Greeting:

We being willing for certain reasons to be certified
of the order lately made by the “Board of Public Utility
Commissioners” of the State of New Jersey, dated 20
February 9th, 1916, in the matter of the complaint of
Bradley Beach against the Atlantic Coast Electric Rail-
way Company, requiring said company to give to all
persons boarding its northbound cars in Bradley Beach,

who, on payment of the fare of five cents on such cars, requests transfers to its cars operating easterly on Cookman Avenue, Asbury Park, said transfers, the same to be accepted by the company for a ride on Cookman Avenue easterly as far as Kingsley Street, Asbury Park, and to give all persons boarding its westbound cars on Cookman Avenue, who, on payment of the fare of five cents on such cars, requests transfers to its cars operating southerly on its Belmar line, said transfers, the same
 10 to be accepted by the company for a ride on its Belmar line to the southerly boundary of Bradley Beach,

Do command you that the said order, and all evidence taken in the matter of the complaint of Bradley Beach against the Atlantic Coast Electric Railway Company in which said order was made, together with all matters touching the same, you do distinctly and openly send, together with this our writ, to our Justices of our Supreme Court of Judicature, in Trenton, on the 14th day of March, next, that we may further cause to be
 20 done therein what of right and according to law we shall see fit to be done.

Witness, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this second day of March, nineteen hundred and sixteen.

WM. C. GEBHARDT,
 Clerk.

DURAND, IVINS & CARTON,
 Attorneys.

30

RETURN OF WRIT.

*To the Honorable the Justices of the Supreme Court of
 Judicature of New Jersey:*

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain order made by said Board the ninth day of February, nineteen hundred and sixteen,

together with the record and proceedings before said Board, and all things touching and concerning the same, as fully and entirely as before said Board they remain, as it is within commanded.

In witness whereof the seal of said Board is hereto affixed, and certified by the subscriber.

ALFRED N. BARBER,

[L. S.] *Secretary of the Board of Public Utility
Commissioners of New Jersey.*

10

BOARD OF PUBLIC UTILITY COMMISSIONERS.

*In the matter of the Request of the
Borough of Bradley Beach for
Transfers on the Electric Railway
Company Line of the A. C. E. Ry.
Co. from the Sea Girt-Asbury
Park Branch of the said Line to
the So-Called Belt Line of the A.
C. E. Ry. Co. Operating in the
City of Asbury Park.*

PETITION.

20

The petitioner, by Ward Kremer, its attorney, respectfully shows that:

1. It is a municipal corporation situate in the County of Monmouth and State of New Jersey.
2. It is located on the Atlantic Ocean in the said County of Monmouth, and its northernmost boundary is about one-half mile from the southernmost boundary of the City of Asbury Park. 30
3. That the Atlantic Coast Electric Railway Company operate a trolley line which is a branch of its system, and which branch runs from Sea Girt, which is its southern terminus, to the corner of Cookman Avenue and Main Street, in the City of Asbury Park, which is the northern terminus of this branch.

4. That at the said northern terminus this branch connects with another branch of the system of the Atlantic Coast Electric Railway Company which runs through the City of Asbury Park known as the Belt line.

5. That the said cars of the Atlantic Coast Electric Railway Company operating on this Sea Girt-Asbury Park branch run through the Borough of Bradley Beach, and from the northernmost point in Bradley Beach on the line of said Atlantic Coast Electric Railway Company to the terminus of this branch is about one-half mile, and from the southernmost point in Bradley Beach on the said line to the northern terminus is about one mile.

6. That a great many of the points of interest in the City of Asbury Park are within easy reach by the cars of the so-called Belt line of the Atlantic Coast Electric Railway Company, but are too far to walk from the northern terminus of the Sea Girt-Asbury Park branch.

7. That passengers ascending the cars of the said Atlantic Coast Electric Railway Company in Bradley Beach who desire to go to any point in the City of Asbury Park beyond the northern terminus of the Sea Girt-Asbury Park branch are required to pay an extra fare, if they desire to ride on the cars of the company's so-called Belt line.

8. That the points to be reached in the City of Asbury Park are not far enough from the northern terminus of the Sea Girt-Asbury Park branch to warrant the payment of an extra fare.

Wherefore, the petitioner respectfully prays that the said Atlantic Coast Electric Railway Company be required to furnish to passengers ascending its northbound cars in Bradley Beach transfers good on the cars operating on its so-called Belt line to any point in the City of Asbury Park.

And, petitioner further prays, that the Atlantic Coast Electric Railway Company be required to furnish to

any person ascending the cars of this so-called Belt line in the City of Asbury Park transfers good on the southbound cars of its Sea Girt-Asbury Park branch for use to any point in the Borough of Bradley Beach.

And your petitioner further prays for any other relief which the Public Commission may deem expedient.

(Signed) WARD KREMER,

Attorney for Petitioner.

10

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Request of the Borough of Bradley Beach for Transfers on the Electric Railway Company Line of the Atlantic Coast Electric Railway Company from the Sea Girt-Asbury Park Branch of the Said Line to the So-Called Belt Line of the Atlantic Coast Electric Railway Company Operating in the City of Asbury Park.

ANSWER.

20

The answer of the Atlantic Coast Electric Railway Company to the petition of the Borough of Bradley Beach.

Answering said petition, said company says:

30

It admits the Borough of Bradley Beach is a municipal corporation, situate on the Atlantic Ocean in Monmouth County, about a half mile south of Asbury Park.

It admits and states that it operates a trolley line, or street railway, and that it operates a trolley line from the junction of Cookman Avenue and Main Street, in Asbury Park, southerly to Stockton Lake Avenue, in the Borough of Manasquan, and extending from said

Cookman Avenue southerly in Main Street in Asbury Park a distance of $14/100$ miles; then through Neptune Township and along the westerly line of Ocean Grove, a distance of $42/100$ miles; and through the Borough of Bradley Beach, a distance of $95/100$ miles; and the Borough of Avon-by-the-Sea, a distance of $72/100$ miles; and through the Borough of Belmar, a distance of $1.8/10$ miles, and through Wall Township, Spring Lake, Sea Girt, to the north line of the State Encampment, a distance of $3.95/100$ miles, and through the State Encampment about a half-mile. The total mileage from Asbury Park to Sea Girt being $6.90/100$ miles.

10 That the section of said railway from Asbury Park to Belmar was built and is owned by the Asbury Park and Sea Girt Street Railway Company; the section from Belmar to Sea Girt was built and is owned by the Sea Coast Traction Company, and said two sections are operated by this company under leases from said Asbury Park and Sea Girt and Sea Coast Traction Companies;

20 that this company also operates the trolley line or street railway in Asbury Park, which was built and is owned by the Sea Shore Electric Railway Company under lease from said company, and also operates the street railway extending northerly from Asbury Park to Pleasure Bay and North Long Branch.

30 That the street railway lines, the one in Asbury Park and the other from Asbury Park to Belmar, have also been operated as separate and distinct lines, and never in conjunction or joint operation. And the Asbury Park and Belmar line when first constructed extended from the south line of Asbury Park a distance of $14/100$ of a mile southerly from Cookman Avenue to Belmar, and was later laid in Main Street, in Asbury Park, to Cookman Avenue, to reach the business section of Asbury Park and the belt line of the Sea Shore Electric Railway Company, which turned at Cookman Avenue.

That said two sections of the railway from Asbury Park to Manasquan, the one from Asbury Park to Belmar over the railway of the Asbury Park-Sea Girt Railway Company, the other from Belmar to Sea Girt, now Manasquan, over the railway of the Sea Coast Traction Company have always been operated as two separate divisions of the line and separate fare zones.

The one in which Bradley Beach is located having a distance of 3.20/100 miles, the other a distance of 3.95/100 miles.

10

The line in Asbury Park has always been operated as a separate and distinct railway from the Belmar line, and in no way connected with it; that the fare zones on said Belmar-Sea Girt line are fare divisions of said line by reason of ownership of companies, extent of zone and territory accommodated.

That it is impracticable and impossible for this company to operate its railway so that each passenger will have the right to ride a certain distance over the lines operated by it upon payment of a fare. It is necessary to have fixed divisions and fare zones.

20

That the section of railway and the fare zone in which Bradley Beach is located is nearly three and one-half miles long, extending through the populous Boroughs of Belmar, Avon, Bradley Beach, Neptune Township, and Ocean Grove, and the mere proximity of Bradley Beach to Asbury Park should not entitle passengers taking cars in that borough for Asbury Park to a ride in another fare zone for the one fare.

That it is necessary that this company in the operation of said different railways, as it operates them only as lessee under leases from said companies, to preserve and maintain the identity of the railways of said owner companies as separate divisions or railways, and the separate fares established by each company, and a regulation requiring this company to carry passengers for the same fare over another fare zone or line of another owner company should not be imposed where a similar

30

regulation could not be effective against the separate owner companies. The imposition of such a regulation if effective would result in requiring this company to carry on its Asbury Park line all passengers taking cars anywhere on the Asbury Park-Belmar-Sea Girt line for the one fare, and a regulation might with equal propriety be imposed requiring this company to carry over its Belmar-Sea Girt division all passengers taking its cars on the Asbury Park-Belmar division for the
10 one fare.

By the provisions of the ordinance of Neptune Township granting to said Asbury Park and Sea Girt Railway Company permission to build its said railway, which was adopted February 11th, 1893, when the territory now Bradley Beach was a part of said township, said company is required to pay to said township annually five per cent. of its gross receipts, which is a heavy charge on the operating expenses of said railway, and covers the territory within the Borough of Bradley
20 Beach. Under said ordinance the said company had first constructed a single track road, which later in all the municipalities except Bradley Beach said company did, by permission from said various municipalities, lay an addition or double track, but had been unable to secure from the Borough of Bradley Beach permission for said double track, and in 1911 the Borough of Bradley Beach applied to this company for transfers from the Sea Girt division to the Asbury Park division, and also for securing a better passenger service and
30 conditions through that borough, which second request was owing to the difficulty of the company in operating its cars because of the section of single track through Bradley Beach, and at that time said requests from the Borough of Bradley Beach were taken up and disposed of by said borough granting to the Asbury Park-Sea Girt Company permission to lay an additional or double track in said borough, and said company joined with

the said borough in the improvement of said Main Street in said borough by the laying of a permanent pavement, said company paying the cost of that portion thereof between its tracks and eighteen inches on each side, amounting to about \$25,000. And upon such arrangement being carried out such request for transfers was waived and abandoned. That the street in which the line of said Asbury Park-Sea Girt Railway Company extends from Asbury Park to the southerly line of Belmar is a very much traveled thoroughfare, and said company some years since joined with the Township of Neptune in the improvement of said street in said township by the laying of a permanent pavement, said company paying the cost of that portion thereof between its tracks and eighteen inches on each side thereof, at a cost of upwards of \$12,000, which road is now about worn out and requires to be replaced.

That the Boroughs of Avon and Belmar are now contemplating the improvement of said street by the laying of a permanent pavement in said boroughs, and have applied to said company to pay the cost of that portion of said road between its tracks and eighteen inches on each side as in the Borough of Bradley Beach.

That the said street railway is being maintained and operated at a very great expense, and the granting of transfers as contemplated by the application of the petitioner would very materially reduce the income of this company, create confusion in the operation of said various divisions, and increase the hazard of operation.

And this company says the said borough is not entitled to the regulation requested in its said petition, and prays that said petition may be dismissed.

ATLANTIC COAST ELECTRIC RAILWAY COMPANY,

By (Signed) S. F. HAZELRIGG,

President.

(Signed) DURAND, IVINS & CARTON,

Attys. for Company.

STATE BOARD OF PUBLIC UTILITY COMMISSIONERS OF
NEW JERSEY.

*In the Matter of the Request of the
Borough of Bradley Beach for
Transfers on the Electric Railway
Company's Line of the Atlantic
Coast Electric Railway Company
from the Sea Girt-Asbury Park
Branch to the So-Called Belt Line
of the Atlantic Coast Electric Rail-
way Company Operating in the
Said City of Asbury Park.*

10 } REPLY.

The petitioner by Ward Kremer, its attorney, replies to the answer of the respondent as follows:

1. It denies that paragraph on page 3 of the answer in which the respondent alleges that it is impracticable
20 and impossible for this company to operate its railway so that each passenger will have a right to ride a certain distance over the lines operated by it upon payment of the fare, so far as that statement refers to the practicability of the petitioner's request. The petitioner alleges that the Atlantic Coast Electric Railway Company has made an arrangement in another part of this service which is similar to that which the petitioner begs for, to wit: Passengers boarding the cars of the
30 of this Belt Line in Asbury Park and destined for Allenhurst, Deal Beach, Elberon and Long Branch are required at Elberon Avenue, Allenhurst, to pay a second fare, which entitles them to transportation to Elberon. However, if such passengers, when requested to pay this second fare, inform the conductor that they intend to get off the car before reaching Roseld Avenue, in Deal Beach, a municipality between Allenhurst and Elberon,

they are allowed to ride this extra distance without the payment of an extra fare. It is a similar regulation in regard to Bradley Beach which the petitioner requests.

2. The petitioner admits that paragraph on page 3 of the answer which alleges that Bradley Beach is located in a fare zone nearly three and one-half miles long, but it alleges that the greater portion of the business of residents of Bradley Beach is with Asbury Park and not with the other points south on the line of the Atlantic Coast Electric Railway Company.

10

3. The petitioner denies the allegation of the respondent on page 3 of this answer stating that the imposition of such a regulation if effective would result in requiring the company to carry on its Asbury Park line all passengers taking cars anywhere on the Asbury Park-Belmar and Sea Girt line for one fare. The petitioner alleges that the enactment of a regulation similar to that existing in Allenhurst branch would be perfectly practicable and would work no hardship with the Atlantic Coast Electric Railway Company.

20

4. The petitioner denies the allegations on page 4 of the answer herein that the request for transfers was ever formally waived and abandoned by the Borough of Bradley Beach in its previous dealings and contracts with the Atlantic Coast Electric Railway Company.

5. The petitioner denies the allegations on page 5 of the answer herein as far as it states that enactment of the regulation requested by this petitioner would create confusion in the operation of said various divisions and increase hazard of operation.

30

(Signed) WARD KREMER,

Atty. for Petitioner.

STATE OF NEW JERSEY.
BOARD OF PUBLIC UTILITY COMMISSIONERS.

*In the Matter of the Complaint of
Bradley Beach against the Atlantic
Coast Electric Railway Company.* } REPORT.

WARD KREMER, for the petitioners.

- 10 DURAND, IVINS & CARTON, and ROBERT H. MCCARTER, for the company.

20 Bradley Beach is a borough located about one-half mile from the southerly boundary line of Asbury Park, and its petition sets forth that the Atlantic Coast Electric Railway Company operates a trolley line through its territory extending from Sea Girt to the corner of Cookman Avenue and Main Street, Asbury Park, which is the northern terminus of this branch. That at the said northern terminus this branch of the trolley system connects with another branch of the same system operated by the Atlantic Coast Electric Railway Company which runs through (according to the map offered in evidence) Cookman Avenue, Kingsley Street and Eighth Avenue, then via the Long Branch division to Pleasure Bay.

30 The petitioners complain that it is a short ride, less than one mile from the southerly, and about a half mile from the northern, boundary line of Bradley Beach to the intersection of Cookman Avenue and Main Street; that most of the patrons of the road desire to go to the stores and business places, or to the beach in Asbury Park, and for this additional short ride they are required to pay an extra fare of five cents. This they claim is an unjust and unreasonable regulation.

The relief asked is that the railway company be required to furnish passengers boarding the northbound

cars in Bradley Beach with transfers good on the cars operated on its system in Asbury Park, and a like transfer to be furnished persons boarding its cars in Asbury Park desiring to ride to Bradley Beach.

The answer of the company sets forth (1) that its system is made up of several separate divisions, owned by different companies, and that "the fare zones on the Belmar and Sea Girt line are fare divisions of said line by reason of ownership of the companies, extent of zone and territory accommodated"; (2) that because it operates some parts of its system as lessee, to preserve and maintain the identity of separate divisions, the separate fares established by each company are necessary, and that a regulation requiring it to carry passengers for the same fare over another fare zone, or line of another owner company, should not be imposed where a similar regulation could not be effective against the separate owner company; (3) that Bradley Beach had, by agreement, waived and abandoned any right for a transfer in Asbury Park; (4) that the granting of transfers would materially reduce its income, confuse the operation of its various divisions, and increase the hazard of operation. 10 20

It appears that the Atlantic Coast Electric Railway Company owns, or controls by lease, and operates a trolley line from Pleasure Bay, Long Branch, to Manasquan. In this distance there are five fare zones, with established and defined overlaps for passengers going in either direction, with the single exception of those who enter cars in the Bradley Beach zone going north. Their ride ends at Cookman Avenue, Asbury Park. 30

It is admitted by the company that these overlaps are permitted, and have been established regulations of the company for many years. In proceeding from Long Branch the first overlap is from Lincoln Avenue, Long Branch, to Pearl Street, Deal; the next from Roseld Avenue, Deal (also Allenhurst), to the Deal Lake bridge. Proceeding south from Asbury Park there is

an overlap in Belmar from Fifth Street to Sixteenth Street. Similar overlaps are established on the routes north over the same line. In these zones a passenger is permitted to ride for a five-cent fare over the tracks owned by the company and those leased by the company entirely independent of any ownership company fare as suggested in the answer of the respondent.

10 The majority of the passengers visiting Asbury Park from Belmar by trolley have as their object the reaching of a business place or some of the amusements on the beach front in that well-known summer resort. Cookman Avenue is primarily the business thoroughfare. It runs easterly from Main Street to Kingsley Street practically at right angles with the trolley line from Belmar. Its whole length is built up with stores, shops and business places. From this important street nearly all large business places, not on it, can be readily reached. At the east end of it, which is within a block of the busiest and most attractive section of the ocean boardwalk, there are the Casino, the ocean pier, the
20 Coleman House, the North End Hotel and Pavilion, and numerous summer attractions. They have no such amusements at Bradley Beach.

There are two fare zones between Manasquan and Cookman Avenue, Asbury Park; the lower one, to Sixteenth Avenue, Belmar, is 3.95 miles, and the upper one, from the last-mentioned point to Cookman Avenue, is 3.21 miles.

30 It has been the practice of the company to permit a passenger boarding a car at Roseld Avenue, Deal, to continue his journey south through Deal, Allenhurst, and then, if he so desires, around the whole circuit in Asbury Park. All persons living in the said portion of Deal and all of Allenhurst can, for a five-cent fare, reach any part of Asbury Park covered by the Belt line. A similar privilege is demanded by Bradley Beach. The business of the company from the Deal and Allenhurst section is relatively a small proportion of its

earnings, while the receipts of the Belmar division (which includes Bradley Beach) for the year 1914 amounted to \$119,217.25.

Exhibit R-2 shows there were 763,892 passengers to and from Asbury Park to Sixteenth Avenue, Belmar, between July 16th and December 1st, 1915, and according to Exhibit R-1, during the same period, there were 154,248 passengers got off and on at Bradley Beach, showing a little over 20 per cent. of the business was furnished by the people of Bradley Beach. It is shown that the Belmar division furnishes 35 per cent. of the entire business of the railway company, and brings a return of 4.25 per cent. upon the actual investment of the company in that division, while the return for eleven months from all branches of the system shows a net return of 3.36 per cent. Surely the territory furnishing such a substantial portion of the companies' revenues ought not be subjected to prejudice or disadvantage by unfair discrimination. The company, as a matter of sound business, allows passengers from Deal and Allenhurst for a single fare to reach the same stores, places of business and amusements which the people of Bradley Beach desire to patronize, and it ought to grant equal privileges to the passengers from Bradley Beach.

There can be no substantial or practical objection to the transfer demanded from an operating point of view. The company could easily make a regulation so far as any matters of operation or internal organization are concerned.

As we have previously stated, Cookman Avenue is the thoroughfare from which most of the large stores and other business interests can be readily reached and its intersection with Kingsley Street forms the best possible outlet for persons desiring to visit the beach. It seems reasonable and proper that the patrons of the trolley company coming from Bradley Beach to Asbury Park should at least be allowed a transfer privilege

good for a ride on the company's cars operating on Cookman Avenue as far east as Kingsley Street, and we so find and determine.

This does not extend the northerly line of the fare zone beyond Cookman Avenue, but it does afford a further ride of six or seven blocks on that avenue for those desiring it. It will also be noticed that this additional ride on Cookman Avenue nearly equalizes the fare zones between Manasquan and Belmar, and between Belmar and Asbury Park.

There is nothing, in our opinion, in the Bradley Beach ordinance which can be construed to operate as a bar against the transfer asked for; nor could the reference to the rate of fare therein deprive this Board of any of the powers delegated to it by the statute.

The competition between the jitneys and the trolley was referred to by counsel. We call attention to the fact that the jitney service is confined from points in Bradley Beach and Belmar to the corner of Cookman Avenue and Main Street. If the trolley company, by the transfer, delivers its patrons within a few feet of their desired destination for a nickel, the competition from which it now suffers will soon be of less importance.

We conclude, therefore, that the practice of charging passengers from Bradley Beach an extra five-cent fare to points along the line of Cookman Avenue in Asbury Park is unjust and unreasonable. We further conclude that the practice of charging passengers from Bradley Beach an extra five-cent fare to points along the line of Cookman Avenue in Asbury Park, while permitting passengers from Roseld Avenue, Deal, and Allenhurst, to go over its lines to any part of Asbury Park, is unduly and unjustly discriminatory.

An order will, therefore, be entered directing the Atlantic Coast Electric Railway Company to give to persons boarding its northbound cars in Bradley Beach

transfers to its car operating easterly on Cookman Avenue, permitting them to ride on Cookman Avenue easterly as far as Kingsley Street, Asbury Park, for five cents, and to give to passengers on the westbound cars on Cookman Avenue transfers to southbound cars on the Belmar line, which last-mentioned transfers shall be good for a ride on the Belmar line to the southerly boundary of Bradley Beach.

Dated February 9th, 1916.

BOARD OF PUBLIC UTILITY COMMISSIONERS, 10

By (Signed) RALPH W. E. DONGES,

[SEAL.]

President.

Attest:

(Signed) ALFRED N. BARBER,

Secretary.

I hereby certify the foregoing to be a true copy of report made and filed by the Board of Public Utility Commissioners, at a meeting held on Wednesday, February 9th, 1916.

Secretary.

10

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

*In the Matter of the Complaint of
Bradley Beach Against the At-
lantic Coast Electric Railway
Company.* } ORDER.

20

This case being at issue, upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon,

which said report by reference thereto is hereby made part hereof, the Board

FINDS AND DETERMINES that the practice of the Atlantic Coast Electric Railway Company in charging an extra five-cent fare to points along the line of Cookman Avenue in Asbury Park, to passengers from Bradley Beach, is unjust and unreasonable, and further, that the practice of charging passengers from Bradley Beach an extra five cent fare to points along the line
10 of Cookman Avenue in Asbury Park, while permitting passengers from Roseld Avenue, Deal, and Allenhurst, to travel over its lines to any part of Asbury Park upon the payment of single fares of five cents, is unduly and unjustly discriminatory; and

HEREBY ORDERS the Atlantic Coast Electric Railway Company to give to all persons boarding its northbound cars in Bradley Beach, who on payment of fare of five cents on such cars request transfers to its cars operating easterly on Cookman Avenue, Asbury Park, said trans-
20 fers, the same to be accepted by the company for a ride on Cookman Avenue easterly as far as Kingsley Street, Asbury Park; and

HEREBY FURTHER ORDERS the Atlantic Coast Electric Railway Company to give to all persons boarding its westbound cars on Cookman Avenue, who on payment of fare of five cents on such cars request transfers to its cars operating southerly on its Belmar Line, said transfers, the same to be accepted by the company for a ride on its Belmar Line to the southerly boundary of
30 Bradley Beach.

This order shall become effective March 3d, 1916.

Dated February 9th, 1916.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
 [L. S.] By (Signed) RALPH W. E. DONGES,

President.

Attest:

(Signed) ALFRED N. BARBER,
Secretary.

NEW JERSEY SUPREME COURT.

ATLANTIC COAST ELECTRIC RAIL- WAY COMPANY,	} In Certiorari.	10
<i>Prosecutor,</i>		
<i>vs.</i>		
BOARD OF PUBLIC UTILITY COM- MISSIONERS AND BOROUGH OF BRADLEY BEACH,		
<i>Defendants.</i>		

REASONS.

(Filed March 15th, 1916.)

The Atlantic Coast Electric Railway Company, body corporate, by Durand, Ivins & Carton, its attorneys, comes and prays that the order of the Board of Public Utility Commissioners, dated February 9th, 1916, may be set aside for the following reasons: 20

1. Because the action of the company in refusing transfers to Bradley Beach passengers on its Belmar line over its Belt line in Asbury Park is not discrimination.

2. Because the furnishing of transfers to passengers from Bradley Beach, in compliance with the order of the Board, would reduce the receipts of the company, which the business done by the company at the present time does not warrant.

3. Because the ordinances under which the company 30 is operating through Bradley Beach, on the Belmar and Sea Girt line, provide for a five-cent fare to Cookman Avenue, Asbury Park, and exacts from the company annual payments in consideration of the privileges granted, and are contracts between the company and the municipalities, including the Borough of Bradley Beach, and the order of the Board of Utility Commissioners is in violation of these contracts, and illegal.

4. Because there is no public necessity for the transfers ordered.

5. Because the transfers ordered will reduce the revenue of the company to an extent that is unfair to the company.

6. Because the cars as now operated by the company, with the terminal at Cookman Avenue, Asbury Park, fully and properly accommodate the Bradley Beach public.

10 7. Because no necessity was shown or appears for the order complained of, and the Board of Public Utility Commissioners in making said order exceeded its power and authority.

8. Because the said order of the Board of Public Utility Commissioners is in divers other respects illegal, oppressive and unjust to the said company.

DURAND, IVINS & CARTON,
*Attorneys of Atlantic Coast Electric
Railway Company, Prosecutor.*

20

BOARD OF PUBLIC UTILITY COMMISSIONERS.
NEWARK, N. J., Wednesday, Jan. 5, 1916.

BRADLEY BEACH
vs.
ATLANTIC COAST ELECTRIC }
RAILWAY Co. }

30 Before the following Commissioners: R. W. E. DONGES, ESQ.; J. W. SLOCUM, ESQ.; F. H. SOMMER, ESQ., General Counsel.

For petitioner appears WARD KREMER, ESQ.

For respondent appear R. McCARTER, ESQ., and F. DURAND, ESQ.

Mr. Kremer—This matter is brought on by the Borough of Bradley Beach to require the Atlantic Coast Electric Railway Company, a corporation which runs

a trolley service in Monmouth County, to furnish transfers from one of its lines to another. Perhaps it would be well for me in opening to explain something of the situation—

Commissioner Donges—Are you going to put witnesses on to testify to it?

Mr. Kremer—Yes.

Commissioner Donges—You might put on your witnesses. You may make your opening as briefly as possible. 10

Mr. Kremer—The trolley company runs several systems; one begins at Manasquan, N. J., and runs to Cookman Avenue and Main Street, Asbury Park, a distance of seven miles. Most of that route is about half a mile from the ocean, running due north and south. At that point of junction at Cookman Avenue and Main Street, Asbury Park, a line runs east a half a mile and then north half a mile, describing a square, westward half a mile and then back to the junction of Main Street and Cookman Avenue. 20

Bradley Beach is situated along the shore of the line from Manasquan to Asbury Park, half a mile south of Asbury Park. Bradley Beach has a great deal of intercourse with Asbury Park. Bradley Beach has a population of 2,000, and Asbury Park 12,000 or 13,000, and that is the center for business and amusement, and so forth. The ride to this junction, Cookman Avenue and Main Street, is possibly three minutes. The points of interest are a little journey from that, four or five blocks, another ride along the Belt line. The people of Bradley Beach have to pay an extra fare; they ride the first three minutes to Asbury Park for five cents— 30

Commissioner Donges—What is the fare zone within which the people of Bradley Beach board the cars; what is the length?

Mr. Kremer—The fare zone is about 3.20 miles.

Commissioner Donges—Where does it begin?

Mr. Kremer—It begins at Cookman Avenue and Main Street and runs southward to Sixteenth Street, in Belmar.

Commissioner Donges—Midway between those points is Bradley Beach?

Mr. Kremer—Hardly that. Bradley Beach is a half mile from the northerly termination of that zone. Most of the patronage which Bradley Beach gives that line is going to Asbury Park. Possibly they go to Asbury Park ten times where they go southward along the line once. The only patronage they give is going to Asbury Park.

Mr. McCarter—I have a map here. (Produces map.)

Commissioner Donges—The fare zone begins at—

Mr. Durand—That don't show the entire situation; it shows Bradley Beach and Asbury Park. Here is Asbury Park; it shows all the municipalities clear down to the south end of the camp grounds, which is the terminal of the line. This line extends from Cookman, in Asbury Park, down to Manasquan, here, extends from this point through to the camp at that point. The fare zone in which Bradley Beach is located—Bradley Beach is here—(indicating.)

Commissioner Donges—It begins at Cookman Avenue?

Mr. Durand—It begins at Cookman Avenue, Asbury Park, and extends through Asbury Park about 1,600 feet, then it strikes Neptune township, then extends through Ocean Grove, Bradley Beach, Avon, Belmar, down to the east end of Belmar, which is one-fare district, about three and a half miles. Then from Sixteenth Avenue, in Belmar, down to the lower end, about the same distance.

Commissioner Donges—Is the operation northerly of Cookman Avenue by the same company?

Mr. Durand—That is all operated by the Atlantic Coast Electric Railway, but operated by a entirely different company and is a separate distinct line.

Mr. Kremer—The distance to Neptune Township is about 14/100 of a mile, according to your answer; 14/100 of a mile in Asbury Park, and 43/100 of a mile to Neptune, so the northerly end of Bradley Beach is 56/100 of a mile from the intersection of Cookman Avenue and Main Street.

Commissioner Donges—There are no lapovers in any of the fare zones?

Mr. Kremer—Yes.

Mr. Durand—Coming from Manasquan, when you reach Sixteenth Avenue a passenger who announces his intention of getting off at Belmar, that is the only lapover. 10

Mr. Kremer—In Allenhurst?

Mr. Durand—No, speaking of this section. There is another lapover. This road extends from Manasquan to Pleasure Bay, north of Long Branch. The cars that come from Pleasure Bay coming through Deal, Elberon, Long Beach and other places, and coming into Asbury Park, they make this Belt line and go back. 20
Passengers coming from Allenhurst are permitted to lapover into Asbry Park—

Commissioner Slocum—The same is true of people coming from Deal?

Mr. Durand—Yes, from Roselle Avenue. Passengers getting on these cars in Asbury Park are permitted to lapover as far as Roselle Avenue, in Deal, going north. But those cars which come from Pleasure Bay come down and make the Belt in Asbury Park and go back. These cars that operate south through Asbury Park to Manasquan do not make the Belt or operate beyond Cookman Avenue in Asbury Park. 30

Mr. Kremer—It is a regulation similar to that lapover regulation in Belmar and in Allenhurst we are asking for here. I don't know whether Mr. McCarter intends to admit the fact, it will save time if he does, if Mr. McCarter will admit the fact that the Atlantic Coast operates the entire system from Long Branch to Manasquan.

Mr. McCarter—There is no doubt about that, these are all separate roads, but operated by the Atlantic Coast.

Commissioner Donges—Operated by the Atlantic Coast.

Mr. McCarter—I admit that

Commissioner Donges—The operating company is the Atlantic Coast Electric Railway Company?

Mr. McCarter—Yes.

10

Scott F. Hazelrigg, sworn on behalf of petitioner.

Direct examination, by Mr. Kremer.

Q. Will you state your name, age and occupation.

A. Scott F. Hazelrigg, 53 years old, and President of the Atlantic Coast Electric Railway Company.

Q. That is your official position?

A. Yes, sir.

Q. How far does the territory covered by the railway company extend?

20 *A.* You mean in miles? From Pleasure Bay to Manasquan.

Q. And you control all the lines through one company that operates along there?

A. Yes.

Q. You have the same group of officers for the same cities?

A. Yes.

Q. The same conductors doing the work?

A. The same conductors.

30 *Q.* You shift conductors from one line to the other?

A. Yes.

Q. Is it true that the branch going from Asbury Park to Manasquan is composed of two separate companies, both of which are leased to you?

A. Yes.

Q. Two separate companies?

A. Yes.

Q. Where is the dividing line between those two companies?

A. Asbury Park and Sea Girt, the physical end of that line is at the Ocean Grove line, 1,619 feet south of Main Street and Cookman Avenue; it runs from there to Shark River Bridge and from there it is the Atlantic Coast to 16th Avenue, Belmar; from 16th Avenue, Belmar, to Manasquan it is the Sea Coast Traction Company.

Q. Do I understand there are two or three?

A. There is really three. One section of it is the Atlantic Coast, at Belmar—

10

Q. Then there are three different original companies and you have taken leases on the three?

A. Yes. Of course, the section in Belmar isn't leased.

Q. That is the holding company?

A. Yes.

Q. You charge two fares from Asbury Park to Manasquan?

A. Yes.

Q. Where is the second fare collected on the south-bound trip?

20

A. 16th Avenue.

Q. The northbound trip?

A. If a passenger wants to get off in Belmar, the fare zone is at 16th Avenue coming north, but the passenger is permitted to ride to Fifth.

Q. If he tells the conductor he is only going to Fifth, then he is entitled to ride to that point?

A. Yes.

Q. (By Commissioner Treacy.) That is practically the northern limit?

30

A. Yes. But their limit is out in the river, at that islet.

Q. So there is an overlap for the length of Belmar, practically?

A. Yes, Belmar.

Q. On the northerly trip?

Q. (By Mr. Kremer.) Then your division of the fare zones is predicated entirely on the distance traversed

and not upon the original ownership by the separate companies?

A. No.

Q. Isn't that true?

A. Well, it is by division.

Q. You charge two fares because the distance is greater?

Q. We have two fares because of our franchise concession.

10 *Q.* (By Commissioner Donges.) What is the distance from Central Avenue, or from Manasquan to the lower limits of Belmar, 16th Street?

A. I think between three and four miles.

Mr. Durand—3.95 miles.

Q. What is the distance of your overlap?

A. Our franchise in Belmar is 3,800 feet.

Q. That is approximately—

A. Approximately what it is, yes.

Q. What is the distance from 16th Street, Belmar, 20 to Cookman Avenue and Main Street, Asbury Park?

Mr. Durand—3.20.

Mr. Kremer—3.20 miles?

Witness—From 16th Avenue.

Mr. Durand—Three and a fifth miles, almost the same distance in the two fare zones.

Witness—I know it is 3,800 feet in Belmar. I couldn't give you the other distance, except the Ocean Grove line is 1,619 feet.

Q. (By Mr. Kremer.) The overlap in Belmar is 11 30 blocks from 16th to Fifth?

Q. Yes, from 16th to Fifth the actual distance is 1,301 feet.

Q. If there was one line from Cookman Avenue and Main Street, Asbury Park, to Manasquan, you would charge two fares anyway? The fact is, what they do in the fare zones are predicated on the distance traveled or the leases of the different companies.

Commissioner Slocum—He says it is predicated on the ordinance contract.

Witness—Entirely.

Q. (By Commissioner Donges.) You say the fare zones are fixed?

A. By the ordinance.

Q. The ordinances of these various municipalities?

A. Except under the ordinance in Belmar we have the right to charge five cents, which we don't do, never have; the ordinance permits it.

10

Mr. McCarter—As I understand, if you stuck to the franchises you would charge 15 cents instead of ten.

Witness—Yes. That is entirely what the fare is predicated on, not by the distance at all, never has been.

Mr. Kremer—If it please the Board, it seems to me this is not strictly in accord with the pleadings in this matter. I gather from the pleadings there are two fares charged from Asbury Park to Manasquan because there were two sections of this railroad, almost operated separately and distinctly. Now Mr. Hazelrigg testifies there are virtually three lines. According to that regulation I should think there would be three fares charged.

20

Commissioner Slocum—No. The part in Belmar is owned by the parent company and then there are two independent companies and they might have the right to charge three fares, but as a matter of practice they charge two fares.

30

Q. (By Mr. Kremer.) The one fare you charge entitles the passenger to ride over a part of the line owned by the parent company?

Commissioner Donges—The operating company?

A. Yes.

Q. And also for the same fare over a part of the line owned by the original company?

A. Asbury Park and Sea Girt. That is the one between Asbury Park and Belmar?

Q. What is the name of the original company?

A. The Atlantic Coast Railway.

Q. Part of the line between Asbury Park and 16th Street, Belmar, is owned by the Atlantic Coast Railway Company and part by the Sea Coast Traction Company?

A. No; the Sea Coast Traction Company is south of
10 16th Avenue.

Q. Who owns the line along the 1400 feet in Asbury Park before you go out of Asbury Park?

A. 1619 feet; that is the Atlantic Coast.

Q. And that really becomes the underlying company?

A. No; the Seashore Electric being leased to the Atlantic Coast.

Q. Then from the end of the 1619 feet to 16th Avenue, Belmar, who are the owners?

A. To the bridge is the Asbury Park and Sea Girt,
20 from the bridge to 16th Avenue is the Atlantic Coast.

Q. Owned originally by different companies?

A. No, by the operating company.

Q. All held by the operating company?

A. This was owned and built by the operating company.

Q. Part owned by the operating company and part leased to the operating company, is that true?

A. Yes.

Q. And one fare entitles you to ride over the entire
30 distance?

A. Yes, at present.

Q. This line from Main Street and Cookman Avenue, Asbury Park, beyond to Long Branch; how far is the passenger entitled to ride for one fare?

A. Getting on at that corner and ride to Roselle, Deal.

Q. Where do they collect the second fare?

A. The second fare would be collected after Roselle Avenue, if it hadn't previously been collected.

Q. As a matter of fact, don't you collect at Pearl Avenue, Allenhurst?

A. Any passenger intending going beyond.

Q. At Pearl Avenue, Allenhurst, you collect the second fare?

A. That begins as soon as the register is set back at the car barns.

Q. A passenger only riding to Roselle Avenue, he rides the overlap distance for nothing.

A. Yes, if he has paid before. 10

Q. The line from Cookman Avenue and Main Street, Asbury Park, to Roselle, Deal, is owned by the holding company?

A. The Asbury Park line is leased from Deal Bridge, north, is the Atlantic Coast.

Q. One fare entitles the passenger to ride over part of the line leased and part of the line held by the parent company?

A. It does.

Q. In the summer time, is it true you have a regulation at the Deal Bridge, permitting a passenger on the Long Branch cars, northbound, to get off at the bridge and take the Belt line southbound without the payment of an extra fare? 20

A. Yes; if they have paid on the car before.

Q. And they are allowed to get off—

A. Get off northbound, and take a southbound, those going into Asbury Park for the purpose of getting around on Main street. It has a track that only runs in one direction. 30

Q. (By Mr. Sommer.) Is that the practice prevailing part of the year merely?

A. No, all time.

Q. (By Mr. Kremer.) That prevails now?

A. Yes; all times.

Q. Then it is true that both on the rides from Asbury Park to Manasquan and in the ride from Main Street and Cookman Avenue to Long Branch, a passenger is

permitted to ride over the track owned by the parent company and also tracks leased by the parent company from the original holding company, for one fare.

A. Yes. That is an overlap.

Mr. Kremer—That is all.

Cross-examination, by Mr. McCarter.

Q. Now, Mr. Hazelrigg, possibly some of the members of the Board don't know as much about this as
10 you do. I understand that the practice of the operating company is what? Name the operating company.

A. The Atlantic Coast Electric Railway.

Q. And it, by lease of the several companies, practically operates the whole line? No question about that.

A. Absolutely none.

Q. However, these lines were built separately and frequently disjointedly, without any connections at all and are all united in the way of these leases?

A. Yes.

20 *Q.* Which was the earliest company, in point of time?

A. The Seashore Electric, in Asbury Park.

Q. That is what you call the Belt line?

A. The Belt line around Asbury Park.

Q. That appears on the map. Now the next in historical development?

A. The Atlantic Coast from Deal Lake—the Asbury Park and Belmar was then built from Ocean Grove line to the bridge. I believe in 1893 that was a horse car. That was the next one built.

30 *Q.* That left an intermediate space between the southern terminus of the Belt line at Cookman Avenue?

A. Yes.

Q. How many feet?

A. 1619.

Q. That was connected, after they got control of both of these companies, by the operating company, I suppose?

A. Yes.

Q. You got then, from Belmar to the northern end of Asbury Park, a continuous line. When was the line north of Asbury Park up to Long Branch and Pleasure Bay built?

A. Built in 1894 and 1895.

Q. And that is one company by itself?

A. That is two companies. One going to West End and the other from West End to Pleasure Bay, and the other to Long Branch.

Q. Then the line south from Belmar to Manasquan 10
is still another distinct line?

A. Yes.

Q. There are two companies north of Asbury Park; first, Asbury Park to West End?

A. Atlantic Coast Electric Railway.

Q. How far?

A. To the corner of Second Avenue and Pond, I think. That is called the original West End.

Q. And then the corporate name of the company from West End, north to Pleasure Bay? 20

A. West End and Long Branch.

Q. That goes only to Pleasure Bay?

A. Yes. That was originally a horse-car line.

Q. About what is the distance from Asbury Park north to Pleasure Bay?

A. About six and three-quarter miles.

Q. Now, we will take a passenger who gets on the car at Pleasure Bay and goes south. He pays one fare, five cents, and that entitles him to go how far south from Pleasure Bay? 30

A. The south end of the Long Branch, or lapover at Pearl Street.

Q. Practically Elberon?

A. Elberon, yes.

Q. Then if he still pursues his journey, at that point he pays a second fare of five cents?

A. Yes.

Q. Now, on the Long Branch car going south, that entitles him to go how far?

A. At the end of the bridge at Asbury Park. To the north line of Asbury Park and no further.

Q. Deal Lake bridge?

A. Yes.

Q. If he wants to go in Asbury Park, what happens?

A. He pays another fare.

Q. If he wants to go south to Belmar, what happens?

A. He pays another fare. Changes cars and pays another far.

Q. (By Mr. Kremer.) That is the fourth fare?

A. Fourth fare.

Q. (By Mr. McCarter.) Changes cars at Cookman Avenue?

A. Changes cars at Cookman Avenue and pays another fare to Belmar.

Q. Now, haven't you stated that a passenger coming from Long Branch south to Asbury Park changes without an extra fare in Asbury Park—

A. There are none.

Q. I understood you to say there was.

A. I misunderstood what the question was, if I gave that impression.

Mr. Kremer—Aren't there any conditions you can get off a car or change cars at Deal bridge?

Witness—Going north. You can't south. Mr. McCarter was talking about coming south.

Q. Still keeping south, the Long Branch car goes down the street line to Cookman Avenue?

A. Yes, sir.

Q. Then what happens to it?

A. It goes down Main Street to Cookman Avenue and then goes down Cookman to Kinsley, up Kinsley to Eighth and back again and connects at the bridge and goes north.

Q. So the Long Branch car goes to Cookman Avenue, goes round the Belt and goes back?

A. Yes; goes round the town.

Q. None of the cars, then, go through beyond Cookman Avenue?

A. No.

Q. If anybody wants to go south of Asbury Park, south of Cookman Avenue, he has to take another car?

A. Yes, sir.

Q. In doing that he starts again in another fare zone, which, as we have seen, is down at Belmar?

A. Sixteenth Avenue. 10

Q. Now we will take a passenger who gets on at Asbury Park, one of these Long Branch cars that goes around the Belt to return to Pleasure Bay, what was it he gets in Asbury Park?

A. Instead of taking a regular Belt car he takes a Long Branch car and rides to the bridge in Asbury Park and takes a car that meets this car coming from Long Branch and continues his circuit in Asbury Park.

Q. In other words, that is the Belt in Asbury Park, for five cents.

A. Yes.

Q. And if a passenger by taking a Long Branch car doesn't complete the Belt, he completes it with the Belt line? 10

A. Yes.

Q. That is the only exchange in Asbury Park?

A. That is right. That is the only one we have anywhere.

Q. Do you have any transfers?

A. No, just by sign from one car to the other. The cars meet there.

Mr. McCarter—I don't know whether it is desired; we can show by this witness what the receipts are; what we make on these lines; whether it is proper now, or shall I withdraw him? 20

Commissioner Donges—You may put that in your case.

Re-direct examination, by Mr. Kremer.

Q. You have an inspector at Deal Beach in the summertime, to make the transfer?

A. He makes the Belt cars come in between the Long Branch in the proper position, and looks after that.

Q. Would he see who gets off one car and gets on another?

A. Yes.

10 *Q.* When a man takes a car at Main Street and Cookman Avenue to Long Branch, going north, you say his route runs through West End?

A. Yes.

Q. You charge him two fares?

A. Three fares.

Q. To West End?

A. Three fares to West End. Three fares after you cross the Elberon line.

Q. All over the same line?

20 *A.* Over the same line.

Q. On account of the distance?

A. On account of the distance, regulated entirely by the ordinances, the same as it is anywhere else.

Q. When you come down leaving Long Branch, how far did you say the passengers are allowed to ride?

A. To the end of the fare zone, Lincoln Avenue, Elberon.

Q. Isn't it true you collect that second fare before you get there?

30 *A.* No, the line is the end of the fare.

Q. That is where you start the fare zone?

A. Yes.

Q. A passenger is allowed to ride a little further?

A. To Pearl Street.

Q. There is a lapover there.

A. Yes, it has been going on twenty years, there oughtn't to be any discussion about it.

Q. Then that lapover entitles him to ride on part of the line originally owned by a different company?

A. That is part of the same line he is coming over.

Q. What is the name of the line—

A. West End.

Q. West End and Long Branch runs from Long Branch to West End?

A. From Long Branch to West End.

Q. From there what is it?

A. Atlantic Coast.

Q. If he gets on at Long Branch, riding on a Long Branch car, West End and Long Branch, you allow him to ride on part of the line owned by the Atlantic Coast without the payment of an extra fare? 10

A. Yes, to Elberon.

Q. (By Commissioner Donges.) What is that distance?

A. Something like four miles.

Witness—What is the distance—

Commissioner Donges—Never mind.

Witness—I think about four miles. It is the longest one we have. It is controlled entirely 20 by ordinance.

Mr. Kremer—That is all.

William E. McDonald, sworn on behalf of petitioner.

Direct examination, by Mr. Kremer.

Q. Will you state your occupation?

A. I am a real estate broker, also Mayor of Bradley Beach.

Q. You live in Bradley Beach, of course?

A. Yes, sir. 30

Q. How long have you lived there?

A. Sixteen years.

Q. What do you say, Mr. McDonald, as to the intercourse of the people in Bradley Beach with Asbury Park as compared with their intercourse with the people to the points south, Avon, Belmar, Spring Lake and Sea Girt?

A. I would say, without any census, only my observation, my office is on the main street, that the people from Bradley Beach would be at a ratio of ten to two; ten going to Asbury Park to two going the other direction and points beyond. We have a laboring class of people, in addition to our summer population--

Q. You say ten people going to Asbury Park to two going the other way?

A. I would say so.

10 *Q.* You have the ride a good many times to Asbury Park?

A. Yes, and beyond those points.

Q. How long does it take the trolley line to get to Main and Cookman Avenue, Asbury Park?

A. If the car runs with the ordinary stops, three minutes.

Q. Are the general points of interest in Asbury Park usually right at the corner of Cookman Avenue and Main Street, or all beyond?

20 *A.* No, beyond. The main attractions are the stores, of which the larger stores are by no means at the junction of Cookman Avenue and Main Street. The amusement places of the beach and so forth, one of the permanent moving picture places, open the year round, is within a block of the ocean, where a great many from our section travel to. A great many of our working men go to Deal and Allenhurst to work and use the trolley cars.

Q. How far along the Belt line in Asbury Park are the points of interest in Asbury Park?

A. What is that?

Q. How far along the Belt line trolley car in Asbury Park are the average points of interest in the Park?

A. I should say possibly half a mile beyond Cookman Avenue and Main Street.

Q. How far?

A. Rather a mile to a mile and a half. In the winter time there are less places open and less places of attraction than there are in the summer.

Q. When you go to Asbury Park as a rule, you have testified, that as a rule you go beyond Cookman Avenue and Main Street in Asbury Park.

A. Yes, and there would be more people ride on the trolley cars if they could do it. You can walk to Asbury Park in about seven minutes and a lot of people walk instead of riding, where the trolley company would benefit by it if they transferred people, by word of mouth, I don't care how they do it, as they do at other divisions. Mr. Hazelrigg said they have done it for twenty years at Elberon. We have a Public Utility Commission where we didn't have them twenty years ago—

Mr. McCarter—Are you testifying now or making a political speech.

Witness—No; I make my political speeches in Monmouth County, as you know.

Mr. Kremer—That is all.

Cross-examination, by Mr. McCarter.

20

Q. What is the northerly terminus where you think there should be a transfer? Cookman Avenue?

A. I think they should wish to build Asbury Park—

Q. Cookman Avenue is the point?

A. That is the junction where the transfer would be made.

Q. Mayor, Cookman Avenue and Main Street, that is the center, is it not, the business center; it is a kind of Broad and Market Streets of Asbury Park?

Mr. Kremer—He has testified it is not.

30

A. I would say no. It is a very busy center.

Q. The big stores are there on the corner?

A. Well, there is a couple of stores—three stores have been standing there twenty-five years.

Q. One of which is kept by whom?

A. One is J. H. Cook, the dry goods man; one is the Steinbach, they moved to the center of the town, where there is more business—

Q. The station is right there?

A. Yes.

Q. What do you mean by the principal attractions of Asbury Park? What have you in mind when you speak of that?

A. Stores and places of amusement on the Beach front, the amusements on the Beach front, of which we haven't any in Bradley Beach.

Q. You spoke a while ago of some men, working
10 people who went on to Deal.

A. Yes.

Q. When you spoke of them you hadn't in mind either the stores or the places of amusement in Asbury Park?

A. No.

Q. And your object, I suppose, is somewhat to look after the so-called laboring man, in your official position?

A. Not necessarily.

Q. Are you seeking to get the so-called working man,
20 who has to go to Allenhurst and Deal to work, a longer ride for five cents?

A. I am seeking to get everybody living in Bradley Beach, winter or summer, an equal ride for five cents north as they get south, the people want it.

Q. Suppose the laboring man going to Allenhurst and Deal was given a transfer, asked herein, to get to the attractions, moving pictures or stores, what more would he get then?

A. I don't think the laboring men would want to go
30 to that portion at that time of day.

Q. You spoke of the laboring men going to Allenhurst and Deal, what was your object?

A. They have to travel over that line and have to pay two fares.

Q. Your idea is to get one fare?

A. Yes, he can go from Cookman Avenue and Main Street to Roselle Avenue, Deal, for a nickel, take him to his work. If they were allowed to have a trans-

fer and put him at the bridge, he could do as he now does, walk part of the distance.

Q. Then, as far as the laboring men are concerned, your idea is they ought to be able to go as far as Deal, if possible, for five cents?

A. Yes.

Q. There are no attractions and amusements at Deal; you are trying to get, as far as the laboring man is concerned, a ride from Bradley Beach all the way to Deal, or as near Deal as possible, for five cents. **10**

A. We want a ride into Asbury Park, not particularly to get to Deal or Allenhurst, although they travel that way.

Q. The stores, what stores do you refer to that are the objective from Bradley Beach?

A. Dry goods stores, grocery stores, clothing stores, there is banks; you can surely understand the kind of business places there would be in a town the size of Asbury Park.

Q. That is what you have in mind? **20**

A. Yes.

Q. They are located where?

Q. Located all over Asbury Park, within a register of four miles.

Q. You are trying, then, to get to all of those stores wherever located, for one fare?

A. To get as long a ride north as south.

Q. You are trying then, to get to all of those stores for five cents?

A. I can't answer what you want me to. **30**

Q. Just answer the question.

Witness—He just said now I was making political speeches—

Commissioner Donges—Read the question.

(Question read.)

A. I am trying to get as long a ride north as I do south.

Q. Won't you answer my question?

A. I won't put it the way you want me to.

Q. The amusements you spoke of are what?

Q. (By Commissioner Donges.) Let me understand. You say you do not desire to get the people in Bradley Beach in touch with the business houses?

A. No.

Q. I understood you told Mr. McCarter you did not.

A. No.

Q. I understood one of the objects of this complaint
110 is to put the people of Bradley Beach in the business section.

A. Yes. To do that they have to get this ride. Now they have to walk.

Q. Where are the business places in Asbury Park?

A. They run all the way down Cookman Avenue to the Beach.

Q. (By Mr. McCarter.) Will you tell me, Mr. Mayor, on Cookman Avenue what business concern there is of any importance in Asbury Park that is

220 more than three blocks from the Cookman Avenue terminus?

A. I don't suppose there is.

Q. There is none.

A. I don't suppose there is any more than three or four blocks.

Q. The bank isn't more than three or four blocks?

A. Not more than three or four blocks.

Q. You think it is a hardship to walk those two or three blocks to get to the business places?

30 *A.* I think it is a privilege to go as far north as south.

Q. I ask you if you think it is a hardship to walk three or four blocks to the business places?

A. No, it isn't a hardship for people to walk in Asbury Park.

Q. What moving picture house is there more than four blocks from Cookman Avenue?

A. The Lyric.

Q. Where is that?

A. Six or seven blocks from Main Street and Cookman Avenue.

Q. (By Commissioner Donges.) Which way?

A. Toward the ocean.

Q. (By Mr. McCarter.) Six blocks?

A. Six or seven.

Q. (By Commissioner Donges.) On Cookman Avenue?

A. Yes.

Q. (By Mr. McCarter.) What other places have you in mind, six or seven blocks away from Asbury Park, that is open all the year round? 10

A. I don't know of any other place that is that far away from there all the year round; but in the summer-time there is 10,000 people in Bradley Beach, where in the winter there is only 2,500—

Q. And the shore amusements are all closed in winter?

A. Yes. People go to the natatorium, the bathing place. 20

Q. You have in mind principally the shore amusements?

A. No, I have in mind the laboring people who want to do shopping, people who want to go to the amusements, and people might possibly want to ride on the trolley to see the town, from Bradley Beach.

Q. (By Commissioner Donges.) As I understand it, you ask that this privilege be accorded people boarding the car at Bradley Beach only, and not south of Bradley Beach? 30

A. No, we only ask for Bradley Beach.

Q. (By Mr. McCarter.) Do you know the principal moving-picture concern in Asbury Park is the Savoy?

A. No, sir. Not from the point of good pictures. The Paramount is the best for good pictures in Asbury Park.

Q. Which is the best patronized?

A. I would think the Savoy, because it is larger.

Q. That is within a block of Cookman Avenue?

A. Yes. And the other one is good pictures, and further away.

Q. All the business places you have in mind are within two blocks, the banks are within two blocks of Cookman Avenue, the principal moving-picture show is within one block of Cookman Avenue, the only moving-picture concern that is further away than that is the Lyric, that is open all the year round, that is about six blocks, and the other attraction is the beach, I presume?

A. No; I said the principal business places were within three or four blocks and the Lyric six or seven.

Q. What principal business places have you in mind that are three or four blocks away from Cookman Avenue terminus?

A. There is Steinbach's store.

20 *Q.* That is two blocks, isn't it?

A. Yes, two blocks. There is the five-and-ten-cent store, which is three blocks.

Q. (By Commissioner Donges.) Where is that located?

A. South side of Cookman Avenue, about three blocks eastward of Main Street and Cookman Avenue.

Q. (By Mr. McCarter.) There are two of them?

A. Three.

30 *Q.* Two of them are within two blocks of the terminus?

A. Yes. But I can't answer the way you want me to. I am trying to tell—

Commissioner Donges—Just answer the questions.

A. Yes, two are within a block and a half.

Q. Go on with your large places.

A. O. H. Brown's place, three blocks away.

Q. (By Commissioner Donges.) Is that on the Cookman Avenue line?

A. Yes. Automobile places, three or four places on Main Street, Zacharias's, sometimes a man has to walk up there when his car is out of repair.

Q. Isn't there a very large garage within half a block?

A. Yes, and two or three in Bradley Beach. You don't have to go to Asbury Park to get to business places, we have some in Bradley Beach, but the beach 10 is the larger attraction.

Q. What does attract you to Asbury Park, your good citizens?

A. The amusements.

Q. On the beach?

A. On the beach and alongside of them. People coming from Bradley Beach and going to Asbury Park, eight or ten blocks. The laborer has to reach Asbury Park, people want to go to the shops, people want to go to the amusements, and people ride around the 20 town on pleasure, they are not very frequent. A town of 2,500 population has large business interests in Asbury Park, they have to travel there and get a three-minute ride for a nickel.

Re-direct examination, by Mr. Kremer.

Q. Taking the Belt line cars, Cookman Avenue and Main Street, going eastward to the ocean, how many blocks is it to the Asbury Park business houses?

A. Two blocks. 30

Q. Are they long or short blocks?

A. The first block is not so long and the second block is quite long.

Q. How many blocks is it to Steinbach's.

A. Two blocks, the same.

Q. Are there shops all the way to the shore?

A. Yes, from four to possibly five blocks.

Q. How far is the Lyric Theatre?

A. Six or seven blocks.

Q. Is the Beach Casino an attraction for the people at Bradley Beach?

A. Yes.

Q. Is it true that is within a block of the Belt line, when it reaches the ocean terminus?

A. Yes.

Q. Is the Arcade, at Fifth and the beach, a place of amusement?

10 *A.* I don't know how much it is at this time of the year; but the natatorium is.

Q. Is that within easy reach of the Belt line?

A. Yes.

Q. Is the Boardwalk somewhat of an attraction?

A. Yes.

Q. Is that within easy reach of the Belt line?

A. It runs parallel to the cars for a mile north.

Q. Coming on the Belt, going the other way from Cookman Avenue and Main Street, on what they call **20** the inside Belt, going inside three, or four, or five, blocks along Main Street are the places of interest for the business people on the Belt line going north?

A. Yes, up to Asbury Avenue, a distance of about five blocks.

Q. How far is it to the Asbury Park and Ocean Grove Bank?

A. Two blocks, one block.

Q. How far is the post office?

A. Two blocks.

30 *Q.* What places of business are there along the street?

A. Businesses of nearly every character; outside the large clothing stores.

Q. Is it or is it not true that the corner of Main Street and Cookman Avenue at present is busy chiefly because of the intersection of the two railroads?

A. Yes, it is. Every car coming in there, you can imagine for yourself how many people get on. Also

the people coming from Long Branch getting off and continuing south.

Q. Would you say the chief points of interest are there or elsewhere?

A. If it wasn't for people unloading there it wouldn't be the chief point. It is practically the cars stopping which makes it the chief point.

Q. You say most of the points to be reached are away from there?

A. Away 2, 3, 4, 5, or 6 blocks.

10

Q. Within reach of the Belt line?

A. Yes.

Mr. Kremer—That is all.

Mr. McCarter—That is all.

John E. Morris, sworn on behalf of petitioner.

Direct examination, by Mr. Kremer.

Q. Where do you live, Mr. Morris?

A. On Monroe Avenue.

Q. Asbury Park?

20

A. Yes, sir.

Q. What is your business?

A. Conductor for the Atlantic Coast Electric Company.

Q. What branch do you work?

A. From Asbury Park to 16th Avenue.

Q. Don't you go south to Manasquan?

A. No, sir.

Q. How long have you been working on that line?

A. Ever since last September sometime. Just what day I don't exactly know they put me over there.

30

Q. Have you made any observations as to the proportion of people using the trolley line who get off and on cars at Bradley Beach?

A. The only thing we kept was, we got ten going down, sometimes only two out of Bradley Beach, sometimes three, sometimes we get thirty, and then maybe four or five out of Bradley Beach.

Q. You do keep track of them?

A. Yes.

Q. How long did you do that?

A. How long we started to keep track of them, I don't know. When I took the conductor job I started in then.

Q. What, in the best of your estimation, is the percentage of people on northbound cars, getting on at Bradley Beach?

10 *A.* That is a hard question. I can't exactly tell you. Sometimes two, sometimes twenty.

Q. At night you total the proportion?

A. Yes; sometimes forty; sometimes sixty; sometimes more; it depends on the riding day.

Q. Don't you keep track of the total number of people making a daily trip?

A. Yes. Sometimes the day's riding is heavier than others. It is hard to tell the exact proportion you have. Some days we get forty, some days fifty.

20 *Q.* When you get forty from Bradley Beach, how many do you get all along the line from 16th Avenue, Belmar, to Asbury Park?

A. Sometimes we come with eight or ten. Some get on at Belmar, some at Avon.

Q. You say you total up the total number of passengers at night and also the total that ride from Bradley Beach?

A. Yes.

30 *Q.* Sometimes you have forty coming from Bradley Beach?

A. Yes.

Q. About how many make the total of the trip from 16th Avenue?

A. Sometimes 200; maybe 300.

Q. Could you say it is about one-third, or one-quarter, or one-half, or what could you say?

A. I couldn't say.

Commissioner Donges—Do I understand that there is an account of the passengers that board the cars at Bradley Beach?

Mr. McCarter—I understand the situation is this about that: since this idea has been bruited, as it has been before the Court here, the railroad company has undertaken by its conductors to get the relative number of passengers coming through and getting on and off at Bradley Beach. We will give you those figures. It was the best way we could do it. 10

Commissioner Donges—That will be put in then, in your case.

Mr. McCarter—It was easier to do now than in the summer months when they are so crowded—

Mr. Kremer—You say, Mr. McCarter, you intend to bring out those figures?

Mr. McCarter—Yes, the best we can.

Mr. Kremer—That is all. 20

A. P. Rogers, sworn on behalf of petitioner.

Direct examination, by Mr. Kremer.

Q. Will you testify as to your occupation, Mr. Rogers?

A. I am in the milk business, corner of Main and Newark Avenue, Bradley Beach.

Q. How long have you lived there?

A. Twenty-five years the fifteenth day of next March. 30

Q. Do you occupy any official position?

A. Commissioner.

Q. Have you ever occupied an official position before?

A. I have.

Q. What was that?

A. I served the borough nine years as Council, eight years as Mayor; on the Board of Education nine years as a member of the Board of Education.

Mr. Kremer—Mr. Commissioner, I don't know whether it is exactly proper at this time or not, whether the question is one that is proper or not; I think he is in a position, on account of his residence of so many years, that he is very familiar with the sentiment.

Commissioner Donges—I don't know that that makes any difference. We will assume everybody in Bradley Beach wants to transfer.

10 Mr. McCarter—We will go so far as to say they would like to go for nothing.

Witness—As a resident I would like to deny his statement.

Commissioner Donges—I think that will not help in the determination; we will assume the people in Bradley Beach want what you ask.

Mr. Kremer—That is all, Mr. Rogers.

Mr. McCarter—No questions.

20 Mr. Kremer—In view of the fact that the company has admitted the regulation as to the fare zones along the line, those things I intended to bring out by the conductor, I think that is our case.

Commissioner Donges—Very well.

A. R. Asay, sworn on behalf of respondent.

Direct examination, by Mr. McCarter.

Q. Mr. Asay, you are auditor of this company?

A. I am.

30 *Q. Do you know how long there has been any effort made to ascertain the proportion of passengers who board your cars at Bradley Beach as compared with those that come from below.*

A. About the middle of last July.

Q. How is that method pursued?

A. It is taken from the conductors' day-cards. The conductors are required to keep account of passengers boarding and leaving cars at Bradley Beach.

Q. They report on these day-cards and those cards are turned in and you make up your figures from that?

A. Yes.

Q. I show you some documents here, which I believe you prepared (handing witness papers). Please look at them and explain to the Commission what they are.

Q. One is a record of the passengers on and off at Bradley Beach in 1915, since the 16th of July.

Q. (By Commissioner Donges.) Daily record?

A. Daily record. And passengers to and from Asbury Park from Sixteenth Avenue, Belmar, from the 16th of July. 10

Mr. McCarter—I will offer these in evidence.

(Same are marked *Ex. R 1* and *R 2*, respectively.)

Q. What is this third document?

A. That is a comparison of the passengers—

Q. I will come to that later. Look at the documents which have been marked *R 1* and *R 2*; what are the totals to 18th Avenue, Belmar, from Asbury Park?

A. 16th Avenue: July 16th to 31st, 112,287; during the month of August, 246,253; September, 156,715; 10
October, 84,951; November, 74,911; December, 88,775.

Q. The second sheet, *R 1*, is a list of those who got off and on at Bradley Beach, as I understand it?

A. Yes.

Q. (By Commissioner Donges.) The same period?

A. Yes.

Q. (By Mr. McCarter.) Give us those figures?

A. July 16th to 31st, 23,624; during the month of August, 46,491; September, 22,081; October, 20,462; 20
November, 18,152; December, 23,438.

Q. Have you formed an estimate of the proportion between those who get on and off at Bradley Beach and those going down to 16th Avenue, Belmar? About one-fifth, isn't it?

A. No, I haven't. About one-fourth.

Q. Now turn to the other sheet; that is the third sheet.

A. (Complies.)

Mr. McCarter—I will offer that.

(Same is marked *Ex. R 3.*)

Q. The exhibit marked *R 3* is what?

A. Comparison of the passengers receipts on the entire line between 1913 and 1914 by months.

10 *Q.* (By Commissioner Donges.) This shows the entire system?

A. All divisions.

Q. (By Mr. McCarter.) From Long Branch?

A. Long Branch to Manasquan.

Q. (By Commissioner Slocum.) Shows them separately?

A. Yes.

Q. (By Commissioner Donges.) By divisions?

A. Yes.

20 *Q.* (By Mr. McCarter.) The red ink figures indicate what?

A. Decrease.

Q. (By Commissioner Donges.) Let me ask if the fare zones are considered one operating division?

A. No; Belt lines. This is the division of Long Branch, operating from Long Branch to Asbury Park, and the Belt line division running in Asbury Park, and the Belmar division from Asbury Park to Sea Girt. Those three divisions are shown separately.

30 Mr. McCarter—I will offer this as an exhibit.
(Same is marked *Ex. R 4.*)

Q. (By Mr. McCarter.) This paper, *Ex. R 4*, shows what?

A. The same comparison between 1914 and 1915, up to November 30th. It shows the decrease in business from Long Branch, 1915 over 1914, of 7.3 per cent.

Q. On the Asbury Park division?

A. 8½ per cent.

Q. Belmar?

A. 16.2 per cent.

Q. (By Commissioner Donges.) You mean in revenues, or passengers?

A. Passenger revenues.

Q. (By Mr. McCarter.) *Ex. R 4* says the percentage of gross receipts for three months is what?

A. 45.62. That is on the Belmar division only.

Q. On the Belmar division the percentage for three months of the total was 45.62 per cent.?

A. During the months of July, August, and September.

Q. Those are your busiest months?

A. Yes.

Q. So that, in nine months you get about fifty-five per cent. of your revenue on that, and on the three months referred to, about 45.62 per cent. of the revenue?

A. Yes.

Q. The decrease in revenue on the so-called Belmar division—which I understand is from where to where?

A. From Asbury Park to Manasquan.

Q. For the year 1915 over 1914 was 16.2 per cent.?

A. Yes.

Q. Practically as much as the decrease on the other two divisions together?

A. More.

Q. A little more than the decrease of the other two divisions together?

A. Yes.

Q. What percentage upon the capital stock or actual investment on the Belmar division do these receipts bring?

A. About 4¼ per cent.

Q. (By Commissioner Donges.) Upon what?

A. Upon the actual investment.

Q. (By Mr. McCarter.) Book cost?

A. It is the actual cost.

Q. Actual cost. I understand in that division it is a fact it actually cost a little more than the capital stock, is that the fact?

A. Yes.

Q. (By Commissioner Donges.) That is, for the entire division from Main and Cookman Avenue to Manasquan.

A. To Manasquan.

Q. Part of which was constructed by the operating company and part is leased property.

A. Yes.

Q. But you have taken the actual cost as found in the books of both companies?

A. Yes.

Q. And what is that cost?

A. \$406,000.

Q. What does that include?

A. It includes everything we paid on that road. Do you want it itemized?

Q. (By Mr. McCarter.) In a general way.

A. Double track in Asbury Park—

Q. Is it all tabulated there?

A. Yes.

Mr. McCarter—We will offer that in evidence.

(Same is marked *Ex. R 5.*)

Q. What is the paper you now hold in your hand?

A. Expenditure on the Belmar division.

Q. (By Commissioner Donges.) What do you mean here by cost of capital stock?

A. That was what was paid by Mr. Rogers when he took over the road.

Q. What was paid?

A. Yes, sir.

Q. What do you mean?

A. I mean the actual money he paid for that company.

Q. He paid for the stock. If I understand you, the expenditures on the Belmar division are represented in

this figure of 122,000; that is, the actual, physical structures, is that right?

A. Yes.

Q. The next item, \$118,000, represents what some individuals paid for the outstanding capital stock?

A. Yes, sir. That is on the road that is already built. We have no figures on that.

Q. What part of the road was already built?

A. The road that was already built was from Asbury Park to Fifth Avenue, Belmar—Shark River bridge, 10 rather.

Q. These figures of \$118,000 for stock is \$116,000 for stock and bonds.

A. That is on the Sea Coast.

Q. And \$50,000 bonds of the Asbury Park and Sea Girt represents the outstanding capital stock for that part of the road built between Asbury Park and Belmar?

A. Yes, sir. No, \$116,000 for the road between 16th Avenue, Belmar, and Sea Girt.

Q. What is the \$122,000? 20

A. The \$122,000 is money that has been paid on that road in double tracking since these bonds and stock were taken over.

Q. (By Mr. McCarter.) Then, if understand you, the \$118,000 represents the cost to the present owners of the capital stock that was issued, and \$116,000 represents the cost to the present owners of other bonds that were issued.

A. Stock and bonds that were issued.

Q. Issued for portions of the so-called Belmar division? 30

A. Yes.

Commissioner Donges—And the same is true of the item of \$50,000.

Mr. McCarter—The same is true of the item of \$50,000.

Q. Then the figures amounting to \$122,072.58 represent the amount actually expended by the present management on some part of this division?

A. Yes.

Q. (By Commissioner Donges.) And they are the only figures you are able to get of the actual construction cost?

A. That is all I can give you.

Q. (By Mr. McCarter.) What was the per cent.?

A. Four and a quarter.

Q. Is four and a quarter per cent. on what sum?

A. \$406,000.

10 Q. Have you made a calculation of the income from the whole line from Pleasure Bay down?

A. Yes.

Q. What is that revenue?

A. I have it up to November 30th of this year.

Q. You haven't December in yet?

A. No.

Q. So you weren't able to give that?

A. No.

Mr. McCarter—I ask to have this marked.

20 (Same is marked *Ex. R 6.*)

Q. This gives the revenue for the entire line; I won't go into particulars; it will speak for itself. What percentage does that produce to the company, looking at it now as one entire system?

A. Up to date?

Q. To the month of December, 1915.

A. Passengers or capital stock.

Q. Or any other calculations you have made.

A. 3.36 per cent.

30 Q. That is for the eleven months?

A. For the eleven months.

Q. With December there would be a decrease?

A. Decrease probably of \$7,000 or \$8,000.

Q. Your estimate including December would be that?

A. 2.6 per cent.

Q. That is 2.6 per cent. based on the capital stock?

A. Based on \$1,000,000, capital stock.

Q. Have you any way, other than that, to apportion your receipts so as to derive your per cent.?

A. No, sir.

Q. Do you know whether the company is in receipt of any revenue other than from passengers on its street car lines?

A. I don't think so.

Q. Is it selling power?

A. Selling power, yes.

Q. Are these figures that are given here, in all of your exhibits, do they include revenue from power as well as passengers on street car lines? **10**

A. They do on this last statement, or in the total; because there is revenue from power on the other lines.

Q. How much of the revenue does that give you; two and what?

A. 2.6 per cent. on \$1,000,000 capital stock.

Q. (By Commissioner Donges.) On what?

A. On one million dollars capital stock. Mr. McCarter asked me to estimate what we would lose during December; I called it \$7,000, bringing down to the \$26,000 net income. **20**

Q. \$26,000, net income?

A. Yes.

Q. Now you are estimating the per cent. of return?

A. On the power.

Mr. McCarter—I was just bringing out the fact there was something included in there for power that was sold.

Q. How much of those figures is the revenue derived from power that is sold?

A. We have \$102,800 for power up to November 30th. **30**

Q. (By Commissioner Donges.) You sell power to whom?

A. Sell to the Atlantic Coast Lighting Company and various consumers around there.

Q. Have you made any estimate of the percentage to the street railway from its receipts from passengers, exclusive of the receipts from power?

A. No, sir.

Mr. McCarter—When you come off the stand make that roughly.

Commissioner Donges—Based upon what? Capital stock outstanding, you mean?

Mr. McCarter—Yes.

Commissioner Donges—There is \$1,000,000 capital stock, and \$800,000 bonded debt.

10 Witness—Yes; but I am figuring that percentage merely on the capital stock.

Commissioner Donges—You pay the interest on bonded debt.

Witness—We pay the interest.

Cross-examination, by Mr. Kremer.

Q. You say the percentage of return on the capital stock of the entire line is 2.6 per cent.?

A. 2.6 per cent.; that is an estimate.

20 Q. The percentage of return on the Asbury Park, Manasquan line is $4\frac{1}{4}$ per cent.?

A. Yes.

Q. Then that is the most profitable branch of your system?

Mr. McCarter—The figures speak for themselves.

Q. You say there was a decrease along the line of Asbury Park and Manasquan of 16 per cent. for the year of 1915 over 1914?

A. Yes. 16.2 per cent.

30 Q. Will you tell me again what the decreases were?

A. Long Branch 7.3 per cent. and the Belt line $8\frac{1}{2}$ per cent.

Q. To what do you attribute that unusual range of decrease along the Manasquan route?

A. I have made no attempt to figure it.

Q. Do you compare such statistics for the year 1914 as compared with the year 1913?

A. Yes.

Q. Was there an increase or decrease in that particular year?

A. Belmar, an increase of 1.7 per cent.

Q. On the other branches?

A. On the Long Branch line decrease $7\frac{1}{2}$ per cent., Belmar 3.1 per cent.

Q. Do you think the advent of the jitney had any effect on the decrease this year?

A. I think very little; it had some effect, I don't know how much.

10

Q. You say statistics compiled for three months, that 45 per cent. of your receipts came—

A. 45.62 per cent.

Q. —from the Asbury Park-Sea Girt branch?

A. That percentage of our business for three months on our lines.

Q. You say of that per cent. about one-fifth of that were people using the line to Bradley Beach?

A. To Bradley Beach.

Q. So Bradley Beach would furnish about nine or 20 ten per cent. of the total patronage of your entire line?

*Mr. McCarter—*Of the Belmar line.

Q. That is about one-fourth or one-fifth, or one-tenth of the entire patronage?

A. 45 per cent. isn't the percentage, except Belmar; those passengers taking three months on that line.

Q. It wasn't a percentage of the whole line for three months?

A. No.

Q. For what purpose was that given?

30

A. To show the percentage of business we do in three months.

Q. Through any three months?

A. No, the summer months, July, August and September.

Q. You didn't give figures for the other three months; the last three months?

A. No.

Q. Have you any figures showing the percentage of your entire business, the Asbury Park-Belmar line bears for the months of October, November and December?

A. I haven't with me.

Q. Have you compiled any such figures?

A. No.

Q. Why did you make the calculation for only the three busy months?

A. We wished to show what percentage of business
10 we carried in those three busy months.

Q. You have no figures to show the volume of business done on that line in the other nine months of the year?

A. The difference between 45.62 per cent. and 100 per cent.; 54.38 per cent. for nine months.

Q. You say in the other nine months that line furnished 55 per cent. of your income?

A. No, sir. I mean during the three months of the summer 45.62 per cent. of the business of that line
20 was carried in three months, and in nine months 54.38 per cent. I mean in three months we carried nearly as many people on that line—

Q. Just that line?

A. Just that line.

Q. That isn't what I am getting at. What proportion does the business carried on the Belmar line bear to the entire three divisions together?

A. About 35 per cent.

Q. For the year?

0 *A.* For the year.

Q. Is carried on the Asbury Park-Belmar line?

A. This is eleven months.

Q. Of that 35 per cent. carried on the Asbury Park-Manasquan branch, do your figures show how much of that business comes from Bradley Beach patrons?

A. I have here since July 16th to date, about one-fourth or one-fifth.

Q. Approximately one-fourth of the business is done on the Bradley Beach-Asbury Park part?

A. Yes.

Q. (By Mr. Sommer.) What rate of interest do the bonds bear?

A. 5 per cent.

Q. All of them?

A. Yes; except some Seashore bonds underlying we pay interest on at 6 per cent.

Q. How many of those bear 6 per cent.?

A. \$200,000 of them.

Q. (By Mr. McCarter.) Which line is that on? 10

A. Asbury Park.

Q. The Belmar line?

A. The Belmar line.

Q. (By Mr. McCarter.) Won't you look at those figures a little closer whether they are nearer a fourth or a fifth, that proportion?

Scott F. Hazelrigg, recalled on behalf of respondent.

Direct examination, by Mr. McCarter.

Q. Have you had any requests from any municipalities through which you operate on this division, the so-called Belmar division, for repaving? 20

A. Yes, sir.

Q. What is under way at present with reference to that?

A. Speaking of the Belmar division now?

Q. Yes.

A. Avon, and Belmar, both.

Q. What have you paid, if you know, down there for paving on that division? 30

A. We have paid in Bradley Beach something between \$22,000 and \$25,000 for paving.

Q. When was that?

A. Within the last three or four years. I can't just state where it was. \$9,000 in Neptune Township. And they are preparing now and have already let a contract to take about \$6,000 more.

Q. From you?

A. Yes.

Q. Do you have any percentage of the gross receipts you have to pay?

A. I can't tell you that. That is one of a number of different items. We paid different in some municipalities than we do in others. I can't give you the amounts of those. Mr. Asay can give you that. We pay the State a great deal; in most cases the franchise tax we pay exceeds that. We pay \$1,000 franchise tax

10 in the Bradley Beach area.

Q. (By Commissioner Donges.) A flat sum?

A. Yes, sir.

Q. (By Mr. McCarter.) Do you know what you pay in Neptune Township?

A. No; I can't recall that. I just know the other because it happened to be in the case of the pavement.

Q. (By Commissioner Donges.) That is all credited on the amount you pay to the State?

A. No, sir, it was a flat sum. All agreed on. And, **20** of course, as I say, it is usually in excess of what we agreed on in some cases.

Q. You get credit for that amount on the State tax?

A. Yes.

Q. That is deducted from the amount you would otherwise pay?

A. Yes. I didn't understand your question.

Q. (By Mr. McCarter.) Now, the statement that has been offered gives a gross sum, made up of the amount paid as the witness expressed it, amount paid for bonds and stock, and also certain expenditures. **30** Do you know the facts about that?

A. Yes.

Q. Explain them.

A. During the receivership, prior to 1906, Mr. Rogers purchased the capital stock of the Asbury Park and Sea Girt road and he paid \$118,000 for it.

Q. What was the amount of it?

A. \$118,000. The item of \$116,000 represents the bonds and stock which were given for the construction of the Sea Coast Traction Company.

Q. Which was that?

A. That is \$116,000, that is the one below 16th Avenue. That is what was paid by Mr. Rogers for the construction of that property he bought the bonds and stock for that price for the construction.

Q. And the other figures, \$50,000.

A. \$50,000, that represents the original bonds of the old length of the road down from the Ocean Grove line to the Belmar bridge, \$50,000 bonds on the original property. In other words, that was an old horse car line. 10

Q. Then the figures of \$122,072.88 represent what?

A. Other expenditures that have been made in the meantime and in addition to these payments (indicating).

Q. What was the line that failed; the name of the line? 20

A. Atlantic Coast Electric Railway.

Q. That went into the hands of a receiver when?

A. 1901, I think.

Q. And these figures represent actual expenditures made by the present owners for the total property as they now have it, is that right?

A. That is it exactly.

Q. (By Mr. Sommer.) Do the figures include the conversion of the horse railway into the electric railway? 30

A. No, that was done before we acquired it.

Q. (By Mr. McCarter.) At the time of the receivership, exactly what was the status of the company? It went from where to where, and was all electrified?

A. Yes.

Q. Where did it go to?

A. But the Atlantic Coast didn't control any of this road at all.

Q. I understand that. What was the length of the road at that time?

A. From Pleasure Bay to Cookman Avenue and around the town on the Belt.

Q. And was the road south of Cookman Avenue built?

A. It was built to Belmar, and through Belmar.

Q. That is what I am asking about.

A. I didn't understand your question.

10 *Q.* In other words, when the purchase was made from the receivers of the old line they acquired an electrified line extending from where to where?

A. Really from Cookman Avenue and Main Street to Manasquan or to Sea Girt.

Q. It was already built all the way to Sea Girt?

A. The Sea Coast Traction Company, built by Mr. Rogers during the receivership.

Q. What did you acquire from the receivers?

20 *A.* We acquired all the original Atlantic Coast property, which extended from Pleasure Bay to Cookman Avenue and Main Street, and the section in Belmar. The balance of this property, from there south had been acquired in the meantime by Mr. Rogers from other sources, and was all put in under the reorganization mortgage.

Q. And the figures that you are giving are the actual figures paid?

A. Yes, sir.

30 *Q.* (By Commissioner Donges.) For the stock and bonds?

A. Yes, sir.

Q. (By Mr. McCarter.) Do you know how much the line of the Sea Coast Traction Company cost to build?

A. Yes, sir.

Q. That extends from where to where?

A. From 16th Avenue, Belmar, to Manasquan. This cost of \$116,000 only carries it to Sea Girt. There is another item in here covering the extension since that.

Q. Does that appear there?

A. Yes.

Q. How much?

A. \$11,040.07.

Q. From Sea Girt over across the camp?

A. Yes.

Q. Actually paid?

A. Yes, actually paid.

Mr. McCarter—That is all.

10

Cross-examination, by Mr. Kremer.

Q. You always have to assist in the paving of streets in municipalities?

A. Not necessarily.

Q. Down that way you are accustomed to?

A. We did it with you because we made that arrangement, and we have with Neptune; not Neptune city, Neptune township.

Q. You help keep the streets in repair in each township?

20

A. Yes.

Q. Your part between the railroad tracks?

A. We are right up against the paving, new paving there.

Q. Before the paving you had to keep it re-graveled?

A. We pay our portion for whatever work is done.

Q. Whether it is paved or not you have to gravel grading; you have to keep your track 18 inches each side?

A. Which we install.

30

Q. Has the paving in Bradley Beach been an economy to you and to the borough?

A. I don't know; I don't think that it has.

Q. You haven't had to do any repairing since that was done?

A. Not to amount to anything.

Q. So the fact there is about to be paving in Neptune township doesn't impose any additional burden?

A. Yes; it imposes quite a burden, in the face of falling receipts.

Q. It imposes a burden which you have to bear in another shape; you save in the long run?

A. When we bear that burden it would be on 4½ property.

Q. Instead of paying to a small extent in fixing a gravel street you pay a lump sum, and you won't have to pay any more?

10 *A.* I don't know. We thought that when we paid \$9,000 four years ago.

Q. You didn't have to pay any more in Bradley Beach?

A. It hasn't been down there that long. We thought when we paid \$9,000 in Neptune township we were done. Now we are up against \$6,000.

Q. You think it is economy—

A. No doubt it is economy to pave the street. We can't sell bonds or securities in advance to make this
20 money before we spend it. If you people take it all away from us, then there won't be any to do anything with.

Q. Paving Bradley Beach cost \$22,000?

A. \$22,000, that is the actual paving.

Q. That was in Mr. MacDonald's administration?

A. Yes.

Q. He got your double track through for you?

A. Yes.

30 *George B. Cade, sworn on behalf of respondent.*
Direct examination, by Mr. McCarter.

Q. You are comptroller of the line?

A. No, Secretary and Assistant Treasurer.

Q. You have lived there some time?

A. About 20 years.

Q. Describe the situation at the Cookman Avenue terminus; what is the fact there with regard to the crowds of people?

A. It is very congested, especially in the summertime.

Q. Do you have crowded cars in the summertime?

A. Yes.

Q. How is it in the winter?

A. In the winter it is not so crowded; sometimes it is and sometimes very few ride.

Q. Mr. Asay has endeavored to give some figures in reference to the proportion of the number of passengers getting on and off at Bradley Beach. When did you start to get those figures? 10

A. I think the request came from Mr. Asay, probably about the middle of July, and I ordered the conductors to count the passengers, as best they could, getting on and off at Bradley Beach; the 16th Avenue-Belmar record was on the day-cards. This record of the conductor I have has two counts, and I allowed for the number that got off.

Q. Is it an easy thing to do?

A. It is a very hard thing to do when travel is heavy.

Q. It is difficult counting those who get off.

A. Yes. A conductor will be assisting someone off or someone on and can't see. It isn't satisfactory, but it is the best we could do. 10

Q. With reference to the business: how far is the business center of Asbury Park, the banks, the stores, and those things that attract customers, from this Cookman Avenue terminus?

A. I guess I can give it to you better by naming a few buildings there. The Asbury Park and Ocean Grove Bank is one block, the Sea Coast Bank two blocks. The Asbury Park and Ocean Grove Bank is at the corner of Madison Avenue and Main Street, one block; the Sea Coast Bank is at Madison and Broad Street, a block more, and one block east. The New York Drug Store, one of the largest, is right at the corner of Cookman Avenue and Main Street. Laurier's 20

Drug Store is right at the corner of Cookman Avenue and Main Street. The Savoy is in the block between and Main Street and Madison Avenue, a block and a half. The Hippodrome, the largest theatre before you get to the terminal, is on the Bradley Beach line. There are a number of butcher shops, gents' furnishing stores—I could count three gents' furnishing stores within one block of Cookman Avenue terminal and four drug stores, three drug stores to be sure, and then Steinbach's is two blocks, Steinbach's is situated at Albany Street and Cookman Avenue, two blocks east, that is the largest department store; then O. H. Brown and Frank's, that would be three blocks; that is the outside of the business district.

10

Q. The attractions that are spoken of over on the shore, they are mostly a summer arrangement?

A. Yes; except the natatorium, that is on the beach, the swimming building.

Q. Do you remember where the largest grocery store is?

20

A. The largest is right at the corner of Cookman Avenue and Main Street, Lehman's, and a large butcher show.

Cross-examination, by Mr. Kremer.

Q. How far is the Lyric Theatre?

A. The Lyric Theatre, I should say, is six blocks.

Q. That is open all the year round?

A. Yes.

Q. You said there was nothing beyond three or four blocks that was a winter attraction.

30

A. The Lyric, that is possibly an exception.

Q. Isn't it true, all the way from the corner of Cookman Avenue, and Emery and Grand Streets, there are shops? Davidson's Drug Store?

A. Davidson's Drug Store, two or three fruit stores, gents' furnishing store, and jewelry store.

Q. And ten-cent store?

A. And florist, and then comes the ten-cent store.

Q. How far is Cole's Photography Shop?

A. About three blocks; long blocks.

Q. Beyond Grand?

A. Beyond Grand.

Q. How far is Sexton's Garage?

A. About the same distance.

Q. The Elks' Home?

A. About the same distance.

Q. The Marlborough Hotel?

10

A. The Marlborough Hotel is three blocks and a half.

Q. That is one of the biggest hotels?

A. Yes.

Q. Where is the Coleman House?

A. On the beach.

Q. Six or seven blocks from the corner of Cookman Avenue and Main Street?

A. I guess it is.

Q. Is the Beach Casino open in the winter?

20

A. Open at night for dancing.

Q. (By Commissioner Donges.) During the summer the pleasure seeker goes to what point, the vicinity of the Casino.

A. No, sir; the beach.

Q. (By Commissioner Slocum.) Isn't that the point where most of the people want to get to in the summer time.

A. Yes, the boardwalk.

Q. (By Commissioner Donges.) They go from Cookman Avenue to the neighborhood of the Coleman House and the Casino in the summer time?

30

A. Yes.

Q. And in the winter there are some attractions?

A. The Casino is open at night, I think, for dances, twice a week, and the natatorium is open all day. Those are the only attractions on the beach I know of. The Arcade and Fifth Street are closed, nothing there.

Q. (By Mr. McCarter.) How do you account for the large percentage of decrease in this division of what we call the Belmar division, 16 per cent.; what has happened recently?

A. The jitney has affected us quite considerably.

Q. Do the jitneys run from Belmar to Asbury Park?

A. Yes.

Q. Is that one of the reasons for this decrease, do you think?

10 *A.* I do.

Q. Has the introduction of the automobile in that locality affected your receipts, do you think?

A. Yes.

Q. Do the jitneys run north, as far north as Long Branch?

A. The jitneys run from Tenth Avenue, Belmar, to Cookman Avenue and Main Street.

Q. They don't run north of Cookman Avenue?

A. No.

20 *Q.* This southern part is affected by the jitneys who go in large numbers.

A. The automobiles hurt us, and the jitneys hurt us materially.

Q. What do they charge from Belmar to Asbury Park?

A. Five cents.

Re-cross examination, by Mr. Kremer.

30 *Q.* Is it the policy in Asbury Park to try to get people to come in the off season as well as in the summer; aren't they trying to boom it as a winter resort?

A. I don't know. There is a large newspaper agitation to try to keep the town open and boom business.

Q. Trying to get people down there?

A. I am not personally aware of any particular movement going on down there. They are trying to keep the hotels open.

Q. They keep the Casino open?

A. Everything along there.

Q. Do they dance in Asbury Park?

A. A few do.

Q. Did Mr. McCarter ask something about what you attributed the reduction in the receipts to?

A. I said in general the increase in automobiles and the jitneys.

Q. Don't you think there is a prejudice in Bradley Beach against the trolleys on account of the fact they don't give these transfers? 10

A. I wouldn't accuse a man of being prejudiced. I know there has been an agitation for a long time about this.

Q. Have you contemplated a change in your tracks at Main Street and Cookman Avenue going east.

A. I didn't contemplate it. I have heard nothing of that kind within my knowledge.

Q. You say that it is difficult to watch people getting off cars that you have included here.

A. I mean it is practically impossible to secure an accurate account of the people getting on and off. 20

Q. Your traffic is congested in the rush hours and in the summer time.

A. Not as much as they could have.

Q. Lots of people getting on at 6 and 6:30 from Long Branch?

A. Not many.

Q. It is the most crowded hour for that line?

A. Possibly seven o'clock at night, or coming down on the boat travel in the afternoon. 30

Q. There is a lot of school children in the morning along that line going to Asbury Park High School.

A. School children don't overload our capacity.

Q. You have a similar regulation there, and your conductors watch it.

A. They can.

Q. You have an overlap, and I am asking you if you don't have such a regulation on the Long Branch line

and put it up to the conductors of the Long Branch line to see nobody violates it.

Mr. McCarter—I think they are talking at cross purposes. The question put to the witness a while ago was whether these figures were the best he could get. We believe they are accurate of the number that got on and off.

Mr. Kremer—You mean more people are patrons of the road than you show?

10 Mr. McCarter—I don't know what we mean. We don't say that is absolutely accurate; that is the best we could do. It may vary one way or the other.

Witness—That is right.

Mr. McCarter—It isn't accurate.

Witness—It isn't accurate.

Mr. McCarter—It is the best we could do.

Witness—Yes.

20 *A. R. Asay* resumes the stand on behalf of respondent.

Further direct examination, by Mr. McCarter.

Q. Have you looked at these figures and calculated the percentage?

A. Yes.

Q. What is it?

A. 20.2 per cent.

Q. That covers what—that percentage?

30 A. People boarding the car and alighting from the car at Bradley Beach from Asbury Park.

Q. 20.2 per cent. of the total that traveled between what points?

A. Asbury Park and 16th Avenue.

Q. That doesn't include those going down to Sea Girt?

A. No, sir.

Q. The travel to 16th Avenue is very much larger than that which goes all the way through, isn't it?

A. Yes.

Mr. McCarter—I will offer this paper in evidence.

(Same is marked *Ex. R 7.*)

Q. Have you on this sheet R 7 shown the amounts of money the company paid to the different municipalities, for one reason or another, franchise fees?

A. Franchise taxes, and real estate and personal property taxes.

Q. For instance, in the whole township you pay 10 what?

A. Franchise tax, \$895.56, and personal property tax, \$238.

Q. Go right down with the different municipalities.

A. Spring Lake franchise tax \$839.59 and real estate and personal property \$413.75.

Q. Go on.

A. Belmar franchise tax \$400, real estate tax \$180; Avon franchise \$350, personal property \$186; Bradley Beach franchise \$1,000, real estate and personal property tax \$266.67; Neptune township franchise \$1,528.86 and personal property tax \$34.86. 20

Q. These are annual payments?

A. They vary from year to year. These are 1915 payments. Total \$6,273.29.

Q. Of course, as Commissioner Donges has suggested, you include them in order to get your net revenue you spoke of?

A. Yes.

30

Cross-examination, by Mr. Kremer.

Q. How much did you pay Neptune Township did you say?

A. This year it will be \$1,528.86.

Q. Bradley Beach?

A. \$1,000.

Q. Do you know the distance to Neptune Township?

A. No, I don't.

Q. I think the pleadings show Neptune Township is .42 mile and Bradley Beach .95 mile. Your franchise—

A. I haven't those figures with me. I couldn't say. That Neptune Township franchise is based on the franchise from the Asbury Park city line to Shark river.

Mr. Kremer—That is all

Mr. McCarter—That is all.

Mr. Sommer—Suppose you put in the ordinances and ask leave to substitute copies.

10 Mr. McCarter—We offer the ordinances of the several municipalities.

Commissioner Donges—You better designate what they are.

Mr. McCarter—Mr. Durand will do that; he is more familiar with them.

Mr. Durand—We have them here and we would like to submit copies.

Commissioner Donges—You better offer each one and let each one be designated so there will be no question in the record as to what has been offered, a number given and then you may substitute copies.

20 Mr. Durand—I presume the only ordinances would be those south of Asbury Park.

Commissioner Donges—Those which, in the judgment of the company, affect the question before the Board.

Mr. Durand—I offer ordinance of the Borough of Belmar to the Atlantic Coast Electric Railway Company, dated April 6, 1897.

30 Commissioner Donges—That will be admitted and marked as *Exhibit R 8*.

(Same is marked *Ex. R 8*.)

Mr. Durand—I offer ordinance of the Borough of Asbury Park to the Seashore Electric Railway Company, dated June 6, 1887.

(Same is marked *Ex. R 9*.)

Mr. Durand—I offer ordinance of the Township of Neptune to Asbury Park and Belmar Street Railway Company, dated February 11, 1893.

(Same is marked *Ex. R 10*.)

Mr. Durand—I offer ordinance of the Borough of Neptune City to Asbury Park and Belmar Street Railway Company, dated July 3, 1893.

(Same is marked *Ex. R 11.*)

Mr. Durand—I offer ordinance of the Borough of Neptune City to Asbury Park and Belmar Street Railway Company, dated August 16, 1895.

(Same is marked *Ex. R 12.*)

Mr. Durand—I offer ordinance of the Township of Wall to the Sea Coast Traction Company, dated February 27, 1904. 10

(Same is marked *Ex. R 13.*)

Mr. Durand—I offer ordinance of the Borough of Spring Lake to Sea Coast Traction Company, dated February 29, 1904.

(Same is marked *Ex. R 14.*)

Mr. Durand—I offer ordinance of the Borough of Spring Lake to Sea Coast Traction Company, dated April 24, 1905.

(Same is marked *Ex. R 15.*)

20

Mr. Durand—I offer ordinance of the Borough of Avon-by-the-Sea to Asbury Park and Sea Girt Railroad Company, dated March 10, 1906.

(Same is marked *Ex. R 16.*)

Mr. Durand—I offer ordinance of the Borough of Neptune City to Asbury Park and Sea Girt Railroad Company, dated March 21, 1906.

(Same is marked *Ex. R 17.*)

Mr. Durand—I offer ordinance of City of Asbury Park to Seashore Electric Railway Company, dated June 9, 1906. 30

(Same is marked *Ex. R 18.*)

Mr. Durand—I offer ordinance of the Township of Neptune to Asbury Park and Belmar Street Railway Company, dated July 12, 1909.

(Same is marked *Ex. R 19.*)

Mr. Durand—I offer ordinance of Borough of Neptune to Asbury Park and Sea Girt Railroad Company, dated July 31, 1909.

(Same is marked *Ex. R 20.*)

Mr. Durand—I offer agreement from Sea Girt Land Company to Sea Coast Traction Company, dated May 15, 1905.

(Same is marked *Ex. R 21.*)

Mr. Durand—I offer ordinance of the Borough of
10 Bradley Beach to Atlantic Coast Electric Railroad Company, dated September 8, 1897.

(Same is marked *Ex. R 22.*)

Mr. Durand—I offer ordinance of the Borough of Bradley Beach to Atlantic Coast Electric Railroad Company, dated March 20, 1912.

(Same is marked *Ex. R 23.*)

Mr. Durand—I offer ordinance of the Borough of Bradley Beach to Asbury Park and Sea Girt Railroad Company, dated March 20, 1912.

20 (Same is marked *Ex. R 24.*)

Mr. Durand—I offer agreement, State of New Jersey to Atlantic Coast Electric Railway Company, dated February 18, 1913.

(Same is marked *Ex. R 25.*)

William E. MacDonald resumes stand on behalf of petitioner.

Further direct examination, by Mr. Kremer.

30 Q. You were Mayor of Bradley Beach when the double tracking was permitted?

A. Yes, sir.

Q. Was there any arrangement made between you and the trolley company by which the right of free transfers were waived or formally abandoned at that time?

Commissioner Donges—Will you read the question?
(Questions and answers read.)

Mr. Kremer—That is, by which the borough waived the rights of free transfers.

Mr. McCarter—We don't press it.

Mr. Kremer—I will withdraw the witness.

Commissioner Donges—I understand both sides are closed?

Mr. McCarter—Yes.

Mr. Kremer—Yes.

(Testimony closed and matter adjourned until Tuesday, January 18, 1916, at the State House, Trenton, 10 N. J., at 11 o'clock A. M., at which time matter will be discussed orally and briefs submitted.)

EXHIBIT R I.

PASSENGERS OFF AND ON AT BRADLEY BEACH, N. J., 1915.

July	Aug.	Sept.	Oct.	Nov.	Dec.
16 1248	1 1192	1 1292	1 857	1 591	1 587
17 1428	2 1284	2 2292	2 1053	2 739	2 578
18 1418	3 1232	3 1885	3 360	3 666	3 617
19 1298	4 1453	4 1702	4 650	4 714	4 1000
20 1397	5 1691	5 2101	5 614	5 656	5 425
21 1418	6 1444	6 1283	6 737	6 1016	6 641
22 1466	7 1900	7 1148	7 905	7 518	7 656
23 1356	8 1143	8 1112	8 755	8 633	8 536
24 2143	9 1537	9 1006	9 1039	9 531	9 634
25 1613	10 1669	10 1321	10 437	10 545	10 615
26 1352	11 1585	11 993	11 788	11 543	11 1107
27 1498	12 1380	12 1024	12 685	12 488	12 332
28 1169	13 1302	13 846	13 656	13 943	13 635
29 1468	14 2087	14 896	14 703	14 360	14 808
30 1235	15 1657	15 919	15 573	15 641	15 916
31 2127	16 1383	16 806	16 855	16 559	16 1008
	17 1289	17 1311	17 451	17 627	17 894
	18 1489	18 715	18 558	18 589	18 1361
	19 1347	19 947	19 621	19 687	19 369
	20 3604	20 900	20 472	20 899	20 958
	21 1732	21 733	21 469	21 444	21 867
	22 1523	22 703	22 530	22 583	22 889
	23 1363	23 983	23 959	23 553	23 896
	24 1943	24 920	24 499	24 613	24 1199
	25 1634	25 453	25 604	25 502	25 641
	26 1571	26 683	26 578	26 478	26 380
	27 1535	27 845	27 617	27 459	27 823
	28 892	28 836	28 578	28 649	28 671
	29 1365	29 667	29 626	29 459	29 664
	30 1265	30 759	30 882	30 467	30 781
		31 351	31 351		31 950

From July 16-31,	23624
do Aug. 1-30,	46491
do Sept. 1-30,	22081
do Oct. 1-31,	20462
do Nov. 1-30,	18152
do Dec. 1-31,	23438

EXHIBIT R 2.

1915.

PASSENGERS TO AND FROM ASBURY PARK, N. J., TO 16TH AVE., BELMAR, N. J.

July	Aug.	Sept.	Oct.	Nov.	Dec.
16 5475	1 6227	1 6634	1 2773	1 2653	1 2372
17 7378	2 6417	2 7192	2 4557	2 2783	2 2329
18 8023	3 6577	3 6858	3 2684	3 2617	3 2347
19 5856	4 4990	4 10520	4 3333	4 2550	4 4839
20 6270	5 8790	5 11458	5 2547	5 2451	5 1880
21 6533	6 4974	6 12373	6 2730	6 3651	6 1241
22 6408	7 12194	7 5413	7 3233	7 2017	7 2541
23 6452	8 6847	8 5928	8 3105	8 2607	8 2261
24 10089	9 7735	9 5727	9 4154	9 2253	9 2269
25 8357	10 8257	10 5295	10 2206	10 2271	10 2398
26 6366	11 8564	11 6700	11 3071	11 2127	11 4021
27 6548	12 7051	12 5441	12 2954	12 2039	12 1740
28 5857	13 7085	13 3932	13 2906	13 3446	13 2320
29 7025	14 12065	14 4436	14 2607	14 1512	14 2784
30 5947	15 8123	15 4177	15 2518	15 2473	15 3239
31 9703	16 7287	16 3989	16 3865	16 2248	16 3559
	17 7162	17 3450	17 2171	17 2560	17 3299
112287	18 8578	18 6116	18 2034	18 2380	18 4412
	19 8046	19 3192	19 2534	19 2021	19 1654
	20 7501	20 4064	20 2245	20 3686	20 3867
	21 14447	21 3472	21 2536	21 2725	21 3366
	22 9336	22 3616	22 2304	22 2376	22 3392
	23 7976	23 3788	23 2694	23 2442	23 3605
	24 7980	24 3302	24 2070	24 2467	24 4596
	25 10206	25 4567	25 2170	25 2291	25 2826
	26 8633	26 2484	26 2320	26 2352	26 1474
	27 8225	27 3124	27 2325	27 3276	27 2913
	28 7825	28 3289	28 2429	28 1861	28 2631
	29 4039	29 3229	29 2400	29 2396	29 2124
	30 6211	30 2949	30 3507	30 2380	30 3051
	31 6905		31 1949		31 3425

246253 156715 84951 74911

July 16-31,	112287
Aug. 1-31,	246253
Sept. 1-30,	156715
Oct. 1-31,	84951
Nov. 1-30,	74911
Dec. 1-31,	88775

EXHIBIT R 3.

COMPARISON OF PASSENGER RECEIPTS, 1913 AND 1914.

LONG BRANCH DIVISION.

	1913.	1914.		
January,	4603 80	4617 50	13 70	0.3%
February,	4182 40	3987 60	194 80	4.7%
March,	5284 95	4132 50	1152 45	21.8%
April,	5913 90	6153 30	239 40	4.0%
May,	9430 35	10662 40	1232 05	13.1%
June,	17095 65	16064 15	1031 50	6.0%
July,	35860 05	29781 90	6078 15	16.9%
August,	42473 95	35643 95	6830 00	16.0%
September,	16708 45	19027 25	2318 80	13.9%
October,	6671 75	6840 60	168 85	2.6%
November,	4964 85	4757 65	207 20	4.2%
December,	4917 80	4626 55	291 25	5.9%
	158107 00	146294 45	11812 55	7.5%

ASBURY PARK DIVISION.

January,	1468 35	1665 05	196 70	13.4%
February,	1370 00	1557 45	187 45	13.7%
March,	1789 60	1719 35	70 25	3.9%
April,	1832 60	2023 70	191 10	10.4%
May,	2598 50	2951 20	352 70	13.5%
June,	5523 35	5644 55	121 20	2.2%
July,	16776 30	14946 10	1830 20	10.9%
August,	21656 25	20070 45	1585 80	7.3%
September,	7306 60	8219 15	912 55	12.5%
October,	2227 55	1915 75	311 80	14.0%
November,	1757 95	1630 50	127 45	7.2%
December,	1673 20	1595 65	77 55	4.6%
	65980 25	63938 90	2041 35	3.1%

BELMAR DIVISION.

January,	4976 50	5580 75	604 25	12.2%
February,	4549 90	5555 30	1005 40	22.1%
March,	5685 35	4466 20	1219 15	21.5%
April,	5664 25	6582 90	918 65	16.2%
May,	7392 10	8462 10	1070 00	14.5%
June,	10455 35	11487 20	1031 85	9.9%
July,	21698 70	20968 85	729 85	3.4%
August,	26251 00	24030 10	2220 90	8.5%
September,	11781 10	13416 10	1635 00	13.8%
October,	6682 95	6866 95	16 00	0.2%
November,	5851 50	5744 15	107 35	1.8%
December,	6225 40	6056 65	168 75	2.7%
	117214 10	119217 25	2003 15	1.7%

EXHIBIT R 4.

ATLANTIC COAST ELECTRIC RAILWAY—BELMAR DIVISION.

	<i>Winter.</i>	<i>Summer.</i>
December, 1914,	6056 65	.....
January, 1915,	5440 70	.....
February,	4870 05	.....
March,	5583 95	.....
April,	6079 70	.....
May,	6956 25	.....
June,	8674 90	.....
July, .....	.....	15965 00
August, .....	.....	18339 35
September, .....	.....	11730 35
October,	6133 80	.....
November,	5084 10	.....
	9 Mos. 54880 10	3 Mos. 46034 70

Total, 100914.80. Percentage of Revenue for 3 Mos., 45.62%.

COMPARISON OF PASSENGER RECEIPTS ON ENTIRE SYSTEM, 1914 AND 1915 (TO NOVEMBER 30).

LONG BRANCH DIVISION.

	1914.	1915.		
January,	4617 50	4488 25	129 25	2.8%
February,	3987 60	4136 00	148 40	3.7%
March,	4132 50	4901 70	769 20	18.6%
April,	6153 30	5849 50	303 80	4.9%
May,	10662 40	9027 10	1635 30	15.3%
June,	16064 15	13623 25	2440 90	15.2%
July,	29781 90	28271 05	1510 85	5.1%
August,	35643 05	31136 25	4506 80	12.4%
September,	19027 25	17836 75	1190 50	6.2%
October,	6840 60	7021 15	180 55	2.6%
November,	4757 65	5006 25	248 60	5.2%
	141667 90	131297 25	10370 65	7.3%

ASBURY PARK DIVISION.

January,	1665 05	1587 50	77 55	4.7%
February,	1557 45	1443 55	113 90	7.3%
March,	1719 35	1614 55	104 80	6.0%
April,	2023 70	1849 30	174 40	8.6%
May,	2951 20	2506 50	444 70	15.1%
June,	5644 55	4121 70	1522 85	25.7%
July,	14946 10	14033 15	912 95	6.1%
August,	20070 45	18386 85	1683 60	8.4%
September,	8219 15	8431 65	212 50	2.6%
October,	1915 75	1766 90	148 85	7.8%
November,	1630 50	1308 70	321 80	19.8%
	62343 25	57050 35	5292 90	8.5%

BELMAR DIVISION.

January,	5580 75	5440 70	140 05	2.5%
February,	5555 30	4870 05	685 25	12.3%
March,	4466 20	5583 95	1117 75	25.0%
April,	6582 90	6079 70	503 20	7.7%
May,	8462 10	6956 25	1505 85	17.8%
June,	11487 20	8674 90	2812 30	24.5%
July,	20968 85	15965 00	5003 85	23.9%
August,	24030 10	18339 35	5690 75	23.7%
September,	13416 10	11730 35	1685 75	12.6%
October,	6866 95	6133 80	733 15	10.7%
November,	5744 15	5084 10	660 05	11.5%
	113160 60	94858 15	18302 45	16.2%

EXHIBIT R 5.

EXPENDITURES ON BELMAR DIVISION.

Double Tracking Neptune City and Avon, 1906,	\$25407 15
Double Tracking South Main St., 1909,	5086 22
Paving, 1910,	9457 84
Extension of Feed Wire to Como, 1911,	2587 92
Double Tracking Bradley Beach, 1912,	5854 31
Paving, 1912,	22516 97
Sea Girt Extension, 1913,	11040 71
5th Ave. to 16th Ave., Belmar, 1898,	17250 00
Shark River Bridge,	12850 00
2-4-0 Feed Wires to Sea Girt, 1915,	10021 26
	122072 38
Cost of Cap. Stock. A. P. & S. G.,	118000 00
Cost of Cap. Stock & Bonds—S. C.,	116000 00
A. P. & S. G. Bonds,	50000 00
	\$406072 38

EXHIBIT R 6.

ATLANTIC COAST ELECTRIC RAILWAY COMPANY.

COMPARATIVE AND ACCUMULATIVE STATEMENT FOR MONTH ENDING NOVEMBER 30, 1915.

I I A T

OPERATING EXPENSES IN DETAIL.

MAINT. OF WAY AND STRUCTURES.	<i>Month Ending Nov. 30, 1915.</i>	<i>Same Month Previous Year.</i>	<i>11 Months Ending Nov. 30, 1915.</i>	<i>Same Period Previous Year.</i>
1. Superintendence of Way and Structures,	75 00	75 00	941 25	797 50
2-12. Maintenance of Roadway and Track,	689 95	568 16	13358 85	15358 48
13-19. Other Maintenance of Way, .....	.....	294 12	209 90	1892 78
20. Poles and Fixtures,	158 19	298 51	1384 73	3398 59
21. Underground Conduits, .....	.....	.....	.....	.....
22. Transmission System, .....	.....	.....	.....	.....
23. Distribution System,	113 09	92 28	903 70	1620 44
24. Miscellaneous Electric Line Expenses,	1 14	2 00	5 22	137 86
25. Buildings and Structures,	98 04	56 51	612 76	967 81
26. Depreciation of Way and Structures,	1480 18	1174 03	22923 50	16801 59
27. Other Operations—Dr., .....	.....	.....	.....	.....
28. Other Operations—Cr., .....	.....	.....	.....	.....
Total,	2615 59 .0325	2560 46 .0325	40339 91 .0325	40975 05 .0325
MAINTENANCE OF EQUIPMENT.				
29. Superintendence of Equipment,	150 00	130 00	1549 73	1437 91
30. Power Plant Equipment,	353 88	531 31	4991 17	5957 95
31. Substation Equipment, .....	.....	.....	.....	.....
32-35. Maintenance of Cars and Locomotives,	325 40	503 77	8001 97	9691 88
36-37. Maintenance Elec. Equip. Cars and Locomotives,	365 51	223 83	5653 15	6590 21
38-41. Miscellaneous Equipment Expenses,	6 70	29	190 45	377 29
42. Depreciation of Equipment,	1212 90	974 30	16859 17	13761 33
43. Other Operations—Dr., .....	.....	.....	.....	.....
44. Other Operations—Cr., .....	.....	.....	.....	.....
Total,	2414 39 .0300	2363 50 .0300	37245 64 .0300	37816 57 .0300

EXHIBITS.

81

TRAFFIC.		Month Ending Nov. 30, 1915.	Same Month Previous Year.	11 Months Ending Nov. 30, 1915	Same Period Previous Year.
45-47.	Traffic Expenses,	4 35	.....	317 19	562 75
	Total,	4 35 .0001	.....	317 19 .0300	562 75 .0004
CONDUCTING TRANSPORTATION.					
48.	Superintendence of Transportation,	212 50	107 50	4444 43	5290 84
	Total,	212 50 .0026	107 50 .0013	4444 43 .0036	5290 84 .0042
GROUP I—POWER.					
49.	Power Plant Employees,	993 57	786 80	10654 85	9663 28
50.	Substation Employees, .....	.....	.....	.....	.....
51.	Fuel for Power,	3123 13	3973 58	49186 61	46204 20
52.	Water for Power, .....	.....	12 19	707 60	774 78
53.	Lubricants for Power,	66 81	55 31	545 28	545 05
54.	Miscellaneous Power Plant Supplies and Expenses, ...	65 37	274 13	826 60	1815 91
55.	Substation Supplies and Expenses, .....	.....	.....	.....	.....
56.	Power Purchased, .....	.....	.....	.....	.....
57.	Power Exchanged—Balance, .....	.....	.....	.....	.....
58.	Other Operations—Dr., .....	.....	.....	.....	.....
59.	Other Operations—Cr., .....	.....	.....	.....	.....
	Total,	4248 88 .0528	5102 01 .0648	61920 94 .0499	59003 22 .0468

GROUP II—OPERATION OF CARS.

60.	Passenger Conductors, Motormen and Trainmen,	2813 54		2738 88		49911 59		52326 33	
61.	Freight and Express Con., Mo. and Trainmen, . . . . .	.....		.....		.....		.....
62-63.	Miscellaneous Car Service Employees and Expenses, ..	96 99		39 31		2289 15		2510 90	
64-65.	Station Employees and Expenses,	90 00		.....		355 00		257 50	
66-67.	Carhouse Employees and Expenses,	146 65		243 91		2315 41		2932 79	
68-69.	Signal, Interlocking, T. and T. Systems, .....	.....		.....		313 45		261 23	
70.	Express and Freight Collections and Delivery, .....	.....		.....		.....		.....
71.	Loss and Damage, .....	.....		.....		.....		.....
72.	Other Transportation Expenses,	2 40		2 80		22 16		39 30	
	Total,	3149 58	.0391	3024 90	.0384	55206 76	.0445	58328 05	.0463

GENERAL AND MISCELLANEOUS.

73-74.	Sal. and Exp. Gen. Officers and Clerks,	2199 15		1514 46		21289 38		16008 44	
75.	General Office Supplies and Expenses,	37 73		46 30		664 26		306 38	
76.	Law Expenses,	3 60		9 40		10 60		168 80	
77.	Relief Department Expenses, .....	.....		.....		.....		.....
78.	Pensions, .....	.....		.....		.....		.....
79.	Miscellaneous General Expenses,	557 40		152 58		4524 12		2691 33	
80.	Other Operations—Dr., .....	.....		.....		.....		.....
81.	Other Operations—Cr., .....	.....		.....		.....		.....
82.	Injuries and Damages,	550 00		500 00		6050 00		5500 00	
83.	Insurance,	320 00		400 00		3983 55		4856 44	
84.	Stationery and Printing,	37 95		47 98		606 51		426 78	
85.	Store Expenses,	13 92		.....		83 79		.....
86.	Stable Expenses,	4 16		15 30		108 37		151 16	
87.	Rent of Tracks and Terminals, .....	.....		.....		750 00		750 00	
88.	Rent of Equipment, .....	.....		.....		.....		.....
	Total,	3696 07	.0459	2686 02	.0341	37903 00	.0305	30859 33	.0245
	Total Operating Expenses,	16341 36	.2030	15844 39	.2011	237377 87	.1912	232835 81	.1847

INCOME ACCOUNT FOR MONTH ENDING NOVEMBER 30, 1915.

REVENUE FROM TRANSPORTATION.				
	Month Ending Nov. 30, 1915.	Same Month Previous Year.	11 Months Ending Nov. 30, 1915.	Same Months Previous Year.
<i>Long Branch</i> ,	5006 25	4757 65	131297 25	141667 90
<i>Belmar</i> ,	1308 70	1630 50	57050 35	62343 25
<i>Asbury Park</i> ,	5084 10	5744 15	94858 15	113160 60
1. Passenger Revenue,	11399 05	12132 30	283205 75	317171 75
2. Baggage Revenue, .....	.....	.....	.....	.....
3. Parlor, Chair and Special Car Revenue, .....	.....	.....	.....	.....
4. Mail Revenue, .....	.....	.....	246 70	332 35
5. Express Revenue, .....	.....	.....	.....	.....
6. Milk Revenue, .....	.....	.....	.....	.....
7. Freight Revenue, .....	.....	.....	.....	.....
8. Switching Revenue, .....	.....	.....	.....	.....
9. Miscellaneous Transportation Revenue, .....	.....	.....	.....	.....
REVENUE FROM OTHER OPERATIONS.				
10. Station and Car Privileges,	95 00	95 00	1045 00	1045 00
11. Parcel-Room Receipts, .....	.....	.....	.....	.....
12. Storage, .....	.....	.....	.....	.....
13. Car Service, .....	.....	.....	.....	.....
14. Telegraph and Telephone Service, .....	.....	.....	.....	.....
15. Rents of Tracks and Terminals, .....	.....	.....	.....	.....
16. Rents of Equipment, .....	.....	.....	.....	.....
17. Rents of Buildings and Other Property, .....	.....	.....	.....	.....
18. Power,	50 00	.....	325 00	25 00
Power—A. C.,	1749 64	1584 98	20414 04	19440 04
19. Miscellaneous,	6333 08	6107 28	82415 19	70075 42
Gross Earnings from Operation,	19626 77	19919 56	387651 68	408089 56
Operating Expenses,	16341 36	15844 39	237377 87	232835 81
Net Earnings from Operation,	3285 41	4075 17	150273 81	175253 75

MISCELLANEOUS INCOME.

Interest on Deposits, .....	.....	162 67	390 86	738 18
Income from Securities Owned, .....	.....	.....	.....	.....
Rent from Leased Lines and Terminals, .....	.....	.....	.....	.....
		<hr/>	<hr/>	<hr/>
Total Miscellaneous Income, .....	.....	162 67	390 86	738 18
		<hr/>	<hr/>	<hr/>
Gross Income Less Operating Expenses,	3285 41	4237 84	150664 67	175991 93

DEDUCTIONS FROM INCOME.

Taxes,	1904 66	2096 91	21207 31	22375 06
Interest on Funded Debt,	8500 00	8500 00	93500 00	93500 00
Interest on Real Estate and Mortgages, .....	.....	.....	.....	.....
Interest on Floating Debt, .....	.....	.....	.....	.....
Rentals of Leased Lines and Terminals,	208 34	208 34	2291 67	2291 67
		<hr/>	<hr/>	<hr/>
Total Deductions from Income,	10613 00	10805 25	116998 98	118166 73
		<hr/>	<hr/>	<hr/>
Net Income,	7327 59	6567 41	33665 69	57825 20

STATISTICS.

M. C.	25.055	22563	275214	249305
Car Mileage,	80480	78783	1241229	1260552
Passengers Carried, Revenue,	227981	242646	5669049	6343435
Operating Expenses per Car Mile, .....	.2030	.2011	.1912	.1847
Car Earnings per Car Mile, .....	.1416	.1540	.2284	.2518
Gross Earnings per Car Mile, .....	.2439	.2528	.3123	.3237
Operating Expenses per cent. of Gross Earnings,	83.26%	79.54%	61.24%	57.05%
Operating Power Station per Car Mile, .....	.0184	.0246	.0185	.0207
M. C., .....	.0242	.0316	.0227	.0248
Operating Power Station per Kilowatt Hour, .....	.0103	.0126	.0116	.0118
Kilowatt Hours—A. C.,	258170	248500	3347837	2858600
Kilowatt Hours—D. C.,	188800	197000	2426000	2645900

CASH STATEMENT FOR MONTH ENDING NOVEMBER 30, 1915.

RECEIPTS.

Balance on Hand First Day of Month,	33378 15
Passengers,	11071 30
Baggage, .....	.....
Special Cars, .....	.....
Individuals and Companies,	14809 42
Bills Payable, .....	.....
Operating Expense Credits,	25
New York and Long Branch Steamboat Co.,	1571 20
New York and Long Branch Steamboat Co. Tickets, ..	278 00
Insurance,	7 09
Income Tax Reserve,	75
Total,	<u>61116 16</u>

DISBURSEMENTS.

Accounts Payable,	22835 06
Balance on Hand Last Day of Month,	<u>38281 10</u>
Total,	61116 16

ROAD AND EQUIPMENT, MONTH ENDING NOVEMBER 30, 1915.

I. ROAD.	Month Ending Nov. 30, 1915.	Same Month Previous Year.	11 Months Ending Nov. 30, 1915.	Same Months Previous Year.
1. Engineering and Superintendence, .....	.....	.....	.....	.....
2. Right of Way, .....	.....	.....	.....	.....
3. Other Land Used in Elec. Ry. Operations, .....	.....	.....	.....	.....
4. Grading, .....	.....	.....	2000 00	.....
5. Ballast, .....	.....	.....	.....	.....
6. Ties, .....	.....	.....	.....	.....
7. Rails, Rail Fastenings and Joints, .....	.....	.....	.....	.....
8. Special Work, .....	.....	.....	.....	443 88
9. Underground Construction, .....	.....	.....	.....	.....
10. Paving, .....	.....	.....	.....	.....
11. Track Laying and Surfacing, .....	.....	.....	1307 31	511 77
12. Roadway Tools, .....	.....	.....	.....	.....
13. Tunnels, .....	.....	.....	.....	.....
14. Elevated Structures and Foundations, .....	.....	.....	.....	.....
15. Bridges, Trestles and Culverts, .....	.....	.....	.....	.....
16. Crossings, Fences, Cattle Guards and Signs,	13 28	.....	13 28	.....
17. Interlocking and Other Signal Apparatus, .....	.....	.....	.....	.....
18. Telegraph and Telephone Lines, .....	.....	.....	.....	.....
19. Poles and Fixtures, .....	.....	.....	.....	.....
20. Underground Conduits, .....	.....	.....	211 43	.....
21. Transmission System, .....	.....	.....	.....	.....
22. Distribution System, .....	.....	.....	.....	.....
23. Dams, Canals and Pipe Lines,	13 31	.....	10034 57	.....
24. Power Plant Buildings, .....	.....	.....	.....	37 50
25. Substation Buildings, .....	.....	.....	147 79	.....
26. General Office Buildings, .....	.....	.....	.....	.....
27. Shops and Carhouses,	661 39	.....	13478 64	.....
28. Stations, Waiting Rooms and Misc. Buildings,	2 31	.....	2537 44	.....
29. Docks and Wharves,	329 63	.....	646 87	181 66
30. Power Plant Equipment,	97 75	.....	.....	.....
		38 48	97 29	38 48

31. Substation Equipment, .....	.....	.....	.....	.....
32. Shop Equipment, .....	.....	.....	110 98	.....
33. Park and Resort Property, .....	.....	.....	.....	.....
34. Cost of Road Purchased, .....	.....	.....	.....	.....
	1117 67	38 48	30585 60	1138 29
Total,				

12 AT

II. EQUIPMENT.

35. Cars, .....	.....	.....	.....	.....
36. Locomotives, .....	.....	.....	.....	.....
37. Electric Equipment of Cars, .....	.....	.....	.....	.....
38. Other Rail Equipment, .....	.....	.....	.....	.....
39. Miscellaneous Equipment, .....	.....	.....	.....	.....

Total,				

III. GENERAL EXPENDITURES.

40. Law Expenses, .....	.....	.....	33 20	.....
41. Interest, .....	.....	.....	.....	.....
42. Injuries and Damages, .....	.....	.....	.....	.....
43. Taxes, .....	.....	.....	.....	.....
44. Miscellaneous, .....	.....	.....	.....	.....
	.....	.....	33 20	.....
Total,				
Total Road and Equipment,	1117 67	38 48	30618 80	1138 29

A. R. ASAY, Auditor.

EXHIBITS.

EXHIBIT R 7.

ATLANTIC COAST ELECTRIC RAILWAY Co.—BELMAR DIVISION.

Operating Expenses, 487077 C. M. @ .1912.

MISCELLANEOUS INCOME.

Franchise—			
Wall,	895 56	}	6273 29
Sp. Lake,	839 59		
Belmar,	400 00		
Avon,	350 00		
Bradley Beach,	1000 00		
Neptune T'ship,	1528 86		
R. E. & P. P. Tax—			
Wall,	238 00	}	6273 29
Sp. Lake,	413 75		
Belmar,	180 00		
Avon,	186 00		
Bradley Beach,	206 67		
Neptune T'ship,	34 86		

Interest on Funded Debt—

\$10000 Seacoast Traction Co., @ 5%,

5000 Asbury Park & Sea Girt, @ 5%, 7500.

INCOME ACCOUNT FOR YEAR ENDING NOVEMBER 30, 1915

BOROUGH OF BELMAR, N. J.

10 AN ORDINANCE, granting to the Atlantic Coast Electric Railroad Company permission to construct, operate and maintain a new line of street railway in and upon certain of the public streets, avenues or highways within the limits of the Borough of Belmar, in the County of Monmouth and State of New Jersey; and a location of the route, and a location of the tracks and rails of the said new line of railway in said Borough, and determining the places in which the poles for sustaining the electric wires of said railway shall be located;

WHEREAS, The Atlantic Coast Electric Railroad Company, a corporation formed under the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to authorize the formation of

traction companies for the construction and operation of street railways, or railroads operated as street railways, and to regulate the same," approved March 14, 1893, and the acts amendatory thereof, by its petition bearing date the twenty-third day of June, in the year eighteen hundred and ninety-six, did apply to The Mayor and Council of the Borough of Belmar for permission to construct, operate and maintain a new line of street railway in and upon certain streets, avenues or highways in the Borough of Belmar, in the County of Monmouth and State of New Jersey, hereinafter mentioned, that is to say, extending in and through F. Street from the extreme northerly boundary line of said Borough of Belmar southwardly to the middle of Sixteenth Avenue, and thence in and through Sixteenth Avenue from the middle of said F. Street eastwardly a distance of one hundred and ninety feet to the boundary line of said Borough conformably to the route designated in the description of the route of such new line and the map exhibiting the same filed in the office of the Secretary of State at Trenton, New Jersey, on the twenty-third day of June, in the year eighteen hundred and ninety-six, and for a location of the route, and a location of the tracks and rails of its said new line of railway in said Borough of Belmar conformably to the said route, and to determine the place or places in which the poles for sustaining the electric wires of said railway shall be located, which said petition was duly signed by the said corporation and by all of the directors thereof and was accompanied with a map and description of the route of the said new line of railway, showing also the proposed location of rails or tracks and the location of poles and which said petition and map were duly filed with the Clerk of said Borough on the eighth day of July, in the year eighteen hundred and ninety-six, and public notice of said application having been given to all parties interested, by publication in the *Coast Echo*, a newspaper

- published and circulating in the Borough of Belmar duly designated by the said Mayor and Council, the governing body of said Borough, to publish the notice, and by posting in five public places in said Borough of Belmar likewise designated by said Mayor and Council in which to post the same, for at least fourteen days before the time fixed for a meeting of the said Mayor and Council at which the said application would be considered; said notice specifying the name of the
- 10 corporation presenting such petition, the date of filing the same, the character of the road intended to be constructed, operated and maintained, the motive power to be used thereon and the street or streets or other public highways or places through which the same shall extend, and giving notice that accompanying the said petition and filed therewith is a map of the route of the said railway showing also the proposed location of rails or tracks, and the location of poles, and the said notice also specifying the time and place of a meeting
- 20 of the said Mayor and Council when and at which said Mayor and Council would consider such application.

And the said corporation having filed with the Clerk of the said Borough of Belmar the consent in writing of the owners of at least one-half in amount in lineal feet of property fronting on the parts of streets, avenues, or public places in, through and upon which permission to construct, operate and maintain said street railway is asked, duly executed and acknowledged as are deeds entitled to be recorded.

- 30 And the said Mayor and Council having met at the time and place specified in the said notice and heard all parties interested who desired to be heard concerning the said application and the said meeting having been then and thereafter in an open and public manner adjourned from time to time until this present meeting, and having heard all persons who desired to be heard concerning said application at all of said meetings, and having considered the matter the said Mayor and Coun-

cil has decided to grant permission to said Atlantic Coast Electric Railroad Company to construct, maintain and operate a new line of street railway upon a part of the streets, avenues or highways designated in said petition, that is to say, extending in and through F. Street from the south abutment of the bridge over Shark River southwardly to the middle of Sixteenth Avenue and thence in and through Sixteenth Avenue from the middle of said F. Street, eastwardly a distance of one hundred and ninety feet to the boundary line of said Borough of Belmar, upon the terms and subject to the restrictions hereinafter contained, and to refuse permission to construct, maintain or operate such street railway upon the remainder of said F. Street, that is to say, extending from the south abutment of the Bridge over Shark River northwardly to the extreme northerly boundary line of said Borough of Belmar, therefore: 10

Sec. 1. Be it ordained by the Mayor and Council of the Borough of Belmar that the said application of the said Atlantic Coast Electric Railroad Company so far as the same related to the that part of said F. Street and Sixteenth Avenue in the Borough of Belmar hereinafter particularly described, that is to say, in said F. Street from the south abutment of the bridge over Shark River southwardly to the middle of Sixteenth Avenue and in said Sixteenth Avenue from the middle of said F. Street eastwardly a distance of one hundred and ninety feet to the boundary line of said Borough of Belmar be and the same is hereby granted upon the terms and subject to the restrictions hereinafter contained, that is to say: 20 30

Sec. 2. That said Atlantic Coast Electric Railroad Company shall have the right, and the permission of the said Mayor and Council of the Borough of Belmar is hereby granted to the said Atlantic Coast Electric Railroad Company, its successors and assigns, to construct, operate and maintain a double track railway to be operated as a street railway in and through the follow-

ing streets and avenues in the said Borough of Belmar, in the County of Monmouth and State of New Jersey, that is to say: In and through F. Street from the south abutment of the bridge over Shark River southwardly to the middle of Sixteenth Avenue, and thence in and through said Sixteenth Avenue from the middle of said F. Street eastwardly, a distance of one hundred and ninety feet, to the boundary line of said Borough of Belmar, conformably to the route designated in the
10 description of the route of such railway and the map exhibiting the same, filed in the office of the Secretary of State at Trenton, New Jersey, on the twenty-third day of June A. D., 1896.

Sec. 3. That the permission, rights and privileges hereby granted to the Atlantic Coast Electric Railroad Company shall continue for a period of fifty years from and after the passage of this ordinance.

Sec. 4. That said railway shall be constructed with double tracks; that the tracks of said railway shall be
20 laid as nearly as possible in the middle of said F. Street and Sixteenth Avenue, and as located and shown on the Map entitled "Map of the route of the new line of railway of the Atlantic Coast Electric Railroad Company, showing the proposed location of rails or tracks and the location of poles, in the Borough of Belmar, in the County of Monmouth and State of New Jersey," dated June 8, 1896, made by Wm. H. DeNyse, Civil engineer, and filed with the Clerk of the said Borough of Belmar on the eighth day of July, 1896; that the gauge of the
30 tracks of said railway shall be four feet eight and one-half inches, and there shall be a space of five feet between double tracks; that the rails of the said railway upon the streets and avenues in said Borough of Belmar shall be the so-called improved steel girder rail of the same style and pattern as are now laid and in use by the West End and Long Branch Railway Company on its railway in Second Avenue, at Long Branch, New Jersey, and said rails shall be so laid that the tops

thereof shall be flush with the surface grade of said streets and avenues.

Sec. 5. That in the construction of said railway and its equipment in said Borough the materials and work employed therein shall be of the best quality and character, and the said work shall be done in such manner as not to unnecessarily impede public travel, and it shall be the duty of said company to restore all streets and avenues disturbed by the laying of the tracks of said railway to their former condition and to keep the roadway between its tracks and for two feet outside thereof on each side in good repair at its own expense at all seasons of the year; in case of the failure of said company to keep such portions of the street in good repair and passable condition at its own expense the Mayor and Council of the said Borough, may by its proper officers cause such portions of said street to be repaired and restored and charge the expense thereof to the said railroad company and the same shall be payable forthwith on demand. **10**

Sec. 6. That electricity shall be the motive power to be used for the propulsion of the cars on said railway and not other motive power; that said railroad company shall have the right to equip and operate its said railway with what is commonly known as the overhead trolley system of electrical street railway equipment. **20**

That the necessary poles for sustaining and carrying the wires for conducting electricity to the motors shall be located along each side of said F. Street and Sixteenth Avenue, one opposite the other, or nearly so, at the points or places indicated for the location of said poles on the aforesaid map entitled "Map of the route of the new line of railway of the Atlantic Coast Electric Railroad Company, showing the proposed location of the rails or tracks and the location of poles in the Borough of Belmar, in the County of Monmouth and State of New Jersey," dated June 8, 1896, and filed with the Clerk of the said Borough of Belmar on the eighth **30**

day of July, 1896. Said poles shall be of yellow pine wood, dressed, octagonal in shape, and shall be painted and kept by the said company, and shall be properly planted and securely fastened.

Sec. 7. That all wiring and overhead work shall be properly constructed after the most approved method; that all overhead wires shall be placed at least eighteen feet above the surface of the street; that the trolley wires shall be suspended one over the center line of each
10 track, and be sustained by spanning wires across the tracks from pole to pole in the usual manner; the feed wires may be strung from pole to pole along the sides of said street and avenue, and said feed wire shall be properly insulated; that at the points where electric light, telephone or telegraph wires shall cross the wires of said railway in said Borough, they shall be kept from possible contact therewith by means of guard wires stretched above and over the trolley wires properly insulated.

20 Sec. 8. That the said company in the construction of its railway shall scrape off and remove from the said streets and avenues herein mentioned all loose sand and gravel, and shall remove the same to a point or points to be designated by the said Mayor and Council or their duly authorized representative, and shall resurface the said streets and avenues from curb to curb with first class clay gravel as follows, that is to say: After removing the said loose sand and gravel the said
30 F. Street shall be resurfaced as aforesaid, so that for thirty feet in the center of said F. Street the completed gravel road bed shall be eight inches solid gravel, as near as may be, to conform to the grade to be established by the Borough engineer, and the balance of said street to be graveled so as to taper to six inches solid gravel, as near as may be, at the gutter line; and the said Sixteenth Avenue, where the tracks of said railroad are to be located, shall be graveled so that the completed road bed shall be six inches solid gravel for twenty feet in the

center of said street, and to taper to four inches solid gravel at the gutter line; all of said grading and graveling to be done under the supervision of the Borough engineer.

Sec. 9. That said Atlantic Coast Electric Railroad Company shall pay annually for the use of the Borough the sum of four hundred dollars, as compensation for the permission, rights, and privileges hereby granted; said compensation to be payable to the Borough Treasurer or Collector on the first day of September in each and every year during the continuance of this franchise. 10

And the said Borough of Belmar shall have a first lien on all the property of the said company within said Borough for the payment of any moneys that may at any time become due and payable to said Borough from the said company under any of the provisions of this ordinance, and the said Borough of Belmar shall have the right, without legal process, to seize and having and having first given notice of the time and place of sale thereof by publication in or more newspapers published and circulating in said Borough for at least sixty days before such sale, to sell any or all of the property belonging to said company within said borough for the satisfaction of any indebtedness owing by said company to said Borough. 20

Sec. 10. That in all cases where the owner or owners of any building shall obtain from the Mayor and Council of the Borough of Belmar permission to move any building across any street or avenue upon which the tracks of said company are constructed, the person or persons obtaining such permission shall move such buildings across said tracks in such manner and at such hours as will cause the least possible obstruction or delay to the running of the cars upon said railway, and thereupon the overhead wires of said company shall be removed by said company or its servants sufficiently to permit the moving of the building across 30

the street or avenue with safety; provided nevertheless that the actual expenses to the said company for removing and replacing its said wires shall first be paid for by the person or persons obtaining such permit, and provided further that the expense thereof shall in no event exceed fifteen dollars.

Sec. 11. That the said company shall be solely responsible for all damages that may result on account of accident or injury to any persons or person, or real
10 or personal property, during the construction and operation of said railway, by reason of the negligence of said company.

Sec. 12. That the Borough reserves the use of said streets and avenues for the purpose of making any improvements or repairs for the benefit of the borough, and no expenses attending the removing or replacing of the rails or tracks for the purpose of making such improvements or repairs, shall be borne by the borough; the borough shall in no wise be liable for any damage
20 resulting to said company by reason of loss of service during the making of such improvements and repairs.

Sec. 13. That all private persons or corporations shall be permitted to make such excavations and openings in the streets and avenues on which said tracks are laid as are necessary, by first obtaining consent of the borough; and all expenses incurred by such excavations or openings shall be paid by the persons or corporations making the same; but obstructions and delay shall not continue longer than is reasonably necessary to do the
30 work for which consent may be given.

Sec. 14. That the said company shall run its cars daily over the entire route herein described, in both directions, as follows: From May fifteenth to September fifteenth, from six A. M. to eleven o'clock P. M. at intervals not exceeding fifteen minutes, that is to say, that at least one of the said company's cars shall pass any given point on the route herein described in each direction every fifteen minutes during the above men-

tioned period; and from September fifteenth to May fifteenth, from six o'clock A. M. to ten o'clock P. M. at intervals not exceeding thirty minutes, that is to say, that at least one of the company's cars shall pass any given point on the route herein described, in each direction, every thirty minutes during the above mentioned period.

Sec. 15. That the rate of fare shall not exceed five cents for the transportation of any passenger, for one continuous ride in any direction within the corporate limits of the Borough of Belmar, and children under five years of age, not occupying seats and accompanied by persons of competent age, shall be permitted to ride free of charge. All policemen and firemen, when on duty, shall be permitted to ride free. 10

Sec. 16. That the said company shall cause to be kept lighted suitable headlights upon each of said cars, when in use, upon the streets and avenues at night, and it shall have gongs attached to the cars by which the motorman shall give timely notice of the approach of such cars to pedestrians and drivers of other vehicles. 20

Sec. 17. That each of the cars of said company shall be equipped on the forward end, when in motion, with an appliance commonly known as a fender, designed for the protection of life and limb of pedestrians; said fender to be of the most approved design now in use.

Sec. 18. That each of the said cars belonging to the said company shall at all times, when in use, be in charge of and under the care of a competent motorman.

Sec. 19. That no car belonging to the said company shall be allowed to stand in or obstruct any cross street or street crossing, or to stand or remain in any one position, except at the termini of the road, for more than the time necessary to take on or let off passengers unless unavoidably obstructed or detained by reason of an accident or cause beyond the control of the said company or its officers. 30

Sec. 20. That the said company shall comply with all reasonable ordinances or regulations which the said

Mayor and Council may make from time to time as to the rate of speed of the cars upon said streets and avenues, or any of them, and the manner of maintaining street crossings, and the removal of snow and ice therefrom; provided that the said cars shall not be run at a greater speed than fifteen miles an hour, and that in clearing away and removing snow and ice from said tracks it shall be done in such manner as not to obstruct public travel or unnecessarily interfere with the rights and privileges of the occupants of the properties abutting on the public streets and avenues through
10 and across which said tracks are constructed.

Sec. 21. The said company shall complete the construction of its railway within the Borough of Belmar and have the same in operation on or before the first day of July, in the year eighteen hundred and ninety-seven, unless prevented from so doing by legal restraint, not the result of collusion, on the part of the said company.

20 Sec. 22. That within thirty days after the passage of this ordinance the said company shall enter into a bond to the Mayor and Council of the Borough of Belmar in the penal sum of five thousand dollars, with sureties acceptable to said Mayor and Council, conditioned for the due fulfillment on the part of the said company of its obligation to grade and gravel F. Street and Sixteenth Avenue to the requirements of section eight of this ordinance.

30 Sec. 23. That said company shall file a written acceptance of the ordinance hereby granted and the terms thereof, within thirty days after the passage hereof, and such acceptance and this ordinance shall constitute the contract between said company and this borough for said franchise; and the said acceptance shall provide that said company shall not in any manner or action contest or question the legality or binding force of any provision of this ordinance, or defend against the same on the ground that the same is beyond the power or

authority of the Mayor and Council to legally exact or enforce.

Sec. 24. That the said company shall pay all the expenses of printing and other expenses incident to the granting of this ordinance, including counsel fees, within thirty days after the passage of this ordinance; said counsel fees not to exceed one hundred dollars.

Sec. 25. And be it further ordained that the said application of the Atlantic Coast Electric Railroad Company for permission to construct, operate and maintain a new line of street railway on the remainder of said F. Street, that is to say, from the south abutment of the bridge over Shark River, northwardly to the extreme northerly boundary line of said Borough of Belmar, be and the same is hereby refused. 10

Sec. 26. And be it ordained that this ordinance shall take effect on the twenty-ninth day of March, eighteen hundred and ninety-seven.

Passed March 4, 1897.

Approved March 8, 1897. 20

[SEAL.]

W. S. JACKSON, *Mayor*.

Attest:

B. R. RICHARDSON, *Clerk*.

A RESOLUTION AND ORDINANCE granting to "The Asbury Park and Belmar Street Railway Company" a location of the tracks of its railway over a portion of a certain street and public highway in the Township of Neptune, in the County of Monmouth and State of New Jersey. 30

WHEREAS, N. E. Buchanon, C. C. Clayton, George Potts, John Hubbard, H. C. Winsor, L. E. Watson and John Rockafeller, a majority of the directors of "The Asbury Park and Belmar Street Railway Company," a company incorporated under an act of the Legislature of the State of New Jersey entitled: "An Act to pro-

vide for the incorporating of street railway companies and to regulate the same," approved April 6, 1886, did, on the seventh day of January, A. D. 1893, petition the Township Committee of said Neptune Township pursuant to said act and the supplements thereto, for a location of the tracks of its railway in said Township conformably to the route designated in the articles of incorporation of said company, that is to say, for a location of the tracks of its railway over the main street
10 or public highway leading from Asbury Park to Belmar; commencing at Wesley Lake Bridge at the head of Wesley Lake in the Township of Neptune, County of Monmouth and State of New Jersey, and thence running southerly on the easterly side of the macadamized road to Shark River which connects the said road with Belmar in the said County; thence southerly across Shark River to the southerly line of the Township of Neptune.

And due notice having been given to the parties interested, of the time and place of a meeting at which said
20 Township Committee would consider such application for location, by publication of said notice in *The Evening News*, a newspaper published and circulating in said Township, at least fourteen days before such meeting.

And the said Railway Company having filed with the Clerk of said Committee and of said Township the written consent of the owners of more than one-half of the property fronting on the portion of the said street or public highway through which said railway is to be made, which written consents are acknowledged by the subscribers thereto as are deeds entitled to be recorded.

30 And it appearing to said committee by due proof that said company has made the deposit with the State Treasurer required by said act and the supplements thereto.

And said Township Committee having heard and considered said application for location do by resolution and ordinance grant the same as follows:

Be it resolved and ordained by the Township Committee of the Township of Neptune, in the County of Monmouth and State of New Jersey:

1. That the said "The Asbury Park and Belmar Street Railway Company" is hereby granted a location of the tracks of its railway in said Township, conformably to the route designated in the articles of incorporation of said company, over and along the said main street or public highway in said Township leading from Asbury Park to Belmar as follows: Commencing at Wesley Lake at the head of Wesley Lake in the Township of Neptune, County of Monmouth and State of New Jersey, and thence running southerly on the easterly side of the macadamized road to the Shark River Bridge which connects the said road with Belmar in the said County; thence southerly across Shark River to the southerly line of the Township of Neptune. 10

Subject, however, to the payment of the consideration money and compensation hereinafter mentioned, and to the provisions of said act and the supplements thereto, and to the provisions, conditions and restrictions hereinbefore contained. 20

2. That said company shall have the exclusive right, subject to the conditions and restrictions herein contained, to construct and maintain a single track street railway on and over said street or public highway, with switches and turnouts and to operate the same with cars and other necessary appliances.

3. That the tracks of said company shall be laid as follows: For a distance of six hundred feet from the north end of the location, southerly, to the east rail of the tracks shall be laid not more than three nor less than two feet west of the east curb line of said street or public highway, as said committee may hereafter direct; from the end of said six hundred feet to a point five hundred feet north of the north end of Shark River Bridge the west rail of the track shall be laid eighteen inches east of the east edge of the ma- 30

cadamized portion of said street or public highway; from said last named point and between the same and said bridge the tracks shall be laid to cross said street or public highway, where the said committee shall direct and for the rest of the location route the tracks shall be laid on the west side of said street or public highway.

There shall be no more than four turnouts, to be located in such places as said Committee may direct and
10 all turnouts shall be constructed on the east side of the main single track aforesaid.

4. That the location and franchise hereby granted shall be for the term of fifty years from and after the date of the adoption and passage of this resolution and ordinance; that in consideration of the grant of location and franchise herein made, and in consideration of the use for street railway purposes by said company of the portion of said street or public highway subject to the control of said Committee, and
20 as a compensation therefor, said Company shall on the second Monday in January, A. D. eighteen hundred and ninety-seven, and on the second Monday of January in each year thereafter, pay to the Treasurer of Committee for the use of said Township a sum of money equal in every instance to five per centum of the gross receipts from all the business of said Company for the year preceding each date of payment above specified.

5. That said Company shall at all reasonable times
30 submit any and all of its books and papers relating to the amount of business transacted, to the inspection of said Committee or its agents, and shall also, when required by said Committee, produce to said Committee statements of the business transacted by said Company during the specified period duly verified by an executive officer thereof.

6. That in construction of said railway and its equipments and materials and the work employed shall be

of the best quality and character. Said railway shall be constructed with steel "T" rails and laid flush with the surface of the street. That said railway shall be constructed under the direction of said committee or any agent of said committee to be by said committee appointed; that in case of appointment by said committee of an agent to direct the construction of said railway his salary shall be paid by said company, but the same shall not exceed the sum of one hundred dollars per month. 10

That it shall be the duty of said company, at its own expense, to restore the surface of all streets disturbed by the laying of said tracks to their former condition, and said company shall, at its own expense, put and keep in good repair and condition the surface of the said street or public highway, as follows: From the east edge of the macadamized portion of said street or public highway to the west rail of the track of said railway the surface of the street shall be well covered with the best quality of clay gravel for a period of two years from the date of this resolution and ordinance, and at the expiration of said two years the same shall be macadamized in the same way and with the same materials as said macadamized is now constructed, and so kept. The portion of said street or public highway within the tracks of said railway and east of such track to the east curb line, throughout, shall be well covered with the best quality of clay gravel under the direction and to the satisfaction of said Committee, and so kept; and over that portion of said street or public highway whereon the track is constructed within three feet of the east curb line said company shall construct and maintain a trunk or drain for the passage of surface water in the manner and places directed by said committee. 20 30

The said company shall, at its own expense, construct said road in such manner as not in anywise to

impede public travel and put the surface of said street or public highway in the condition and to the extent above specified and so keep the same at all times.

In case of the failure of said company to put and keep such portions of said street or public highway in good repair and condition as aforesaid, at its own expense the authorities of said township may cause the same to be done and charge the expense thereof to said company.

- 10 7. That electricity shall be the only power motive employed in the propulsion of cars on said railway.

That in case any overhanging wire system of electrical railway is used by said company the kind and arrangement of poles shall be subject to the direction of future regulation, by resolution or otherwise of said committee.

8. That nothing in this resolution or ordinance contained shall be held to exempt said company from the payment of any local, municipal, State or other lawful tax, imposition or assessment whatever.

20 9. That said company shall be subject to and shall comply with all reasonable resolutions, ordinances, or regulations which the proper local authorities having control of said street or public highway, or any part thereof, shall make from time to time, as to the rate of speed and the mode of using and maintaining said tracks, and the removal of ice and snow therefrom.

That until otherwise ordered and regulated the cars on said railway shall not be run at a greater speed
30 than six miles an hour from the northerly end of the Broadway entrance to Ocean Grove nor over the remainder of the route at a greater speed than fifteen miles per hour; nor shall any freight car be run upon said tracks or any part thereof.

10. That said company shall not charge any passenger for a continuous ride in one direction more than five cents from any point on the route hereinabove described within said township and that children under

five years of age not occupying seats and in company with persons of full age shall be transported free of charge. And that all policemen and firemen while on duty shall be permitted to ride on the cars of said company free of charge.

11. That said company shall not suffer or permit its cars to stand on said tracks at any time except to receive and deposit passengers or to effect the passing of cars; and in taking on and letting off passengers the cars shall not be stopped so as to interfere with the free and uninterrupted passage of travel on cross streets. 10

12. That it shall be the duty of said company to provide and keep upon its cars while in motion suitable and proper bells to give warning of the approach of cars; and also to provide and keep up proper lights in said cars and light the same when the cars are running at night; and in clearing away and removing snow or ice from said tracks it shall be done in such manner as not to interfere with the rights and privileges of the occupants of the property fronting on said street or public highway nor to obstruct public travel. And that no signs advertising the sale of liquors shall be anywhere displayed on or in the cars of said company. 20

13. That at the expiration of said term of fifty years, unless this grant of location and franchise shall have been extended or renewed, the said tracks of said company and other fixtures pertaining thereto shall be appraised by appraisers, one to be appointed by said Committee and one by the said company and these two may choose a third. 30

The said Committee reserves and the said Township shall have the right to purchase said tracks of said company and other fixtures pertaining thereto at the price fixed by said appraisers or a majority thereof, at its option.

If the said Township shall decide not to purchase the same any sale thereof to other parties shall be subject to the approval of the said committee, and the purchasers thereof shall have no right to use or operate the same except by further permission of the said committee. If the said tracks and other fixtures pertaining thereto are at any time removed from said street or public highway the said company must place said street or public highway in good repair and restore the surface thereof to as good condition as before.

14. That said company shall run its cars in both directions over the route herein located, as follows: From October 15, to May 1st. from 6:30 A. M. to 9 P. M. every thirty minutes. From May 1st. to July 1st. and from September 1st. to October 15th. from 6 A. M. to 10 P. M. every thirty minutes. From July 1st. to September 1st. from 6 A. M. to 11 P. M. every fifteen minutes.

15. That said committee reserve the use of said streets or public highway for the purpose of making any improvements or repairs thereto for the benefit of the said township and that all expenses attending the sustaining, removing and replacing of the rails or tracks of said company for the purpose of making such improvements or repairs shall be borne by said company and not by said Township; and that all persons and corporations shall be permitted to make such excavations and openings in the said street or public highway on which said tracks are laid as are lawful and necessary, by first obtaining the consent of said committee, and all expenses incurred in making such excavations and openings shall be paid by the person or corporation making the same.

16. That said company shall pay in addition to the compensation above provided, all the expense which said committee or said township may incur in connection with the grant of location herein made, within ten days after the notice of the amount thereof; but such

expense shall not exceed the sum of Three Hundred Dollars.

17. That said tracks shall be wholly laid within four months and said road fully equipped and in full operation within eight months from the date of the adoption and passage of this resolution and ordinance; provided, however, that the time during which said company may be restrained from constructing or operating its said railway, by due legal process, not the result of collusion on its part, shall not be counted as part of the periods above fixed and specified. 10

18. That within thirty days after the adoption and passage of this resolution and ordinance said company shall enter into bond with the said Township in its corporate name in the penal sum of Ten Thousand Dollars, with two sufficient sureties, freeholders of the State of New Jersey, who shall, if required, justify to the satisfaction of said committee, conditioned for the due fulfillment on the part of said company of all obligations and conditions imposed upon it by this resolution and ordinance and the laws of this State, which said bond shall be renewed by said company, with like sureties and conditions, every two years from the date thereof, until the term herein designated shall have expired. 20

19. That the designations herein used of "said Committee" "Township, Committee", or like designations mean, and shall be held to mean, the Township Committee for the time being of said Neptune Township.

20. The said Committee reserves the right to hereafter make at any time such lawful and reasonable regulations as to the maintenance and operation of said railway as they deem the interest of the public may require. 30

21. That before acquiring any rights under this resolution and ordinance, and within thirty days after its adoption and passage, said company shall file with the Clerk of said Committee and of said Township, the bond aforesaid, and shall also file as aforesaid a written

acceptance under its corporate seal of the location herein granted and of the terms of this resolution and ordinance and agreeing thereto and to comply therewith, in which acceptance and agreement said company shall further agree not in any manner or action to question or contest the legality or binding force of any of the terms hereof, nor to defend against the same upon the ground that this resolution and ordinance or any part thereof is without full legal warrant or that the same

10 in any particular is beyond the power of authority of said Committee to legally pass, enact or enforce.

AMOS TILTON, *Chairman.*

LEWIS RAINEAR.

S. W. KIRKBRIDE.

Adopted and passed February 11, 1893.

Attest, J. R. BREECE, *Township Clerk.*

20 This ordinance adopted or amended, June 1, 1893.

AMOS TILTON, *Chairman.*

S. W. KIRKBRIDE.

H. B. JOHNSON.

30 AN ORDINANCE granting to the Seacoast Traction Company permission to construct, maintain and operate a street railway in certain streets and avenues in the Township of Wall, in the County of Monmouth.

WHEREAS, The Seacoast Traction Company, a corporation of the State of New Jersey, incorporated under an act entitled, "An Act to provide for the incorporation of street railway companies, and to regulate the same," approved April 6, 1886, and the several acts supplementary thereto and amendatory thereof, has presented a petition to the Township Committee of this Township for permission to construct, maintain and

operate a double track street railway upon certain streets and avenues in this Township, and

WHEREAS due notice has been given to all parties interested of the time and place of a meeting at which the Township Committee of said Township would consider the said petition by publication of said notice in the *Seacoast Gazette*, a newspaper published and circulating in said Township, and by posting said notice in five public places in said Township, at least fourteen days before said meeting, and

10

WHEREAS the said Seacoast Traction Company has filed with the Clerk of this Township the written consent of the owners of more than one-half of the property fronting on the portions of the streets and avenues hereinafter mentioned through which said railway is to be constructed and acknowledged or proven by the subscribers as are deeds entitled to be recorded, and

WHEREAS the Township Committee has considered said petition and decided to grant the same upon the restrictions hereinafter contained, *therefore*

20

BE IT ORDAINED by the Township Committee of the

I. That the consent and permission of the Township Committee of the Township of Wall be and the same is hereby given to the Seacoast Traction Company to construct, maintain and operate a double track street railway to be constructed with standard girder steel rails and to be operated by electricity with the overhead trolley system, upon the following streets and highways in the Township of Wall:

Commencing in F. Street or Third Avenue at the southerly boundary of the Borough of Belmar, and extending thence southerly in F. Street or Third Avenue to the northerly boundary line of the Borough of Spring Lake. Also commencing in Wreck Pond at the southerly boundary line of the Borough of Spring Lake in the prolongation of Second Avenue and extending; thence across Wreck Pond to Second Avenue in Sea Girt and in Second Avenue and Crescent Avenue in

30

Sea Girt to Central Avenue; thence westerly in Central Avenue to lands of the New York and Long Branch Railroad Company and the Sea Girt Camp.

2. That the said double track shall be laid as nearly as possible as consistent with safety on the middle line of each street or avenue over lapping said middle line an equal distance on each side, the poles are to be placed in two lines one on either side of the street parallel with the middle line thereof along the edge of the sidewalk and close to the curb or gutter, the poles are to stand 10 opposite one another and the successive poles are to be placed as nearly as possible one hundred feet apart and in the position located and shown on the map accompanying this ordinance and filed with the Township Clerk. They are to be properly planted and securely fastened and shall be at least twenty-two feet in height and shall be sightly and be kept well painted. The wire and overhead work shall be properly constructed after the most approved method. The trolley wire shall be 20 suspended from the main span wires over the center line of the track, it shall be of copper and when in position shall not be less than eighteen feet from the ground. The materials used in the construction of said street railway and all the equipments and cars placed in use shall be new and of first class quality and character. Said railway shall be constructed with standard girder steel rail the same as now in use in Belmar and the crown of such rail shall be on a line with the surface of the streets. Said company shall restore the surface of all streets 30 disturbed by the laying of its tracks to their former condition and shall, at all times during the term of the franchise hereby granted, keep the road bed inside of its tracks or fifteen feet on each side of the center line of each street graveled and in good repair at its own expense and shall construct said road in such manner as will in no wise impede public travel.

The company shall lay its tracks to conform in all cases to the grade line of the streets as now established,

or as they may be hereafter established or changed by the Township authorities; in case of any such change of grade the company will conform thereto and so far as necessary therefor alter its tracks at its own expense without unnecessary delay. No car belonging to the company shall be allowed to stand in or obstruct any cross street or street crossing or to stand or remain in any one position for more than the time necessary to take on or let off passengers unless unavoidably obstructed or detained for reason of an accident or cause beyond the control of the company, or its officers or employees. 10

Said company shall cause to be kept lighted suitable head lights upon each of said cars when in use upon the streets and avenues at night and shall have gongs attached to the cars by which the motorman shall give timely warning of the approach of such cars to pedestrians and travelers in other vehicles. Every car operated on the said road when in use shall be provided with a proper fender and be in charge of a competent motorman and conductor and no advertising signs or notices shall be displayed on the outside of said cars and a sufficient number of cars shall be placed in service on said road as to give proper accommodation to the traveling public, and said road shall be operated during the entire year. 20

Said company shall run its own cars over said railway daily during the term of said franchise from six o'clock A. M. to eleven o'clock P. M. and make trips in opposite directions at least as often as once in every thirty minutes. The rate of fare shall not exceed five cents for the transportation of any single passenger for one continuous ride between Belmar and Sea Girt Camp; children not five years of age and accompanied by persons of full age shall be permitted to ride free of charge. 30

Said company shall comply with all reasonable ordinances and requests which the Township authorities

shall make, from time to time, as to the rate of speed and the mode of using and maintaining its said tracks and the removal of ice and snow therefrom and said cars shall not be run at a greater speed than at the rate of fifteen miles an hour.

In all cases where the Township authorities shall grant a permit for the removal of buildings across the tracks of said railway, such removal shall be made at night when the cars are not running, and the wires in such
10 cases shall be removed to permit the passing of such buildings, and replaced by said company at the expense of the company.

The Township reserves the use of said street for the purpose of making any improvements or repairs for the benefit of the Township, for making all necessary or proper openings and excavations for laying water, sewer or other pipes or mains or connections, and the expenses attending the removing and replacing of the rails or
20 tracks for the purpose of making such improvements or repairs or openings and excavations shall be borne by the said company. All private persons or corporations shall be permitted to make such excavations and openings in the streets on which said tracks are laid as are necessary, by first obtaining consent of the Township; and all expense incurred by such excavations or openings shall be paid by the persons or corporations making the same and such work shall be done so as not to obstruct the operation of said road.

The franchise, rights and privileges hereby granted
30 shall continue for a period of ninety-nine years from the date of the passage of this ordinance.

That before acquiring any rights under the ordinance and within ten days after its passage, said company shall file with the Clerk of this Township a written acceptance under its corporate seal of this ordinance, and of the terms and rights hereby granted, and therein agree not in any action or otherwise to dispute the binding force of any of the provisions of the ordinance for illegality,

want of authority or otherwise, and such acceptance and this ordinance shall constitute the contract between said company and this Township for said franchise.

3. This franchise is granted upon the following conditions, that work on said road shall be commenced within three months after the acceptance by the company of this ordinance and shall be completed and cars running in accordance with the terms of this ordinance within fifteen months from the date of acceptance by the Company of this ordinance, any violation of this section will make the entire ordinance null and void. 10

Passed February 27, 1904.

Adopted February 27, 1904.

Approved February 27, 1904.

CHAS. GIFFARD, *Chairman.*

H. J. STINES,

CHAS. WHITE.

Attest:

JAMES W. McLAUGHLIN,

Township Clerk.

20

ORDINANCE.

AN ORDINANCE granting to the Seacoast Traction Company permission to construct, maintain and operate a street railway in certain streets and avenues in the Borough of Spring Lake.

WHEREAS, The Seacoast Traction Company, a corporation of the State of New Jersey, incorporated under an act entitled "An act to provide for the incorporation of street railway companies and to regulate the same," approved April 6, 1886, and the several acts supplementary thereto and amendatory thereof, has presented a petition to the Council of said borough for permission to construct, maintain and operate a double track street railway upon certain streets and avenues in this borough; and 30

WHEREAS, Due notice has been given to all parties interested of the time and place of a meeting at which the Council of said borough would consider the said petition by publication of said notice in the *Seaside Gazette*, a newspaper published in said borough, and by posting said notice in five public places in the said borough at least fourteen days before said meeting; and

10 WHEREAS, The said Seacoast Traction Company has filed with the Clerk of this borough the written consent of the owners of more than one-half of the property fronting on the portions of the streets and avenues hereinafter mentioned through which said railway is to be constructed, and acknowledged or proven by the subscribers as are deeds entitled to be recorded; and

WHEREAS, The Council has considered said petition and decided to grant the same upon the restrictions hereinafter contained,

THEREFORE BE IT ORDAINED by the Council of the Borough of Spring Lake:

- 20 I. That the consent and permission of the Council of the Borough of Spring Lake be and the same is hereby given to the Seacoast Traction Company to construct, maintain and operate a double track street railway to be constructed with standard girder steel rails and to be operated by electricity with the overhead trolley system upon the following streets and highways in the Borough of Spring Lake—commencing in Third Avenue at the northerly boundary line of the said Borough of Spring Lake and extending thence southerly in
- 30 Third Avenue to South Boulevard; thence southwesterly in said South Boulevard to Fourth Avenue; thence southerly in said Fourth Avenue to Morris Avenue; thence westerly in said Morris Avenue to Fifth Avenue; thence southerly in said Fifth Avenue to Atlantic Avenue; thence easterly in Atlantic Avenue to Second Avenue; thence southerly in Second Avenue to Wreck Pond and across Wreck Pond to the southerly boundary of the Borough of Spring Lake.

2. That the said double track shall be laid as nearly as possible as consistent with safety on the middle line of each street or avenue overlapping said middle line an equal distance on each side, the poles are to be octagon and are to be placed in two lines one on either side of the street parallel with the middle line thereof along the edge of the sidewalk and close to the curb or gutter, the poles are to stand opposite one another and the successive poles are to be placed as nearly as possible one hundred feet apart and in the positions located and shown on the map accompanying this ordinance and filed with the borough clerk. They are to be properly planted and securely fastened and shall be at least twenty-two feet in height and shall be sightly and be kept well painted. The wire and overhead work shall be properly constructed after the most approved method. The trolley wire shall be suspended from the span wires over the centre line of the track, it shall be of copper and when in position shall not be less than eighteen feet from the ground. The materials used in the construction of said street railway and all the equipments and cars placed in use shall be new and of first class quality and character. Said railway shall be constructed with standard girder steel rails same as now in use in Belmar and the crown of such rails shall be on a line with the surface of the streets. Said company shall restore the surface of the streets disturbed by the laying of its tracks to their former condition and shall grade and gravel said streets and avenues from curb to curb with a layer of gravel eight inches at crown and six inches at curb rolled, and shall at all times during the term of this franchise hereby granted keep the roadbed inside of its tracks and eighteen inches outside thereof on each side in good repair at its own expense and shall construct said road in such manner as in no wise will impede public travel.

Said Company shall widen Fourth Avenue between Morris and Jersey avenues five feet on each side and

between Jersey avenue and Washington avenue five feet on the east side by moving back the curb and shade trees that distance.

Said company shall pave Fifth Avenue in front of the engine house with Belgian blocks a distance of fifty feet the width of the street.

- The company shall lay its tracks to conform in all cases to the grade line of the streets as now established or as they may be hereafter established or changed by
- 10** the borough authorities in case of any such change of grade the company will conform thereto and so far as necessary therefore alter its tracks at its own expense without unnecessary delay. No car belonging to the company shall be allowed to stand in or obstruct any cross street or street crossing or to stand or remain in any one position for more than the time necessary to take on or let off passengers unless unavoidably obstructed or detained for reason of an accident or cause beyond the control of the company or its officers or employees.
- 20**

Said company shall cause to be kept lighted suitable headlights upon each of the cars when in use upon the streets and avenues at night and shall have gongs attached to the cars by which the motormen shall give timely notice of the approach of such car to pedestrians and travelers in other vehicles. Every car shall operated on said road when in use shall be provided with a proper fender and be in charge of a competent motorman and conductor, and in winter shall be kept heated.

- 30** And a sufficient number of cars shall be placed in service on said road as to give proper accommodation to the travelling public and said road shall be operated during the entire year.

Said company shall run its cars over said railway daily during the term of said franchise from six o'clock A. M. to 11:30 o'clock P. M. and make trips in opposite directions at least as often as once in every twenty minutes from June 1st to October 1st, and the balance of

the year every thirty minutes. The rate of fare shall not exceed five cents for the transportation of any single passenger for one continuous ride between Belmar and Borough of Manasquan; children not five years of age and accompanied by persons of full age shall be permitted to ride free of charge. All policemen in uniform and firemen going to and from fires of the borough when on duty shall be permitted to ride free of charge.

Said company shall comply with all reasonable ordinances and requests which the borough authorities shall make from time to time as to the rate of speed and the mode of using and maintaining its said tracks and the removal of snow and ice therefrom and said cars shall not run at a greater speed than at the rate of fifteen miles an hour. 10

In all cases where the borough authorities shall grant a permit for the removal of buildings across the tracks of said railway company, such removal shall be made at night when the cars are not running and the wires in such cases shall be removed to permit the passing of such buildings, and replaced by said company at the expense of the owner or mover of such buildings and not to exceed ten dollars. 20

The borough reserves the use of said streets for the purpose of making any improvements or repairs for the benefit of the borough, for making all necessary or proper openings and excavations for laying water, sewer or other pipes or mains or connections, and the expense attending and removing the replacing of the rails or tracks for the purpose of making such improvements or repairs or openings and excavations shall be borne by the said company. All private persons or corporations shall be permitted to make such excavations and openings in the streets on which said tracks are laid as are necessary, by first obtaining consent of the borough; and all expenses incurred by such excavations or openings shall be paid by the persons or cor- 30

porations making the same and such work shall be done so as not to obstruct the operation of the road.

The franchise, rights and privileges hereby granted shall continue for a period of ninety-nine years from the date of the passage of this ordinance.

That before acquiring any such rights under the ordinance and within ten days after the passage of its passage, said company shall file with the clerk of this borough a written acceptance under its corporate seal
 10 of this ordinance of the terms and rights hereby granted, and therein agree not in any action or otherwise to dispute the binding force of any of the provisions of the ordinance for illegality, want of authority or otherwise, and such acceptance and this ordinance shall constitute the contract between said company and this borough for said franchise.

Said company shall have said road completed to the south side of Mercer Avenue by the fifteenth day of July, 1904, and said road completed to the south bound-
 20 ary of the borough within fifteen months from the date of the passage of this ordinance.

In consideration of the permission hereby granted said company shall build a road through the Spring Lake Park from Passaic Avenue to Warren Avenue and through block 61 according to the plans for the same made by the borough engineer.

This ordinance shall take effect when the same has been posted or published as required by law.

Presented February 29, 1904.

30 Passed February 29, 1904.

Approved February 29, 1904.

O. H. BROWN, *Mayor.*

Attest:

H. C. VAN ARSDALE,

Borough Clerk.

AN ORDINANCE.

AN ORDINANCE granting to the Asbury Park and Sea Girt Railroad Company permission to construct, maintain and operate a street railway in Main Street in the Borough of Neptune City, in the County of Monmouth.

WHEREAS, The Asbury Park and Sea Girt Railroad Company, a corporation of the State of New Jersey, 10
incorporated under an act entitled, "An Act to authorize the formation of Traction Companies for the construction and operation of street railways or railroads operated as street railways, and to regulate the same," approved March 14th, 1893, and the several acts supplementary thereto, has presented a petition to the Council of this Borough for permission to construct, maintain and operate a double track street railway upon Main Street its entire length in the Borough, and

WHEREAS, due notice has been given to all parties 20
interested of the time and place of a meeting at which the Council of said Borough would consider the said petition by publication of said notice in the *Asbury Park Evening Press*, a newspaper published at Asbury Park, and circulating in said Borough, and by posting said notice in five public places in said Borough at least fourteen days before said meeting, and

WHEREAS, the said Asbury Park and Sea Girt Railroad Company has filed with the Clerk of this Borough the written consent of the owners of more than one- 30
half of the property fronting on the said Main Street through which said railway is to be constructed, and acknowledged or proven by the subscribers as are deeds entitled to be recorded, and

WHEREAS, the Council has considered said petition and decided to grant the same upon the restrictions hereinafter contained, therefore,

BE IT ORDAINED By the Council of the Borough of Neptune City in the County of Monmouth:

1. That the consent and permission of the Council of the Borough of Neptune City be and the same is hereby given to the Asbury Park and Sea Girt Railroad Company to construct, maintain and operate a double track street railway to be constructed with standard tramway girder steel rails, and to be operated by electricity with the overhead trolley system, upon the following street and highway in the Borough of Neptune City:

10 Commencing in Main Street at the northerly boundary line of the Borough of Neptune City and extending thence southerly in said Main Street to the southerly boundary line of the Borough of Neptune City.

2. That the said double track shall be laid as nearly as possible on the middle line of Main Street overlapping said middle line an equal distance on each side, the poles are to be placed in two lines one on either side of the street parallel with the middle line thereof
20 along the edge of the sidewalk and close to the curb or gutters; the poles are to stand opposite one another and the successive poles are to be placed as nearly as possible one hundred feet apart and in the position located and shown on the said map accompanying this ordinance and filed with the Borough Clerk. They are to be properly planted and securely fastened and shall be at least twenty-two feet in height and shall be slightly and be kept well painted. The wires and overhead work shall be properly constructed after the most approved
30 method. The trolley wire shall be suspended from the span wires over the center line of the track, it shall be of copper and when in position shall not be less than eighteen feet from the ground.

The materials used in the construction of said street railway and all the equipments and cars placed in use shall be of first class quality and character. Said railway shall be constructed with standard tramway girder steel rails and the crown of such rail shall be on a line

with the surface of the street. Said company shall restore the surface of said Main street disturbed by the laying of its tracks to its former condition, and shall gravel said street from curb to curb with a layer of clay gravel eight inches at crown and six inches at curb, rolled and shall at all times during the term of the franchise hereby granted keep the road bed inside of its tracks and eighteen inches outside thereof on each side in good repair at its own expense and shall construct said road in such manner as in no wise to impede public travel. 10

The Company shall lay its tracks to conform in all cases to the grade line of the said Main street as now established, or as it may be hereafter established or changed by the Borough authorities. In case of any such change of grade the company will conform thereto and so far as necessary therefore alter its tracks at its own expense without unnecessary delay. No car belonging to the company shall be allowed to stand in or obstruct any cross street or street crossing, or to stand or remain in any one position for more than the time necessary to take on or let off passengers unless unavoidably obstructed or detained for reason of an accident of cause beyond the control of the company of its officers or employees. 20

Said company shall cause to be kept lighted suitable headlights upon each of said cars when in use upon the streets and avenues at night and shall have gongs attached to the cars by which the motorman shall give timely notice of the approach of such cars to pedestrians and travellers in vehicles. Every car operated on said road when in use shall be provided with a proper fender and be in charge of a competent motorman and conductor and no advertising signs or notices shall be displayed on the outside of said cars, and a sufficient number of cars shall be maintained and operated in service on said road as to give proper accommodation to the traveling public, and said road shall be operated during the entire year. 30

Said company shall run its cars over said railway daily during the term of said franchise from six o'clock A. M. to 11:30 o'clock P. M. and make trips in opposite directions at least as often as once in every fifteen minutes. The rate of fare shall not exceed five cents for the transportation of any single passenger for one continuous ride between Asbury Park and Belmar and between Belmar and Sea Girt Camp; children not five years of age not occupying seats and accompanied by 10 persons of full age shall be permitted to ride free of charge.

Said company shall comply with all reasonable ordinances and requests which the Borough authorities shall make from time to time, as to the rate of speed and the mode of using and maintaining its said tracks and the removal of ice and snow therefrom, and said cars shall not be run at a greater speed than at the rate of fifteen miles an hour.

In all cases where the Borough authorities shall grant 20 a permit for the removal of buildings across the tracks of said railway, such removal shall be made with the least possible obstruction or delay to the running of cars upon said tracks, and the wires in such cases shall be removed to permit the passage of such buildings, and replaced by said company upon the owner of such building paying to the company the actual expenses incurred.

The Borough reserves the use of said streets for the purposes of making any improvements or repairs for the benefit of the Borough, for making all necessary 30 or proper openings and excavations for laying water, sewer or other pipes or mains or connections, and the expenses attending its removal and replacing the rails or tracks for the purpose of making such improvements or repairs or openings and excavations shall be borne by the said company.

All private persons or corporations shall be permitted to make such excavations and openings in

the streets on which said tracks are laid as are necessary, by first obtaining consent of the Borough, and all expenses incurred by such excavations or openings shall be paid by the persons or corporations making the same; but such obstruction and delay shall not continue longer than is reasonable necessary to do the work for which such consent may be given.

The franchise, rights and privileges hereby granted shall continue for a period of forty years from the date of the passage of this ordinance, and said company shall pay to this Borough for such franchise hereby granted such franchise tax or taxes as may be fixed by law, but such sum so paid shall not in any year be less than the sum of Two Hundred and Twenty-five Dollars. 10

That before acquiring any rights under the ordinance and within ten days after its passage, said company shall file with the Borough Clerk of this Borough a written acceptance under its corporate seal of this ordinance and of the terms and rights hereby granted, and therein agree not, in any action or otherwise, to dispute the binding force of any of the provisions of the ordinance for illegality, want of authority or otherwise, and such acceptance and this ordinance shall constitute the contract between said company and this Borough for said franchise. 20

3. This ordinance shall take effect when the same has been posted or published as required by law.

Presented, March 21, 1906.

Adopted, March 21, 1906.

STEPHEN H. HENDRICKS,
Borough Clerk. 30

Approved, March 23, 1906.

E. M. BEUTELL,
Acting Mayor.

Attest:

STEPHEN H. HENDRICKS,
Borough Clerk.

BOROUGH OF BRADLEY BEACH.

AN ORDINANCE granting to The Atlantic Coast Electric Railway Company permission to construct, operate and maintain a new line of street railway in, through and upon the the public street or highway in said Borough of Bradley Beach, commonly known as the main public road, leading from Asbury Park through the borough of Bradley Beach to Belmar called Main Street, and a location of the route and a location of the tracks and rails of said new line of railway in said borough and determining the places in which the poles for sustaining the electric wires of said railway shall be located.

WHEREAS, The Atlantic Coast Electric Railroad Company, a corporation formed upon the provisions of an act of the Legislature of the State of New Jersey, entitled, "An act to authorize the formation of traction companies for the construction and operation of street railways, or railroads operated as street railways, and to regulate the same," approved March 14, 1893, and the acts amendatory thereof, by its petition bearing date the twelfth day of June in the year eighteen hundred and ninety-seven, did apply to the mayor and council of the borough of Bradley Beach for permission to construct, operate and maintain a new line of street railway in, through and upon the public street or highway in said borough of Bradley Beach, commonly known as the main public road leading from Asbury Park through the borough of Bradley Beach to Belmar, called Main Street, and extending therein from the extreme northern boundary line of said borough of Bradley Beach southwardly to the extreme southern boundary line of said borough, conformably to the route designated in the description of the route of such new line, and the map exhibiting the same filed in the office of the Secretary of State at Trenton, New Jersey, on the twenty-

third day of June, in the year eighteen hundred and ninety-six, and for a location of the route, and a location of the tracks and rails of its said new line of railway in said borough of Bradley Beach conformably to the said route, and to determine the place or places in which the poles for sustaining the electric wires of said railway shall be located, which said petition was duly signed by the said corporation and by a majority of the directors thereof and was accompanied with a map and description of the route of the said new line of railway, showing also the proposed location of rails of tracks and the location of poles and which said petition and map were duly filed with the clerk of said borough on the thirtieth day of June in the year eighteen hundred and ninety-seven, and public notice of said application having been given to all parties interested by publication in the Asbury Park "Journal," a newspaper published at Asbury Park, in said County of Monmouth, and circulating in said borough of Bradley Beach, duly designated by the council of the Borough of Bradley Beach, the governing body of said borough, to publish the said notice and by posting in five public places in said borough of Bradley Beach likewise designated by the said council in which to post the same, for at least fourteen days before the time fixed for the meeting of said council at which said application would be considered; said notice specifying the name of the corporation presenting such petition, the date of filing the same, the character of the road intended to be constructed, operated and maintained, the motive power to be used thereon and the street or public highway in and through which the same shall extend, and giving notice that accompanying the said petition and filed therewith is a map of the route of the said railway showing also the proposed location of rails or tracks, and the location of poles, and the said notice also specifying the time and place of a meeting of the said council when and at which said council would consider such application:

And the said corporation having filed with the clerk of the said borough of Bradley Beach the consent in writing of the owners of at least one-half in amount in lineal feet of property fronting on the part of the public street or highway in, through and upon which permission to construct, operate and maintain said street railway is asked, duly executed and acknowledged as are deeds entitled to be recorded:

And the said Council having met at the time and
10 place specified in the said notice and heard all parties interested who desired to be heard concerning the said application, and the said meeting having been then and thereafter in an open and public manner adjourned from time to time and until this present meeting, and having heard all persons who desired to be heard concerning said application at all of said meetings, and having considered the matter the said council had decided to grant the said application upon the terms and subject to the restrictions hereinafter contained, there-
20 fore:

BE IT ORDAINED, by the council of the Borough of Bradley Beach that the said application of the said Atlantic Coast Electric Railroad Company for permission to construct, operate and maintain a new line of street railway in, through and upon the public street or highway in said borough of Bradley Beach commonly known as the main public road leading from Asbury Park through the borough of Bradley Beach to Belmar called Main Street and extending therein from the ex-
30 tremen northern boundary line of said borough of Bradley Beach southwardly to the extreme southern boundary line of said borough conformably to the route designated in the description of the route of the said new line and the map exhibiting the same filed in the office of the Secretary of State at Trenton, New Jersey, on the twenty-third day of June, A. D. eighteen hundred and ninety-six, and for a location of the route, and a location of the tracks and rails of the said new

line of railway in said borough of Bradley Beach conformably to the said route, and to determine the place or places in which the poles for sustaining the electric wires of said railway shall be located, be and the same is hereby granted upon the terms and subject to the restrictions hereinafter contained, that is to say:

2. That said Atlantic Coast Electric Railroad Company, shall have the right and the permission of the said council of the Borough of Bradley Beach is hereby granted to the said Atlantic Coast Electric Railroad Company, its successors and assigns, to construct, operate and maintain a single track railway with one turnout to be operated as a street railway in and through the public street or highway in said borough of Bradley Beach commonly known as the main public road leading from Asbury Park through the borough of Bradley Beach to Belmar and called Main Street and extending therein from the extreme northern boundary line of said borough of Bradley Beach southwardly to the extreme southern boundary line of said borough, conformably to the route designated in the description of the route of such railway and the map exhibiting the same, filed in the office of the Secretary of State at Trenton, New Jersey, on the twenty-third day of June, A. D. 1896.

3. That said railway shall be a single track railway with one turnout to be located as hereinafter mentioned; that the main tracks of said railway shall be located in said Main Street so that the east rail of said main track shall be located two and one-half feet west from the center line of said Main Street, according to the location of the said rails and tracks as the same are shown on the map entitled, "Map showing the proposed location of rails or tracks and the location of poles of the Atlantic Coast Electric Railroad Company in the Borough of Bradley Beach, in the County of Monmouth," made by W. H. DeNyse, civil engineer, and filed with the clerk of the borough of Bradley Beach, on the thirtieth day of June, 1897, and referred to in

the said petition. The said turnout shall be located on the east side of said main tracks and shall extend from the southerly side of Cook Avenue, southwardly, to the northerly side of Sixth Avenue and the rails, tracks and curves thereof shall be located as the same are shown on the last mentioned map. The gauge of the tracks of said railway shall be four feet eight and one-half inches and there shall be a space of five feet between the main tracks of said railway and the said turnout; that the
10 rails of the said railway shall be the so-called improved steel girder rail of the same style and pattern as are now laid and in use by said company on its railway in Cookman Avenue at Asbury Park, New Jersey, and said rails shall be so laid that the tops thereof shall be flush with the surface grade of said street.

4. That in the construction of said railway and its equipment in said borough the materials and work employed therein shall be of the best quality and character, and the said work shall be done in such a manner as not
20 to unnecessarily impede public travel, and it shall be the duty of said company to restore all streets and avenues disturbed by the laying of the tracks of said railway to their former condition and to keep the roadway between its tracks and for two feet outside thereon on each side in good repair at its own expense at all seasons of the year. In case of the failure of such company to keep such portions of the street in good repair and passable condition at its own expense, the said
30 borough may by its own proper officers cause such portions of said street to be repaired and restored and charge the expense thereof to the said railroad company, and the same shall be payable forthwith on demand.

5. That electricity shall be the motive power to be used for the propulsion of the cars on said railway and no other motive power; that said railroad company shall have the right to equip and operate its said railway with what is commonly known as the overhead trolley system of electrical street railway equipment.

That the necessary poles for sustaining and carrying the wires for conducting electricity to the motors shall be located along each side of said Main Street, one opposite the other just inside the curb line at the points and places indicated for the location of said poles on the aforesaid map entitled, "Map showing the proposed location of rails or tracks and the location of the poles of the Atlantic Coast Electric Railroad Company in the Borough of Bradley Beach, in the County of Monmouth," made by W. H. DeNyse, civil engineer, filed with the clerk of the borough of Bradley Beach, June 30, 1897, as aforesaid; said poles shall be of yellow pine wood, octagonal in shape and shall be painted and kept painted by the said company and shall be properly planted and securely fastened. 10

6. That all wiring and overhead work shall be properly constructed after the most approved method; that all overhead wires shall be placed at least twenty feet above the surface of the street; that the trolley wires shall be suspended over the center line of the tracks and be sustained by spanning wires across the tracks from pole to pole in the usual manner; that if said company shall at any time hereafter obtain permission from the owners of the electric light poles now erected along the east side of Main Street for the purpose, the said railway company shall have the right to sustain its said trolley wires over its tracks by spanning wires across said street from the said railway poles on the west side of said Main Street to and attaching same to the said poles of the electric light company on the east side of said Main Street and to suspend said trolley wires from said spanning wires in the usual manner; the feed wires for supplying electricity to said trolley wires shall be strung from pole to pole along the west side of said street and said feed wires shall be properly insulated. 20 30

7. That in all cases where the owner or owners of any building shall obtain from the council of the borough of Bradley Beach permission to move any

building across the street upon which the tracks of said company are constructed, the person or persons obtaining such permission shall move such building across said tracks in such manner and at such hours as will cause the least possible obstruction or delay to the running of the cars upon said railway; and thereupon the overhead wires of said company shall be removed by said company or its servants sufficiently to permit the moving of the building across the street with safety;

10 providing nevertheless that the actual expense to said company of removing and replacing its said wires shall first be paid for by the person or persons obtaining such permit.

8. That the said company shall be solely responsible for all damages that may result on account of accident or injury to any person or persons, or real or personal property during the construction and operation of said railway, by reason of negligence of said company, and said company shall indemnify and save harmless the

20 said Borough of Bradley Beach from any and all cost, charges and expenses which may be incurred by it in defending any litigation against said borough by any person or persons or corporation growing out, or by reason of, the passage of this ordinance or the granting of the franchise to said company herein set forth.

9. That the borough reserves the use of said streets and avenues for the purpose of making any improvements or repairs for the benefit of the borough, and no expense attending the removing or replacing of the rails

30 or tracks for the purpose of making such improvements or repairs shall be borne by the borough; the borough shall in no wise be liable for any damage resulting to said company by reason of loss of service during the making of such improvements and repairs.

10. That all private persons or corporations shall be permitted to make such excavations and openings in the streets and avenues on which said tracks are laid as are necessary, by first obtaining consent of the borough;

and all expenses incurred by such excavations or openings shall be paid by the persons or corporations making the same; but obstructions and delay shall not continue longer than is reasonably necessary to do the work for which said consent may be given.

11. That said company shall run its cars daily over the said railway in both directions, as follows: From May fifteenth to September fifteenth, from six A. M. to eleven o'clock P. M. at intervals not exceeding fifteen minutes, that is to say, that at least one of the company's cars shall pass any given point on the route herein described, in each direction every fifteen minutes during the above mentioned period; and from September fifteenth, from six o'clock A. M. to ten o'clock P. M. at intervals not exceeding thirty minutes, that is to say, that at least one of the company's cars shall pass any given point on the route herein described, in each direction, every thirty minutes during the above mentioned period. 10

12. That the rate of fare shall be five cents for the transportation of any passenger for one continuous ride on the cars of said company in any direction within the corporate limits of said borough, and no more than five cents shall be charged by said company for the transportation of any passenger for one continuous ride in either direction on the cars of said company from Cookman Avenue in Asbury Park to any point in Belmar on the route of said railway, or to any other point on said route whenever said railway of said company shall be constructed and in operation over its said route between Asbury Park and the southern boundary line of the Borough of Belmar. 20 30

13. That the said company shall cause to be kept lighted suitable headlights upon each of said cars, when in use upon the streets and avenues at night, and it shall have gongs attached to the cars by which the motorman shall give timely warning of the approach of such cars to pedestrians and drivers of such vehicles.

14. That each of the cars of the said company shall be equipped on the forward end, when in motion, with an appliance commonly known as a fender, designated for the protection of life and limb of pedestrians and drivers of such vehicles.

15. That each of the said cars belonging to the said company shall at all times, when in use, be in charge of and under the care of a competent motorman.

16. That no car belonging to the said company shall
10 be allowed to stand in or obstruct any cross street or street crossing, or to stand or remain in any one position, except at the terminal of said road, for more than the time necessary to take on or let off passengers, unless unavoidably obstructed or detained by reason of an accident or cause beyond the control of the said company or its officers.

17. That the said company shall comply with all reasonable ordinances or regulations which the said
20 council may make from time to time as to the rate of speed of the cars upon said streets and avenues, or any of them, and the manner of maintaining street crossings, and the removal of snow and ice therefrom; provided that the said cars shall not be run at a greater speed than fifteen miles an hour, and that in clearing away and removing snow and ice from said tracks it shall be done in such manner as not to obstruct public travel or unnecessarily interfere with the rights and
privileges of the occupants of the properties abutting
on the public streets and avenues through and across
30 which said tracks are constructed.

18. That the said company shall complete the construction of its railway within the borough of Bradley Beach on or before the first day of November in the year eighteen hundred and ninety-seven, unless prevented from so doing by legal restraint, not the result of collusion, on the part of the said company.

19. That the permission, rights and privileges hereby granted to the Atlantic Coast Electric Railroad Com-

pany shall continue for a period of fifty years from and after the passage of this ordinance.

20. That as compensation for the rights and privileges hereby granted the said railroad company shall at its own cost and expense, in a good and workmanlike manner, to the satisfaction and under the direction of the said council of the Borough of Bradley Beach, grade and gravel with good quality of gravel so much of said Main Street in said borough as lies between the east rail of the said tracks of said railroad company in said Main Street and the curb line on the west side of said street the entire length of said Main Street in said borough. The said gravel to be six inches in depth when rolled to grade, and said grading and graveling to be done while the work of laying the tracks is being done; all of said work of grading and graveling to be done under the supervision of the council of said borough of Bradley Beach or some person who shall by resolution of said council be appointed and authorized to supervise the same; the wages of such person to be paid by the said company and shall not exceed three dollars per day for each day's service while actually employed in the supervision of said work. And the said railroad company shall as further and additional compensation for the said rights and privileges hereby granted pay to the borough of Bradley Beach for the use of said borough, the sum of two hundred and fifty dollars annually, on the first day of September in each and every year after January first, eighteen hundred and ninety-eight, during said period of fifty years for which the franchise is granted.

21. That within thirty days after the passage of this ordinance the said company shall enter into a bond to the borough of Bradley Beach in the penal sum of five thousand dollars conditioned for the due fulfillment on the part of the said company of its obligations to grade and gravel Main Street according to the requirements of section twenty of this ordinance.

22. That said company shall file a written acceptance of the ordinance hereby granted and the terms thereof, within thirty days after the passage hereof, and such acceptance and this ordinance shall constitute the contract between said company and this borough for said franchise; and the said acceptance shall provide that said company shall not in any manner or action contest or question the legality or binding force of any provision of this ordinance, or defend against the same on
- 10 on the ground that the same is beyond the power or authority of the mayor and council to legally exact or enforce.

23. And be it ordained that this ordinance shall take effect on the first day of October, eighteen hundred and ninety-seven.

Passed Sept. 8th, 1897.

Approved Sept. 8th, 1897.

(L. S.)

A. R. YARNELL, *Mayor*.

Attest: H. P. GANT, *Clerk*.

20

AN ORDINANCE.

AN ORDINANCE granting to the Asbury Park and Sea Girt Railroad Company permission to construct, maintain and operate a street railway in Main Street in the Borough of Avon-by-the-Sea, in the County of Monmouth.

- 30 WHEREAS, The Asbury Park and Sea Girt Railroad Company, a corporation of the State of New Jersey, incorporated under an act entitled, "An act to authorize the formation of Traction Companies for the construction and operation of street railways or railroads operated as street railways, and to regulate the same," approved March 14th, 1893, and the several acts supplementary thereto, has presented a petition to the Council of this Borough for permission to construct,

maintain and operate a double track street railway upon Main street its entire length in this Borough, and

Whereas, due notice has been given to all parties interested of the time and place of a meeting at which the Council of said Borough would consider the said petition by publication of said notice in the Asbury Park Evening Press, a newspaper published at Asbury Park and circulating in said Borough, and by posting said notice in five public places in said Borough at least fourteen days before said meeting, and

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Whereas, the said the Asbury Park and Sea Girt Railroad Company has filed with the Clerk of this Borough the written consent of the owners of more than one half of the property fronting on the said Main Street through which said railway is to be constructed, and acknowledged or proven by the subscribers as are deeds entitled to be recorded, and

Whereas, the Council has considered said petition and decided to grant the same upon the restrictions hereinafter contained, therefore,

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Be it ordained by the Council of the Borough of Avon-by-the-Sea, in the County of Monmouth:

1. That the consent and permission of the Council of the Borough of Avon-by-the-Sea be and the same is hereby given to the Asbury Park and Sea Girt Railroad Company to construct, maintain and operate a double track street railway to be constructed with T or other standard tramway steel rails, and to be operated by electricity with the overhead trolley system, upon the following street and highway in the Borough of Avon-by-the-Sea:

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Commencing in Main street at the Northerly boundary line of the Borough of Avon-by-the-Sea and extending thence southerly in said Main Street to the southerly boundary line of the Borough of Avon-by-the-Sea.

2. That the said double track shall be laid as nearly as possible on the middle line of said Main street over-

lapping said middle line an equal distance on each side, the poles are to be placed in two lines one on either side of the street parallel with the middle line thereof along the edge of the sidewalk and close to the curb or gutters; the poles are to stand opposite one another and the successive poles are to be placed as nearly as possible one hundred feet apart and in the position located and shown on the map accompanying this ordinance and filed with the Borough Clerk. They are to

- 10** be properly planted and securely fastened and shall be at least twenty-two feet in height and shall be sightly and be kept well painted. The wire and overhead work shall be properly constructed after the most approved method. The trolley wire shall be suspended from the span wires over the center line of the track, it shall be of copper and when in position shall not be less than eighteen feet from the ground.

- The materials used in the construction of said street railway and all the equipments and cars placed in use
- 20** shall be of first class quality and character. Said railway shall be constructed with T or other standard tramway steel rail and the crown of such rail shall be on a line with the surface of the street. Said company shall restore the surface of said Main Street disturbed by the laying of its tracks to its former condition, and shall gravel said street from curb to curb with a layer of gravel eight inches at crown and six inches at curb, and shall at all times during the term of the franchise hereby granted, keep the road bed inside of its tracks
- 30** and eighteen inches outside thereof on each side in good repair at its own expense and shall construct said road in such manner as in no wise will impede public travel.

The Company shall lay its tracks to conform in all cases to the grade line of the said Main Street as now established, or as it may be hereafter established or changed by the Borough authorities. In case of any such change of grade the company will conform there-

to and so far as necessary therefore alter its tracks at its own expense without unnecessary delay. No car belonging to the company shall be allowed to stand in or obstruct any cross-street or street crossing, or to stand or remain in any one position for more than the time necessary to take on or let off passengers unless unavoidably obstructed or detained for reason of an accident or cause beyond the control of the company or its officers or employees.

Said company shall cause to be kept lighted suitable head lights upon each of said cars when in use upon the streets and avenues at night and shall have gongs attached to the cars by which the motorman shall give timely notice of the approach of such cars to pedestrian and travellers in other vehicles. Every car operated on said road when in use shall be provided with a proper fender and be in charge of a competent motorman and conductor and no advertising signs or notices shall be displayed on the outside of said cars and a sufficient number of cars shall be maintained and operated in service on said road as to give proper accommodation to the traveling public, and said road shall be operated during the entire year. 10 20

Said company shall run its cars over said railway daily during the term of said franchise from six o'clock A. M. to 11.30 o'clock P. M. and make trips in opposite directions at least as often as once in every twenty minutes. The rate of fare shall not exceed five cents for the transportation of any single passenger for one continuous ride between Asbury Park and Belmar and between Belmar and Sea Girt Camp; children not five years of age not occupying seats and accompanied by persons of full age shall be permitted to ride free of charge. 30

Said company shall comply with all reasonable ordinances and requests which the Borough authorities shall make from time to time, as to rate of speed and the mode of using and maintaining its said tracks and

the removal of ice and snow therefrom, and said cars shall not be run at a greater speed than at the rate of fifteen mile an hour.

In all cases where the Borough authorities shall grant a permit for the removal of buildings across the tracks of said railway, such removal shall be made with the least possible obstruction or delay to the running of cars upon said tracks, and the wires in such cases shall be removed to permit the passing of such build-
10 ings, and replaced by said company upon the owner of such building paying to the company the actual expense incurred.

The Borough reserves the use of said streets for the purpose of making any improvements or repairs for the benefit of the Borough, for making all necessary or proper openings and excavations for laying water, sewer or other pipes or mains or connections, and the expense attending the removing and replacing
20 of the rails or tracks for the purpose of making such improvements or repairs or openings and excavations shall be borne by the said company. All private persons or corporations shall be permitted to make such excavations and openings in the streets on which said tracks are laid as are necessary, by first obtaining consent of the Borough; and all expenses incurred by such excavations or openings shall be paid by the persons or corporations making the same; but such obstruction and delay shall not continue longer than is
30 reasonably necessary to do the work for which such consent may be given.

The franchise, rights and privileges hereby granted shall continue for a period of forty years from the date of the passage of this ordinance and said company shall pay to this Borough for such franchise hereby granted, such franchise tax or taxes as may be fixed by law, but such sum so paid shall not in any year be less than the sum of Three hundred and fifty dollars.

That before acquiring any rights under the ordinance and within ten days after its passage said com-

pany shall file with the Borough Clerk of this Borough a written acceptance under its corporate seal of this ordinance, and of the terms and rights hereby granted, and therein agree not, in any action or otherwise, to dispute the binding force of any of the provisions of ordinance for illegality, want of authority or otherwise, and such acceptance and this ordinance shall constitute the contract between said company and this Borough for said franchise.

3. This ordinance shall take effect when the same 10
has been posted or published as required by law.

Presented March 10, 1906.

Passed March 10, 1906.

Approved March 10, 1906.

THOMAS D. TOMPKINS,
Mayor.

ORDINANCE.

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AN ORDINANCE granting to the Asbury Park and Sea
Girt Railroad Company a re-location of its tracks
and rails in the Borough of Bradley Beach.

WHEREAS, The Township Committee of the Township
of Neptune, in the County of Monmouth, by ordinance
entitled "A resolution and ordinance granting to the
Asbury Park and Belmar Street Railway Company, a
location of the tracks of its railway over a portion of
a certain street or public highway in the Township of 30
Neptune, County of Monmouth and State of New Jer-
sey," adopted February 11, 1893, granted to the Asbury
Park and Belmar Street Railway Company a location
of its tracks along the Main Street or public highway
in said Township of Neptune leading from Asbury
Park to Belmar, and

WHEREAS, Since the adoption of said ordinance the
Borough of Bradley Beach has been incorporated from

a portion of said Township and includes a portion of said Main Street, and

WHEREAS, The tracks of said railway, by the said ordinance were located in said Main Street in the Borough of Bradley Beach, by requiring the west rail of the said track of said railway, to be laid eighteen inches east edge of the macadamized portion of said Main Street, and

WHEREAS, the said Asbury Park and Sea Girt Railway Company has since succeeded to the rights, property and franchises of said Asbury Park and Belmar Street Railway Company, and is now the owner of said tracks and rails, and has applied to the Council of this Borough for a re-location of its tracks and rails in the Borough of Bradley Beach, and the Council having decided to grant the same,

THEREFORE BE IT ORDAINED by the Council of the Borough of Bradley Beach:

1. That the main tracks of said railway of the Asbury Park and Sea Girt Railroad Company shall be located in said Main Street in the Borough of Bradley Beach so that the west rail of said track shall be located two and one-half feet easterly from the center line of said Main Street, and shall conform to the grade established by this borough for said Main Street, which grade shall be fixed for said Company by the engineer of this Borough.

2. That the said Company shall complete the work of re-locating its said tracks or rails within the Borough of Bradley Beach, on or before the first day of July, Nineteen Hundred and Twelve, said Company shall restore the surface of said Main Street disturbed by the re-locating of its tracks, to its former condition, and shall grade and gravel with good quality of gravel, so much of said Main Street in said Borough as lies between the center line of said Street and the curb line on the east side of said Street, the entire length of said track, so re-located in said Main Street in said Borough, the said gravel to be six inches in depth when rolled

to grade and said grading and gravelling to be done when the work of laying the track is being done; all of said work of grading and gravelling to be done under the supervision of the Council of said Borough of Bradley Beach, or some person who shall by resolution of said Council, be appointed and authorized to supervise the same, the wages of such person to be paid by the said Company but not to exceed three dollars per day for each day's service while actually employed in the supervision of said work.

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And the said Railroad Company shall as further and additional compensation for the said rights and privileges hereby granted, pay to the Borough of Bradley Beach, for the use of said Borough, the sum of three hundred and eighty-seven dollars and 50 cents annually on the first day of September in each and every year during the remainder of said period of fifty years for which the said franchise was granted, which payment shall cover and include all franchise tax or taxes, as may be imposed or fixed by law.

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And the said Railroad Company shall as further and additional compensation for the said rights and privileges hereby granted, pave that portion of said Main Street between the center line of said Main Street and eighteen inches easterly of the east rail of its said tracks as re-located the entire length of said Main Street in this Borough, with a permanent pavement when the Borough of Bradley Beach shall improve said Main Street with a permanent pavement, said permanent pavement to be the same as adopted and used by said Borough. And should said Borough at any time before the re-location of said tracks or on or before the first day of June in the year one thousand nine hundred and twelve, provide for the improvement of said Main Street by such permanent pavement then said Company shall at the same time pave its said portion of said Main Street, and the provision for gravelling said Main Street by said Company shall be waived. But should said Company grade and gravel said Main Street under the provision

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of this ordinance, then said Company shall not be required to pave said Main Street with a permanent pavement within three years from the date of the adoption of this ordinance.

3. Said Company shall during the balance of the term of said franchise keep that portion of Main Street between the center line of said Street and eighteen inches easterly of its east rail of its tracks as re-located under this ordinance, in good repair at its own expense.

10 4. The cars of said Company operated over said tracks shall come to a full stop at La Reine Avenue, in the Borough of Bradley Beach.

5. Upon the re-location of the tracks of said company under this ordinance, all rights of said Company to the present location of its tracks shall cease, determine and be void.

20 This ordinance shall not affect that portion of the tracks and railroad of said Company in said Borough of Bradley Beach constructed, operated and maintained under an ordinance entitled "An Ordinance granting to the Asbury Park and Sea Girt Railroad Company, permission to construct, maintain and operate a street railway in Main Street in the Borough of Neptune City in the County of Monmouth," adopted by the Council of the Borough of Neptune City, March 21st, 1906, excepting only so far as the provisions of this ordinance provide for permanent paving of said Main Street its entire length.

30 7. This ordinance shall take effect when the same has been posted or published as required by law

Introduced by George Deiss, Jr.

Seconded by R. D. Pierce.

Passed first reading March 4, 1912.

Passed second reading March 11, 1912

Passed third and final reading March 18, 1912.

Approved March 20, 1912.

W. E. MACDONALD, *Mayor.*

Attest:

JACOB H. DOLL, *Borough Clerk.*

AMENDMENT.

An Amendment to an Ordinance entitled "An Ordinance granting to the Atlantic Coast Electric Railroad Company permission to construct, operate and maintain a new line of street railway in, through and upon the public street or highway in said Borough of Bradley Beach, commonly known as the main public road leading from Asbury Park through the Borough of Bradley Beach, to Belmar, called Main Street, and a location of the route and a location of the tracks and rails of said new line of railway in said Borough, and determining the places in which the poles for sustaining the electric wires of said railway shall be located," adopted September 8th, 1897. 10

Be it Ordained by the Council of the Borough of Bradley Beach:

1. That section Eighteen of said Ordinance be and the same is hereby amended to read as follows:

Eighteen. That the said company shall complete the construction of its railway within the Borough of Bradley Beach on or before the first day of July in the year one thousand nine hundred and twelve. 20

2. That Section Twenty of said Ordinance be and the same is hereby amended to read as follows:

Twenty. That as compensation for the rights and privileges hereby granted, the said railroad Company shall at its own cost and expense, in a good workman-like manner, to the satisfaction and under the direction of the said Council of the Borough of Bradley Beach, grade and gravel with good quality of gravel so much of said Main Street in said borough as lies between the center of said Main Street and the curb line of the west side of said Street the entire length of said track laid under this ordinance in Main Street in said Borough; the said gravel to be six inches in depth when rolled to grade, and said grading and gravelling to be done while the work of laying the tracks is being done, 30

all of said work of grading and to be done under the supervision of the Council of said Borough of Bradley Beach, or some person who shall by resolution of said Council be appointed and authorized to supervise the same; the wages of such person to be paid by the said Company, but not to exceed three dollars per day for each day's service, while actually employed in the supervision of said work. And the said railroad Company shall as further and additional compensation for the

10 said rights and privileges hereby granted, pay to the Borough of Bradley Beach for the use of said Borough, the sum of three hundred and eighty-seven dollars and 50 cents annually, on the first day of September in each and every year during the remainder of the said period of fifty years for which the said franchise was granted, which said payment shall cover and include all the said franchise tax or taxes, as may be imposed or fixed by law.

And the railroad Company as further and additional

20 compensation for the said rights and privileges hereby granted, pave that portion of said Main Street between the center line of said Main Street and eighteen inches westerly of the west rail of its said tracks, owned and leased by it the entire length of Main Street in this Borough, with a permanent pavement when the Borough of Bradley Beach shall improve said Main Street with a permanent pavement; said permanent pavement to be the same as adopted and used by said Borough. And should said Borough at any time before the lay-

30 ing of said tracks on or before the first day of June, in the year one thousand nine hundred and twelve, provide for the improvement of said Main Street by such permanent pavement then said Company shall at the same time pave its said portion of said Main Street, and the provision for gravelling said Main Street by said Company shall be waived. But should said Company grade and gravel said Main Street under the provisions of this ordinance, then said Company shall not be re-

quired to pave said Main Street with a permanent pavement within three years from the adoption of this ordinance.

3. Said Company shall in laying its tracks conform to the grade established by this Borough for said Main Street, and said grade shall be fixed for said company by the engineer of this borough.

4. Said company shall during the balance of the term of said franchise keep that portion of Main Street between the center line of said Street and eighteen 10 inches westerly of its west rail of its tracks in good repair at its own expense.

5. The cars of said Company operated over said tracks shall come to a full stop at La Reine Avenue.

6. This ordinance shall take effect when the same has been posted or published as required by law.

Introduced March 4, 1912, by A. C. Salisbury.

Seconded by George Deiss, Jr.

Passed first reading March 4, 1912.

Passed second reading March 11, 1912.

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Passed third and final reading March 18, 1912.

Approved March 20, 1912.

W. E. MACDONALD, *Mayor*.

Attest:

JACOB H. DOLL, *Borough Clerk*.

ORDINANCE No. 17.

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AN ORDINANCE granting to the Seashore Electric Railway Company a location of the tracks of its railway over portions of certain streets and avenues in the Borough of Asbury Park.

WHEREAS, Hugh S. Kinmonth, Edward M. Fielder, Alfred R. Toland, James E. Wortman, Henry S. Iselin, Sumner T. Dunham, and Daniel G. Thompson, the Directors of the Seashore Electric Railway Company,

a corporation formed under the provisions of an act of the Legislature of the State of New Jersey, entitled, "An Act to provide for the incorporation of street railway companies, and to regulate the same," approved April 6, 1886, and the acts supplementary thereto and amendatory thereof, did, on the nineteenth day of May, A. D. 1887, petition this Board, applying for a location of the tracks of its railway in the Borough of Asbury Park, conformably to the route designated in the articles

10 of incorporation filed in the office of the Secretary of State, at Trenton, New Jersey, May 19, A. D. 1887:

And due notice having been given to all parties interested of the time and place of a meeting at which this Board would consider such application, by publication of said notice in the Asbury Park Journal and in the Shore Press, two newspapers published and circulating in said Borough of Asbury Park, at least fourteen days previous to said meeting.

And the said railway company having filed with the

20 Clerk of this Board the written consent of the owners of more than one-half of the property fronting on the portions of the streets and avenues hereinafter mentioned, through which said railway is to be made, acknowledged by the subscribers thereto, as are deeds entitled to be recorded.

And having heard and considered the matter, this Board has decided to grant said application upon the restrictions hereinafter contained.

BE IT ORDAINED, By the Commissioners of the

30 Borough of Asbury Park, in the County of Monmouth, and State of New Jersey:

1. That the application of the Directors of the Seashore Electric Railway Company, a corporation formed under the provisions of an act of the legislature of the State of New Jersey, entitled, "An Act to provide for the incorporation of street railway companies and to regulate the same," approved April 6, 1886, and the acts supplementary thereto and amendatory thereof, for a

location of the tracks of its railway in the following streets and avenues in this Borough, to wit:

Beginning at a point in Cookman Avenue, in the Borough of Asbury Park, County of Monmouth and State of New Jersey, distant one hundred and seventy feet westerly from the westerly side of Main Street; thence easterly along and through Cookman Avenue to Kingsley Street; thence northwardly along and through Kingsley Street to Eighth Avenue; thence westwardly along and through Eighth Avenue to Emory Street; **10** thence southwardly along and through Emory Street to Asbury Avenue; thence westwardly along and through Asbury Avenue to Main Street; thence southwardly along and through Main Street to the extreme southerly boundary line of said Borough, be and the same is hereby granted under the restrictions hereinafter contained.

2. That said company shall have the right to construct, maintain and operate its railway on the streets and avenues aforesaid, with the necessary tracks, curves, **20** switches and turnouts; that said company shall construct, maintain and operate a double track upon Cookman avenue from a point distant one hundred and seventy feet westerly from the westerly side of Main Street to Kingsley Street, and that on the other streets and avenues above mentioned said company shall have the right to construct, maintain and operate a single track only.

3. That the tracks of said company shall be laid as nearly as possible in the centre of the streets, in such **80** manner as may be directed by the Borough Commissioners.

4. That the location and franchise hereby granted shall be for the term of twenty years from and after the date of the passage of this ordinance; that said company shall pay annually to the corporate authorities of the Borough as compensation for the rights and franchises hereby granted the sum of Three Thousand

Dollars, which rental shall be payable to the Treasurer of the Borough annually, on the first day of September in each and every year during the said term of twenty years.

5. That in construction of such railway and its equipments the materials and work employed shall be out of the best quality and character; said railway shall be constructed with side-bearing steel rails, with rounded edge, similar to the so-called Johnson rail, and laid
10 flush with the surface of the street; that said railway shall be constructed under the direction of an Inspector or Engineer to be appointed by this Board; that the salary of said Inspector or Engineer shall be paid by said company, but the same shall not exceed the sum of one hundred dollars per month; that it shall be the duty of such company to restore the surface of all streets disturbed by the laying of said tracks to their former condition, and to keep the road inside of their tracks, and two feet outside thereof on each side, in
20 good repair at their own expense at all seasons of the year, and also to construct said road in such manner as not in anywise to impede public travel; in case of the failure of said company to keep such portions of the street in good repair and passable condition, at their own expense, the Borough may by its proper officers cause such streets to be repaired and restored, and charge the expense thereof to said company.

6. That electricity shall be the only motive power employed in the propulsion of cars on said railway; that
30 the necessary poles for sustaining and conducting wires of said electric motors shall be erected between the sidewalk and curb line of the streets at least at least eighty feet apart, except on curves, where they shall be erected in such manner as may be deemed necessary and advisable, subject to approval by the Borough Commissioners; that wherever practicable telegraph and telephone poles now erected shall be used; that all other poles shall be the approved iron pole and used by the

Daft system and be kept neatly painted; that the Borough reserves the right to use said poles without compensation for the purpose of stringing thereon wires for the use of the telephone service for the police and fire department and for the purpose of electric lighting of the streets and public places of said Borough, so long as said wires and the stringing thereof shall not interfere with or impede or injure in any way the said Electric Railway or the operation thereof; that all wires shall be placed at least twenty (20) feet above the grade of the street. That the so-called Daft overhanging wire system of Electrical Railway shall be the only one employed in the operation of said railway under this ordinance. 10

7. That the engine, boiler and plant of said company for the purpose of generating the electrical power, shall be located west of Main Street, and said company shall pay full local tax upon all its property in said Borough.

8. That said company shall comply with all reasonable ordinances or regulations which the local authorities having charge of the streets of said borough shall make from time to time as to the rate of speed, and the mode of using and maintaining said tracks, and the removal of ice and snow therefrom, provided that said cars shall not run at a greater speed than fifteen miles per hour, and no freight car shall be run upon said track or any part thereof. 20

9. That said company shall not charge any passenger, for a continuous ride, more than five cents from any point to any point on the route hereinabove described, or any extension thereof within this borough, and that children under five years of age not occupying seats, and in company with persons of full age shall be transported free of charge. And that all policemen while on duty shall be permitted to ride on the cars of said company free of charge. 30

10. That nothing herein contained shall be construed to grant said company the use of said streets except for

said tracks, turnouts and switches, nor as a guarantee of the title of the Borough to said streets and avenues, and that said company shall not suffer or permit their cars to stand on said tracks in the streets at any times, except to receive and deposit passengers, and in taking on and letting out passengers the cars shall not be stopped so as to interfere with the free and uninterrupted passage of travel on cross streets.

11. That it shall be the duty of said company to provide and keep upon their cars while in motion, suitable and proper bells to give warning of their approach, and also to provide and keep up proper lights in said cars, and light the same when the cars are running at night, and in clearing away and removing snow or ice from said tracks it shall be done in such manner as not to interfere with the rights and privileges of the occupants of the property fronting on the streets through which said tracks will be laid, nor to obstruct public travel; that no advertising signs shall be displayed
10 on the outside of said cars, and that no intoxicating
20 liquor signs shall be displayed on the inside thereof.

12. That at the expiration of said term of twenty years, unless this franchise shall have been extended or renewed, the tracks, poles, wires and other fixtures pertaining thereto shall be appraised by appraisers, one to be appointed by the Borough and one by the company, and these two may choose a third; the Borough reserves the right to purchase the same at the price fixed by said arbitrators or not at its option; if the
30 borough shall decide not to purchase the same, any sale thereof to other parties shall be subject to the approval of the Borough Commissioners, and the purchasers shall have no right to use or operate the same except by further permission of the Borough. If the tracks, plant and poles are removed from the street said company must place the streets in good repair and restore the surface thereof to as good condition as the adjoining parts of said streets.

13. That said company shall run its cars over the belt line or main line to wit: Beginning at a point in Cookman Avenue, in the Borough of Asbury Park, in the County of Monmouth and State of New Jersey, distant one hundred and seventy feet westerly from the westerly side of Main Street; thence eastwardly along and through Cookman Avenue to Kingsley Street; thence northwardly along and through Kingsley Street to Eighth Avenue; thence westwardly along and through Eighth Avenue to Emory Street; thence southwardly along and through Emory Street to Asbury Avenue; thence westwardly along and through Asbury Avenue to Main Street; thence southwardly along and through Main Street to the southerly boundary of Asbury Park; thence back to the place of beginning, at intervals not less than the following:

From October 15th to May 1st, from sunrise to 9 P. M., every twenty minutes. 10

From May 1st to July 1st, and from September 1st to October 15th, from sunrise to 10 P. M., every twenty minutes. 20

From July 1st to September 1st, from sunrise to 11 P. M. every five minutes. But said Company shall make such trips over said belt line alternately in opposite directions.

14. That the Borough Commissioners reserve the use of said streets for the purpose of making any improvements or repairs for the benefit of the Borough, and that all expenses attending the sustaining, removing and replacing of the rails or tracks for the purpose of making such improvements or repairs, shall be borne by said company and not by the Borough; and that all private persons or corporations shall be permitted to make such excavations and openings in the streets on which said tracks are laid, as are necessary, by first obtaining the consent of the Borough Commissioners, and all expenses incurred by such excavations and 30

openings shall be paid by the person or corporation making the same.

15. That said company shall before acquiring any rights hereunder file with the Clerk of the Borough, under its corporate seal, a written consent to the construction and operation of any other street railway or railways which said Borough Commissioners may deem it wise at any time to permit in said Borough notwithstanding the provisions of the Eighth Section of the
10 General Street Railroad law of 1886.

16. That said company shall pay all expenses for preparing the printed proposals under which it bid for the franchise hereby granted, including advertising and counsel fees and the like expenses for preparing and advertising this ordinance in addition to the above rental within ten days after the passage of this ordinance; which expense shall in no case exceed the sum of Three Hundred and Fifty Dollars.

17. That said company shall cause a bridge or road-
20 way to be constructed across Sunset Lake at Emory Street in accordance with the plans and specifications to be furnished by said Borough within fifteen days after the passage of this ordinance and under bids to be accepted upon public competition by the Borough; that the actual cost thereof, which shall not exceed three thousand dollars, shall be paid by the Company, who shall deduct the same from the rentals accruing under this ordinance until said Company has been fully repaid for its outlay on said bridge, which said bridge
30 shall be the absolute property of said Borough, said company shall, however, during the operation of said railway, keep said bridge in repair at its own expense.

18. That said tracks shall be wholly laid by the 20th day of July, A. D. 1887, and said road fully equipped and in full operation on or before the first day of August, A. D. 1887.

19. That said company shall within five days after the passage of this ordinance deposit in the First Na-

tional Bank of Asbury Park in the name of the treasurer of this Borough, the sum of Six Thousand Dollars in cash as security for the completion and operation of said railway in accordance with the terms hereof by the first day of August, A. D. 1887; that for every day's delay in said completion of said tracks after the 20th day of July, A. D. 1887, and for every day's delay in the operation of said road after the first day of August, A. D. 1887, said company shall pay to the Borough out of said fund the sum of Two Hundred Dollars per day as liquidated and ascertained damages (and not as a penalty) for such failure; and said treasurer shall be permitted to retain from said money and place to the credit of said Borough the sum of Two Hundred Dollars for each day that shall be consumed in the completion and operation of said road after the dates aforesaid, provided however that said company shall not be liable for any time which it may be delayed by any injunction or other legal proceedings not the result of collusion on its part resulting from the granting of this franchise. 10

20. That within ten days after the passage of this ordinance said company shall enter into bonds to the Borough in its corporate name in the penal sum of Ten Thousand Dollars with two sureties, freeholders of the State of New Jersey, who shall justify to the satisfaction of the Borough Commissioners conditioned for the due fulfillment on the part of said Company of all obligations and conditions imposed upon it by this ordinance, and the laws of this State, which said bond shall be renewed by said company with acceptable sureties every two years from the date thereof until the term herein designated shall have expired. 20

21. That in addition to the bond aforesaid the Borough of Asbury Park shall have first lien on all property of said company (after such taxes as are prior by the laws of this State) for the payment of all moneys that shall become due to said Borough under this ordi- 30

nance, whether the same are due or not, and shall have the right without legal process to advertise and sell any and all property belonging to said company, upon reasonable notice, for the satisfaction of any indebtedness due from said company to said Borough.

22. That the right is hereby also reserved by the Borough in case of the failure of said company to adhere strictly to all conditions, covenants and stipulations herein contained, to repeal this ordinance and thereupon all the rights and franchises of said Railway acquired hereunder shall cease and determine immediately.

23. That in case said company shall fail to comply with all the requirements herein contained and this ordinance shall be repealed, and the franchise and privileges herein granted revoked and if the said company shall fail, upon reasonable notification thereafter, to remove its tracks, poles, and other property from the streets of this Borough; then the Borough shall have the right, without legal process, to remove said tracks, poles, and other property of said Company from the streets thereof, and the expense incurred thereby shall be secured by the bond for ten thousand dollars aforesaid or by the sale of the property as provided for in section 12.

24. That before acquiring any rights under this ordinance, and within five days after its passage, said company shall file with the Clerk of the Borough, the bond for ten thousand dollars aforesaid, and shall deposit the six thousand dollars as aforesaid, and shall also file a written acceptance under its corporate seal of the terms of this ordinance, which acceptance shall provide that said Company shall not in any manner or action question or contest the legality or binding force of any provision of this ordinance or defend against the same on the ground that the same is without full legal warrant or that the same in any particular is beyond the power

or authority of the commissioners to legally exact or enforce.

Approved, June 6, 1887.

W. G. McEWAN,
Pres't.

Attest: C. T. BAILEY,
Clerk.

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A RESOLUTION, granting to the Asbury Park and Belmar Street Railway Company, a location of its tracks of its railway over a portion of certain streets and public highway in the Borough of Neptune City, in the County of Monmouth and State of New Jersey.

WHEREAS, N. E. Buchanon, C. C. Clayton, George Potts, John Hubbard, H. C. Winsor, L. E. Watson and John Rockefeller, a majority of the directors of the Asbury Park and Belmar Street Railway Company a company incorporated under an act of the legislature of the State of New Jersey, entitled "An act to provide for the incorporation of street railway companies, and to regulate the same"—approved April 6, 1886, did on the first day of February 1893, petition the Mayor and Council of the Borough of Neptune City, pursuant to said act and the supplements thereto for a location of the tracks of its railway in said Borough of Neptune City, in the County of Monmouth and State of New Jersey conformably to the route *designed* in the articles of incorporation of said company, that is to say, for a location of the tracks of its railway as follows: Commencing at the northerly boundary line of the Borough of Neptune City in the said County on the macadamized road leading from Asbury Park to Shark River Bridge, on the easterly side of said road and ending at the southerly boundary line of said Neptune City.

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And the said Mayor and Council of the Borough of Neptune City having on the night of the first day of May, eighteen hundred and ninety three, in Council assembled at the usual place of the meeting of said Council, in Neptune City, aforesaid, designated Monday Night, May 8th, eighteen hundred and ninety three at Temperance Hall in said Borough at 7:30 P. M. as the time and place when the said Mayor and Council would consider such application for location, and the

10 said Council having adjourned from time to time.

And the said Railway Company having filed with the said Mayor and Council due proof that the said company has made the deposit with the State Treasurer as required by said act and the supplements thereto and having heard and considered such application for location, by this resolution do grant the same as follows:

Be it resolved by the Mayor and Council of the Borough of Neptune City, in the County of Monmouth

20 and State of New Jersey:

(1) That the said Asbury Park and Belmar Street Railway Company is hereby granted a location of the tracks of its railway in said Borough of Neptune City, conformable to the route designated in the articles of incorporation of said company as located within the said Borough of Neptune City, as follows, to wit: Commencing at the northerly boundary line of the Borough of Neptune City in said County and State, on the easterly side of the macadamized road leading

30 from Wesley Lake Bridge to Shark River Bridge, and running thence southerly to a point five hundred feet northerly from said Shark River Bridge, at which point the said tracks shall cross the said macadamized road westerly and then continue southerly to the southerly boundary line of Neptune City. The said tracks shall be laid at a distance of not less than eighteen inches from the macadamized road.

2. That said company shall have the exclusive right subject to the conditions and restrictions herein con-

tained, to construct and maintain a single track street railway on and over the said street and public highway with switches and turnouts and to operate the same with cars and other necessary appliances; that the tracks of the said company shall be laid as follows: From the beginning point aforesaid the west rail of the said track shall be laid eighteen inches east of the east edge of the macadamized portion of the said public street or highway, to a point 500 feet north of the Shark River bridge, at which point the tracks shall be laid to cross said public street or highway and for the rest or the located route herein mentioned, the tracks shall be laid on the west side of such street or public highway; there shall be no more than three turnouts, to be located in such places as the said Mayor and Common Council shall direct; to be constructed on the east side of the main single track aforesaid. 10

3. That the location and franchise aforesaid is hereby granted for the term of fifty years from and after the date of the adoption of this resolution, and that in consideration of the said grant of location and franchise and of the use for street railway purposes by said railroad company of the portion of said street aforesaid and as a compensation therefor, the said company shall on the first day of January 1894, and in the second Monday of January each year thereafter, pay to the Treasurer or collector as the case may be of the said Borough of Neptune City, for its use, the sum of Five Hundred dollars until the year one thousand eight hundred and ninety nine and for the five years ensuing from said last mentioned date seven hundred and fifty dollars per year, payable on the second Monday of each January in each of said ensuing years, and in case said railroad company and the Common Council of said Borough cannot agree upon the compensation to be paid by said railroad company for the remainder of the term of said franchise then the question of the fair and reasonable amount of yearly com- 20 30

10 pensation to be paid therefor shall be submitted to three arbitrators one to be selected by said company, one by said Borough and the third arbitrator to be selected by the first two arbitrators whose decision or the decision of the majority thereof as to the amount of said yearly compensation shall be binding upon each of said parties, and thereupon the amount of yearly compensation aforesaid, decided by said arbitrators or a majority thereof shall be annually paid by said company to said Borough, upon the second Monday in each of said years.

20 4. That in construction of said railway and its equipments the material and work employed shall be of the best quality and character. Said railway shall be constructed with steel "T" rails laid with the surface of the street. That said railway shall be constructed under the direction of said Council or any agent of said company to be by said Borough appointed; that in case of the appointment of said Borough of an agent to direct the construction of said railway, his salary shall be paid by said company, but the same shall not exceed one hundred dollars per month. That it shall be the duty of said company at its own expenses to restore the surface of all streets disturbed by the laying of said tracks to their former condition and said company shall at its own expense, put and keep in good repair and condition the surface of the said street or public highway, as follows: From the outer rail of said railroad to the edge of the macadamized road the surface of said street shall be covered with stone ballast or macadamized with good macadam material, which shall be done prior to the operation of said road by said company, and so kept and maintained during the period of this franchise.

30 The portion of said street or public highway east of such track to the east curb line of the street, throughout and where said tracks cross the road, to the west curb line of the street shall be covered with the best

quality of clay gravel under the direction and to the satisfaction of said Borough, and so kept and over that portion of said street or public highway whereon the tracks is constructed within three feet of the east curb line said company shall construct and maintain a trunk or drain for the passage of surface water in the manner and place directed by said Borough. That said company shall at its own expense construct said road in such a manner as not in anywise to impede public travel and put the surface of said street or public highway in the condition and to the extent above specified and so keep the same at all times. In case of the failure of said company to put and keep such portions of said streets or public highway in good repair and condition as aforesaid, at its own expense, the authorities of said Borough may cause the same to be done and charge the expense thereof to said company. The said Asbury Park and Belmar Street Railway at the expiration of three years from the commencement of the operation of its said road shall belt the said Borough of Neptune City with its tracks and operate its cars thereon over and upon such streets as may be designated by the Mayor and Council then governing said Borough, and over which the said Borough may have control and the right to grant said privilege upon such reasonable terms and conditions as may be lawfully imposed. 10 20

5. That electricity shall be the only motive power employed in the propulsion of cars on said railway. That in case any overhanging wire system of electrical railway is used by said company the kind and arrangement of poles and overhead wiring shall be subject to the direction of future regulation, by resolution or otherwise of said Borough. 30

6. That nothing in this resolution or ordinance contained shall be held to exempt said company from the payment of any local, municipal, state or lawful taxes or imposition or assessment whatever.

7. That said company shall be subject to and shall comply with all reasonable resolutions, ordinances or regulations which the proper local authorities having control of said street or public highways, or any part thereof, shall make from time to time as to the rate of speed and the mode of using and maintaining said tracks and the removal of ice and snow therefrom. That until otherwise ordered and regulated, the cars on said railway shall not be run at a greater speed than
10 fifteen miles an hour nor shall any freight cars be run upon said tracks or any part thereof.

8. That said company shall not charge any passenger for a continuous ride in one direction more than five cents from any point on the route designated, described within said Borough and that children under five years of age not occupying seats and in company with persons of full age, shall be transported free of charge. And that all policemen and firemen while on duty shall be permitted to ride on the cars of said company free of
20 charge.

That said company shall not suffer or permit its cars to stand on said tracks at any time except to receive and deposit passengers or to effect the passing of cars, and in taking on and letting off passengers the cars shall not be stopped so as to interfere with the free and uninterrupted passage of travel on cross streets.

9. That it shall be the duty of said Company to provide and keep upon its cars while in motion suitable and proper bells to give warning of the approach of
30 cars; and also to provide and keep up proper lights in said cars, and light the same when the cars are running at nights; and in clearing away and removing snow or ice from said tracks, it shall be done in such a manner as not to interfere with the rights and privileges of the occupants of the property fronting on said street or public highway not to obstruct public travel. And that no signs advertising the sale of the liquors shall be anywhere displayed on or in the cars of said company.

10. That the expiration of said term of fifty years unless this grant of location and franchise shall have been extended or renewed, the said tracks of said company and other fixtures pertaining thereto shall be appraised by appraisers, one to be appointed by said Council, and one by the said Company and these two may choose a third.

The said Council reserves and the said Borough shall have the right to purchase said tracks of said company and other fixtures pertaining thereto at the price fixed upon said appraisers, or a majority thereof, at its option. If said Borough shall decide not to purchase the same, any sale thereof to other parties shall be subject to the approval of said Borough, and the purchasers thereof shall have no right to use or operate the same except by further permission of said Borough. If the said tracks and other fixtures pertaining thereto are at any time removed from said street or public highway the said company must place said street or public highway in good repair and restore the surface thereof to as good condition as before.

11. That said company shall run its cars in both directions over the route herein located as follows:

From October 14 to May 1 from 6:30 A. M. to 9 P. M. every thirty minutes. From May 1 to July 1 and from September 1 to October 15, from 6 A. M. to 10 P. M., every thirty minutes. From July 1 to September 1 from 6 A. M. to 11 P. M. every fifteen minutes.

12. That said Council reserves the use of said street or public highway for the purpose of making any improvements or repairs thereto for the benefit of the said Borough, and that all expense attending the sustaining, removing and replacing of the rails or tracks of said company for the purpose of making such improvements or repairs, shall be borne by said company and not by said Borough; and that all persons and corporations shall be permitted to make such excavations and openings in the said street or public highway which said

tracks are laid as are lawful and necessary, by first obtaining the consent of said council, and all expenses incurred in making such excavations and openings shall be paid by the person or corporation making the same.

13. That said company shall within ten days after presentation of bills pay in addition to the compensation above provided the expense of publishing this resolution in such newspapers as may be designated by the said Mayor and Council, and such other reasonable
10 expenses and disbursements as may be incurred by said Borough in the premises within ten days after notice of the amount thereof.

14. That said tracks shall be wholly laid within four months and said road fully equipped and in full operation within eight months from the date of the adoption of this resolution, provided however, that the time during which the said company may be restrained from constructing and operating its said railway by due legal process, and not the result of collusion on its part shall
20 not be counted as part of the period above fixed and specified.

15. That the said Mayor and Council reserve the right to make such reasonable regulations from time to time as to the maintenance and operation of such railway as they deem the interests of the public may require.

16. Upon the failure of the said company to perform any or all of the conditions herein imposed the rights herein granted shall cease; provided however, that the
30 said Mayor and Council or its successors may from time to time if they deem proper give such extension of time for the performance of these conditions as they may deem necessary, for the purposes hereinbefore specified.

17. That before acquiring any rights under this resolution the said company shall within thirty days after its adoption file with the Clerk of the said Mayor and Council and said Borough a written acceptance of the location herein granted, and of the terms of this resolution and agreeing thereto and complying therewith, in

which acceptance and agreement the said company shall agree not in any manner or action to question or contest the legality or binding force of any of the terms hereof, not to defend against the same on the ground that this resolution or part thereof is without full legal warrant, or that the same is in any particular beyond the power or authority of said Mayor and Council to legally pass, enact or enforce.

Passed and adopted July 3d, 1893.

HOLMES C. BENNETT, *Chairman*, 10
 WILLIAM F. MORRIS,
 ALEXANDER MORRIS,
 ROBERT SAMPSON.

Attest:

GEORGE H. MATTHEWS,
Clerk, Pro Tem.

AMENDMENT.

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AN AMENDMENT to an Ordinance entitled, "An Ordinance granting to the Atlantic Coast Electric Railroad Company permission to construct, operate and maintain a new line of street railway in, through and upon the public streets or highway in said Borough of Bradley Beach, commonly known as the public road leading from Asbury Park through the Borough of Bradley Beach, to Belmar, called Main Street, and a location of the route and a location of the tracks and rails of said new line of Railway in said Borough, and determining the places in which the poles for sustaining the electric wires of said railway shall be located," adopted September 8th, 1897. 80

BE IT ORDAINED by the Council of the Borough of Bradley Beach,

1. That Section Eighteen of said Ordinance be and the same is hereby amended to read as follows:

Eighteen. That the said company shall complete the construction of its railway within the Borough of Bradley Beach on or before the first day of July, in the year One Thousand Nine Hundred and Twelve.

2. That section Twenty of said ordinance be and the same is hereby amended to read as follows:

Twenty. That as compensation for the rights and privileges hereby granted, the said railroad company shall at its own cost and expense, in a good workman-
10 like manner, to the satisfaction and under the direction of the said Council of the Borough of Bradley Beach, grade and gravel with good quality of gravel so much of said Main Street in said Borough as lies between the center of said Main Street and the curb line of the west side of said street the entire length of said track laid under this ordinance in Main Street in said Borough; the said gravel to be six inches in depth when rolled to grade, and said grading and gravelling to be done while
20 the work of laying the tracks is being done, all of said work of grading and to be done under the supervision of the Council of the said Borough of Bradley Beach, or some person who shall by resolution of said Council be appointed and authorized to supervise the same, the wages of such person to be paid by the said company, but not to exceed three dollars per day for each day's service, while actually employed in the supervision of said work. And the said railroad company shall as further and additional compensation for the said rights and privileges hereby granted pay to the Borough of
30 Bradley Beach for the use of said borough, the sum of three hundred and eighty-seven dollars and 50 cents annually, on the first day of September, in each and every year during the remainder of the said period of fifty years for which the said franchise was granted, which said payment shall cover and include all the said franchise tax or taxes, as may be imposed or fixed by law.

And the railroad company as further and additional compensation for the said rights and privileges hereby granted, pave that portion of said Main Street between the centre line of said Main Street and eighteen inches westerly of the west rail of its said tracks, owned and leased by it the entire length of said Main Street in this Borough, with a permanent pavement, when the Borough of Bradley Beach shall improve said Main Street with a permanent pavement; said permanent pavement to be the same as adopted and used by said Borough. And should said borough at any time before the laying of said tracks on or before the first day of June, in the year One Thousand Nine Hundred and Twelve, provide for the improvement of said Main Street by such permanent pavement then said company shall at the same time pave its said portion of said Main Street, and the provision for gravelling said Main Street by said company shall be waived. But should said company grade and gravel said Main Street under the provisions of this ordinance, then said company shall not be required to pave said Main Street with a permanent pavement within three years from the adoption of this ordinance.

3. Said Company shall in laying its tracks conform to the grade established by this borough for said Main Street, and said grade shall be fixed for said company by the Engineer of this borough.

4. Said company shall during the balance of the term of said franchise keep that portion of Main Street between the center line of said street and eighteen inches westerly of its west rail of its tracks in good repair at its own expense.

5. The cars of said company operated over said tracks shall come to a full stop at La Reine Avenue.

6. This ordinance shall take effect when the same has been posted or published as required by law.

Introduced March 4, 1912, by A. C. Salisbury.

Seconded by George Deiss, Jr.

Passed first reading March 4, 1912.

Passed second reading March 11, 1912.

Passed third and final reading March 18, 1912.

Approved March 20, 1912.

W. E. MACDONALD, *Mayor*.

Attest:

JACOB H. DOLL, *Borough Clerk*.

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ORDINANCE.

AN ORDINANCE granting to the Asbury Park and Sea Girt Railroad Company a re-location of its tracks and rails in the Borough of Bradley Beach.

WHEREAS, The Township Committee of the Township of Neptune, in the County of Monmouth, by Ordinance entitled, "A resolution and ordinance granting to the Asbury Park and Belmar Street Railway Company, a location of the tracks of its railway over a portion of a certain street or public highway in the Township of Neptune, County of Monmouth and State of New Jersey," adopted February 11, 1893, granted to the Asbury Park and Belmar Street Railway Company a location of its tracks along the Main Street or public highway in said Township of Neptune, leading from Asbury Park to Belmar, and

WHEREAS, the tracks of said railway, by the said ordinance were located in said Main Street in the Borough of Bradley Beach, by requiring the west rail of the said track of said railway, to be laid eighteen inches east edge of the macadamized portion of said Main Street, and

WHEREAS, the said Asbury Park and Sea Girt Railroad has since succeeded to the rights, property and franchises of said Asbury Park and Belmar Street Railway Company, and is now the owner of said tracks and rails, and has applied to the Council of this Borough

for a re-location of its tracks and rails in the borough of Bradley Beach, and the Council having decided to grant the same,

Therefore, be it ordained, by the Council of the Borough of Bradley Beach:

1. That the main tracks of said railway of the Asbury Park and Sea Girt Railroad Company shall be located in said Main Street in the Borough of Bradley Beach so that the west rail of said track shall be located two and one-half feet easterly from the center line of said Main Street, and shall conform to the grade established by this borough for said Main Street, which grade shall be fixed for said Company by the engineer of this borough. 10

2. That the said company shall complete the work of re-locating its said tracks or rails within the Borough of Bradley Beach, on or before the first day of July, Nineteen Hundred and Twelve, said Company shall restore the surface of said Main Street, disturbed by the re-locating of its tracks, to its former condition, and shall grade and gravel with good quality of gravel, so much of said Main Street in said Borough as lies between the center line of said street and the curb line on the east side of said street, the entire length of said track, to re-located in said Main Street in said Borough, the said gravel to be six inches in depth when rolled to grade and said grading and gravelling when done when the work of laying the tracks is being done; all of said work of grading and gravelling to be done under the supervision of the Council of said Borough of Bradley Beach, or some person who shall be appointed and authorized to supervise the same, the wages of such person to be paid by the said company, but not to exceed three dollars per day for each day's service while actually employed in the supervision of said work. And the said railroad company shall as further and additional compensation for the said rights and privileges hereby 20 30

granted, pay to the Borough of Bradley Beach, for the use of said Borough, the sum of three hundred and eighty-seven dollars and 50 cents annually on the first day of September in each and every year during the remainder of said period of fifty years for which the said franchise was granted, which payment shall cover and include all franchise tax or taxes, as may be imposed or fixed by law.

- And the said Railroad Company shall as further and
- 10** additional compensation for the said rights and privileges hereby granted, pave that portion of said Main Street between the center line of said Main Street and eighteen inches easterly of the east rail of its said tracks as re-located, the entire length of said Main Street in this Borough, with a permanent pavement when the Borough of Bradley Beach shall improve said Main Street with a permanent pavement said permanent pavement to be the same as adopted and used by said Borough. And should said Borough at any
- 20** time before the re-locating of said tracks or on or before the first day of June in the year one thousand nine hundred and twelve, provide for the improvement of said Main Street, by such permanent pavement, then said company shall at the same time pave its said portion of said Main Street, and the provision for graveling said Main Street by said Company shall be waived. But should said Company grade and gravel said Main Street under the provision of this ordinance, then said company shall not be required to pave said Main Street with a permanent pavement within three years from the
- 30** date of the adoption of this ordinance.

3. Said company shall during the balance of the term of said franchise keep that portion of Main Street between the centre line of said street and eighteen inches easterly of its east rail of its tracks as re-located under this ordinance, in good repair at its own expense.

4. The cars of said Company operated over said tracks shall come to a full stop at La Reine Avenue, in the Borough of Bradley Beach.

5. Upon the re-location of the tracks of said Company under this ordinance, all rights of said company to the present location of its tracks shall cease, determine and be void.

This ordinance shall not affect that portion of the tracks and railroad of said company in said Borough of Bradley Beach constructed, operated and maintained under an ordinance entitled "An Ordinance granting to the Asbury Park and Sea Girt Railroad Company, permission to construct, maintain and operate a street railway in Main Street in the Borough of Neptune City in the County of Monmouth," adopted by the council of the Borough of Neptune City, March 31st, 1906, excepting only so far as the provisions of this ordinance provide for permanent paving of said Main Street its entire length. 10

7. This ordinance shall take effect when the same has been posted or published as required by law.

Introduced by George Deiss, Jr.

Seconded by R. D. Pierce. 20

Passed first reading March 4, 1912.

Passed second reading March 11, 1912.

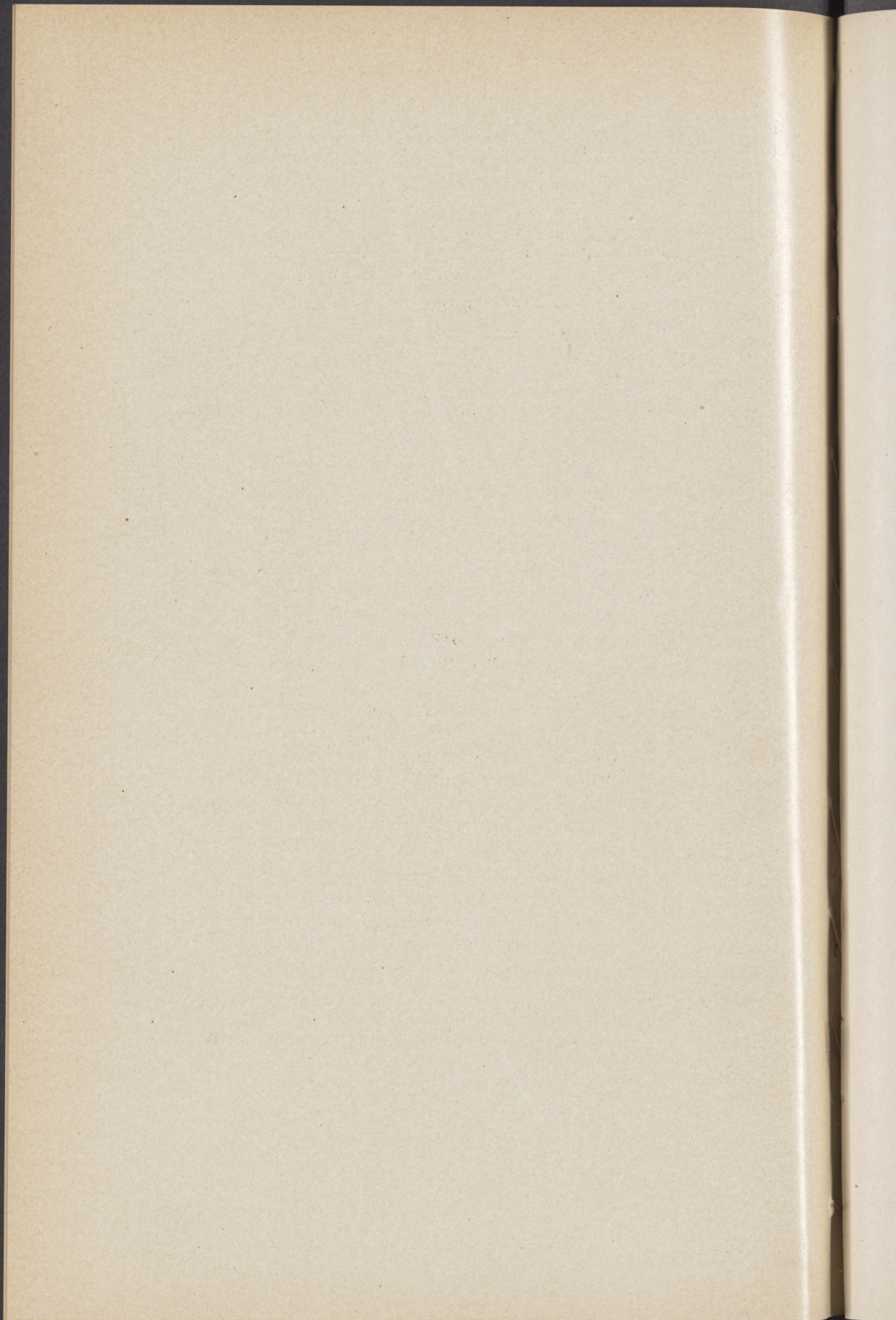
Passed third and final reading March 18, 1912.

Approved March 20, 1912.

W. E. MACDONALD, *Mayor.*

Attest:

JACOB H. DOLL, *Borough Clerk.*



NEW JERSEY SUPREME COURT

June Term, 1916

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY,

Prosecutor,

vs.

THE BOARD OF PUBLIC UTILITY
COMMISSIONERS AND THE BOR-
OUGH OF BRADLEY BEACH,
Defendants.

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Argued June 7, 1916; Decided December 1, 1916

Syllabus

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1. When a traction company, organized under the General Traction Act of 1893 (P. L. p. 302; C. S. p. 5021) obtains from a municipality an ordinance granting a location of street railway tracks, and accepts the same, a regulation of the rate of fares contained therein, if lawful and reasonable, constitutes a contract between the company and the municipality which during the life of the franchise remains inviolable, and it is incompetent for the Board of Public Utility Commissioners to impose upon the company an additional burden in violation of such contract respecting fares. 30

2. An ordinance passed by a municipality pursuant to the General Traction Act of 1893 (P. L. p. 302; C. S. p. 5021) granting a location of street railway tracks, and providing therein respecting the rate of fare that "no more than five cents shall be charged by the company," gives the company, when accepted by it, a contract right to charge a five-cent rate, which rate cannot be reduced without the consent of the company.

3. Where an ordinance passed by a municipality pursuant to the General Traction Act of 1893 (P. L. p. 302; 40

C. S. p. 5021) granting a location of street railway tracks, contained a restriction that the fare in a stated territory shall be "no more than five cents," and such ordinance is accepted by the company, such contract is binding both upon the company and the municipality, even though the territory covered by such fare zone is partly outside the corporate limits of the municipality.

On certiorari, etc.

10 Before Gummere, Chief Justice, and Justices Trenchard and Black.

For the prosecutor, Durand, Ivins & Carton.

For the Board of Public Utility Commissioners, L. Edward Herrman and Frank E. Sommer.

For the Borough of Bradley Beach, Ward Kremer.

The opinion of the Court was delivered by Trenchard, J.

20 The Atlantic Coast Electric Railway Company operates a trolley line or street railway from the junction of Main Street and Cookman Avenue in Asbury Park southerly through other municipalities and the Borough of Bradley Beach to Belmar. It also operates another branch from the northern terminus of the above described line, eastwardly along Cookman Avenue in Asbury Park and through that city and beyond.

30 On February 9, 1916, the Board of Public Utility Commissioners, at the request of the Borough of Bradley Beach, after a hearing, ordered "the Atlantic Coast Electric Railway Company to give to all persons boarding its northbound cars in Bradley Beach, who on payment of fare of five cents on such cars request transfers to its cars operating easterly on Cookman Avenue, Asbury Park, said transfers, the same to be accepted by the company for a ride on Cookman Avenue easterly as far as Kingsley Street, Asbury Park; and * * * to give to all persons boarding its westbound cars on Cookman Avenue, who on payment of fare of five cents, on such cars request transfers to its cars operating southerly on its Belmar Line, said transfers, the same to be accepted by the company for a ride on its Belmar Line to the south-
40 erly boundary of Bradley Beach."

This writ of certiorari, sued out by the company, brings under review the validity of that order.

We are of the opinion that it cannot be sustained.

Among other reasons urged against the order is that "the ordinances under which the company is operating through Bradley Beach, on the Belmar and Sea Girt line, provide for a five cent fare to Cookman Avenue, Asbury Park, and exact from the company annual payments in consideration of the privileges granted, and are contracts between the company and municipalities, including the Borough of Bradley Beach, and the order of the Board of Public Utility Commissioners is in violation of these contracts, and illegal." 10

The company was organized under the General Traction Act of 1893 (P. L. p. 302; C. S. p. 5021) and in 1897 obtained from the Borough of Bradley Beach its ordinance above referred to. This ordinance was approved September 8th, 1897. It recites the application of the company for permission to construct, operate and maintain a new line of street railway through certain streets in accordance with a designated route, and grants such permission "to construct, operate and maintain a new line of street railway in, through and upon the public street or highway in said Borough of Bradley Beach, commonly known as the main public road leading from Asbury Park through the Borough of Bradley Beach to Belmar, called Main Street, and extending therein from the extreme northern boundary line of said Borough of Bradley Beach southwardly to the extreme southern boundary line of said Borough, conformably to the route designated," etc. This is the line in question. 20

The 12th section of the ordinance provides:

"That the rate of fare shall be five cents for the transportation of any passenger for one continuous ride on the cars of said company in any direction within the corporate limits of said borough, and *no more than five cents shall be charged by said company for the transportation of any passenger for one continuous ride in either direction on the cars of said company from Cookman Avenue in Asbury Park to any point in Belmar on the route on said railway, or to any* 30 40

other point on said route whenever said railway of said company shall be constructed and in operation over its said route between Asbury Park and the southern boundary line of the Borough of Belmar."

10 The 19th section provides that the permission, rights and privileges thereby granted to the company shall continue for a period of fifty years. The 20th section provides that as compensation for the rights and privileges thereby granted, the company shall, at its own cost and expense, grade and gravel stated portions of the street, and shall pay to the borough two hundred and fifty dollars annually during the fifty years for which the franchise is granted.

This ordinance was accepted by the company, the line between the two termini thereof was constructed and put in operation, a five cent fare was established thereon, and the company has hitherto fulfilled its obligations as imposed by the ordinance.

20 It was, of course, under the law, necessary for the company to secure the consent given by the ordinance before it could build its trolley line through Bradley Beach.

And par. 32 of the Traction Act (C. S. p. 5035) provides:

"That any consent required by this act to be given by any public body may be given by a resolution or ordinance of such body, which consent, when accepted by any corporation created under this act * * * shall have the force and effect of a contract."

30 The statute leaves the amount of compensation to be charged by such a company entirely open, there being no provision as to the rate of fares in the Act. Other provisions of the statute, however, require that the company, before it shall construct its line, shall present to the governing body of the municipality a petition and plan of construction, and the municipality, after consideration, shall "either pass a resolution refusing such location or pass a resolution or ordinance, as may be necessary or proper, granting the said location or any part thereof, *under such lawful restrictions as they deem the interests of the public* 40 *may require,*" etc. (par. 7; C. S. p. 5025).

Now in *Rutherford vs. Hudson River Traction Co.*, 44 Vr. 227, Mr. Justice Pitney for this Court, speaking of this legislative provision, said:

“The ‘lawful restrictions’ that are to be made in the interest of the public indicate, likewise, a legislative act. In short, the statute, as we take it, plainly imports that the common council or other governing body of the municipality is to perform a legislative function in granting a special user of the public highway to a traction company, and in setting bounds and limits to its user and imposing conditions thereon; while, on the other hand, the traction company likewise is dealt with as a public agency, and not a mere private entity; in its application to the council it not only seeks an opportunity for private profit, but it tenders itself a volunteer to the public service, offering to embark the capital of its stockholders in a public improvement and to assume correlative duties. The proceeding has for its purpose the completion of the general ‘charter’ of the company by the acquisition of a local ‘franchise.’ It results that when the franchise is granted, subject to conditions and restrictions, and when the traction company proceeds to lay its tracks in the street and run its cars thereon, that property and those franchises become impressed with a public use that imposes the duty upon every successive holder to serve the public in accordance with the terms of the original grant.”

In view of the further provisions of the Act that the consent required by the Act to be given by the municipality, when accepted by the company “shall have the force and effect of a contract,” it has, of course, been frequently held that the restrictions thus imposed, if lawful and reasonable, constitute a contract between the company and the municipality which thereafter remain inviolable.

Jersey City vs. Jersey City & Bergen Ry. 41 Vr. 360;

Jersey City vs. North Jersey St. Ry. Co. 43 Id. 384;

Newark vs. North Jersey Street Ry. Co. 44 Id. 265.

That regulations as to the rate of fare are properly classed among such “restrictions” seems quite plain.

Recently Mr. Justice Voorhees writing for the Court of

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Errors and Appeals, in *Reed vs. Inhabitants of Trenton*, 80 N. J. Eq. 503-506 said:

10 “That a municipality, as a condition precedent to granting permission to a traction company to construct and operate a street railway within its corporate limits has power to impose lawful restrictions, in the interest of the public, that *regulation of rates of fare are properly classed among such restrictions and come within the terms of the statute, and that the acceptance of such an ordinance by the company constitutes a contract are too well settled to require discussion.* The contract thus entered into is evidenced by the terms of the ordinance and is to be construed by the ordinary rules of law applicable to that subject.”

As stated by the Supreme Court of the United States in *Detroit vs. Detroit Citizens Street R. Co.*, 184 U. S. 368:

20 “The rate of fare is among the most material and important of the terms and conditions which might be imposed by the city in exchange for its consent to the laying of railroad tracks, and the running of cars thereon through its streets. It would be a subject for grave consideration and conference between the parties, and when determined by mutual agreement, the rate would naturally be regarded as fixed until another rate was adopted by a like agreement.”

30 It is therefore well settled that one of the “restrictions” which the municipality under the legislative authority may impose, as a condition of its consent to the location of tracks within its corporate limits, is the rate of fare that shall be charged, and such restriction, when the ordinance is accepted, becomes a contract. Any other interpretation of the statute is impossible, particularly in view of the provision to the effect that such consent, with the restrictions, when accepted, shall constitute a contract.

40 Such a contract neither party can violate without the consent of the other. Should the company apply to the Utility Board to have the rate of fare increased, it would undoubtedly be met with its contract. The case of *Borough of North Wildwood vs. Board of Public Utility Commissioners*, 95 Atl. Rep. 749, is not to the contrary. There the commission had authorized a higher rate than had been pre-

viously prescribed, and the only question was as to its power so to do against the objection of the municipality. The opinion says:

“While the municipality itself has not assented to a change in rate, the State, its creator and parent, has done so through a specially constituted agency. *If the water company were here complaining that its contract rights were being impaired, a different question would be presented; but the contract right of one of the State’s creatures may be waived by the creator.*”

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The effect then of this ordinance, with its acceptance and action thereunder by the trolley company, belong to constitute a contract between the company and the municipality, it is incompetent for the Board of Public Utility Commissioners, just as it is incompetent for the municipality itself, to violate that contract by imposing upon the company an additional burden, the effect of which is to require it to carry passengers, for the same fare, not to, but beyond Cookman Avenue.

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But it is contended that the ordinance does not in fact entitle the company to charge a five cent fare. We see no merit in this contention. The great weight of authority is that an ordinance which provides, as does the one in question, that “no more than five cents shall be charged” gives the company a contract right to charge a five cent rate, which rate cannot be reduced without the consent of the company.

In *Cleveland vs. Cleveland City Railway Co.* 194 U. S., 517, the street railway company had similar rights under ordinances, one of which provided that the company “*should not charge more than five cents fare*” each way for one passenger over the whole or any part of its line. The City of Cleveland undertook to reduce the fare. The Supreme Court of the United States, after showing that the Legislature of Ohio lodged in the municipal council of Cleveland power to contract with street railway companies with respect to the terms and conditions upon which such roads might be constructed and operated, held that such ordinances when accepted became contracts between the company and the municipality, which the municipality was powerless to abro-

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gate, and that the new ordinance seeking to reduce the fares impaired the contract. That Court had already held in *Detroit vs. Detroit Citizens' Street Ry. Co.* 184 U. S. 368, that the language of an ordinance which provides that the rate of fare for one passenger "*shall not be more than five cents,*" does not reserve or give to the City any right to reduce such fare below the rate of five cents established by the company. To the same effect is *Cleveland vs. Cleveland Electric Ry. Co.* 201 U. S. 529, and also *Minneapolis vs. Minneapolis Street Ry. Co.* 215 U. S. 417.

10 It remains, then, to consider whether or not the restriction is a lawful one, and it has been suggested that inasmuch as it undertakes to apply to passage beyond the corporate limits of the Borough, it is *ultra vires* the municipality. We think, however, there is no merit in this suggestion.

The prosecutor was a trolley company, chartered, and proposing to run a line from Asbury Park to Belmar. It applied to Bradley Beach, an intermediate municipality, for
 20 permission to locate its tracks through that borough. That municipality was authorized to impose lawful restrictions in the interest of the public. The other municipalities involved, by ordinances locating the tracks of the line in question through their respective territories, imposed similar restrictions, so that the territory between Belmar and Asbury Park constituted one fare zone. We think that the municipality of Bradley Beach might legitimately conclude, as it did, that the "public interest" justified it in exacting, as a condition of the privilege to the company to operate within its corporate limits, that a stated fare be exacted over a given territory, notwithstanding such territory is partly outside its corporate limits. It is unnecessary for the borough in
 30 upholding its exactions to operate beyond its boundaries. It simply requires the trolley company, as condition of its contract, to make a certain agreement with reference to its fare. In *Reed vs. Inhabitants of Trenton*, 80 N. J. Eq. 503, supra, the ordinance of the City of Trenton under review expressly provided that:

40 "The rate of fare within the present limits of the City of Trenton for each passenger shall be three cents, and out-

side of the city limits, within a radius of five miles, five cents * * * .”

It was not intimated either by the Chancellor or by the Court of Errors and Appeals that the five cent provision applying outside of the city limits was for that reason illegal. On the contrary the Chancellor said that “the power of the City to impose the terms and conditions in the ordinance contained is undoubted,” and the Court of Errors and Appeals seems to have regarded the acceptance of an ordinance with such a condition as a contract binding both the city and the accepting company. What the court decided was that the company in procuring the franchise with that provision from the City of Trenton did not and could not bind other companies. It was not intimated or suggested that if the lines of the applicant itself had extended beyond the limits it would not have been bound by the rate.

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In *Rice vs. Detroit, etc.*, Ry. 122 Mick 677; 81 Northwestern, 927, the franchise granted by the township of Dearborn was under consideration. The franchise provided for the sale of trip tickets on cars of the company at a reduced rate between a village in the township and a city outside the township. Montgomery, C. J., said at page 928:

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“We have, then, a case in which defendant is operating under a franchise imposing a duty to sell five tickets for 50 cents, good between the city hall, Detroit, and any point in the village of Dearborn. * * * It is contended that the franchise is in force only within the territorial limits of the township and does not cover territory in other townships. We do not think this contention can be sustained. The franchise is in the nature of a contract, and imposes obligations upon the company which those having occasion to ride from Dearborn to Detroit have a right to enforce. * * * The defendant saw fit to contract with the village of Dearborn for a rate outside the limits of the village, and to agree that tickets should be sold on its cars. This contract it cannot repudiate.”

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A somewhat analogous situation is dealt with in *Camden & Amboy Railroad Co. vs. Briggs*, 2 Zab. 623, where a charter of a railroad company restricting rates to be charged

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by a railroad company beyond the limits of the State was sustained. The reasoning of this case, as well as of Raritan & Delaware Bay R. R. Co. vs. The Delaware & Raritan Canal Co., 3 C. E. Gr. 546, is applicable. It is common knowledge that municipalities frequently make exactions of this character, and they are not to be vitiated for that reason.

The order under review will be set aside.

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NEW JERSEY SUPREME COURT

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY,

Prosecutor-Appellee,
vs.

THE BOARD OF PUBLIC UTILITY
COMMISSIONERS AND THE BOR-
OUGH OF BRADLEY BEACH,
Defendants-Appellants.

Notice of
Appeal

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To Durand, Ivins & Carton,
Attorneys of Prosecutor,

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Sirs: Take notice that the Borough of Bradley Beach,
a municipal corporation, defendant appeals to the Court of
Errors and Appeals in the last resort in all causes from the
whole of the judgment entered in this cause.

WARD KREMER,
Attorney for Defendant, Borough of Bradley Beach.

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Due and legal service of the within notice is hereby
acknowledged this day of 1917.

DURAND, IVINS & CARTON

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NEW JERSEY COURT OF ERRORS AND APPEALS

10	ATLANTIC COAST ELECTRIC RAIL- WAY COMPANY, Prosecutor-Appellee, vs. THE BOARD OF PUBLIC UTILITY COMMISSIONERS AND THE BOR- OUGH OF BRADLEY BEACH, Defendants-Appellants.	} Grounds of Appeal
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The defendant, Borough of Bradley Beach, assigns the following grounds of appeal from the judgment of the New Jersey Supreme Court in the above case:

20 1. Because the Supreme Court reversed the order of the Board of Public Utility Commissioners in the above case.

2. Because there was error in the following portion of the opinion of the Supreme Court:

30 "The effect then of this ordinance with its acceptance and action thereunder by the trolley company being to constitute a contract between the company and the municipality, it is incompetent for the Board of Public Utility Commissioners, just as it is incompetent for the municipality itself, to violate that contract by imposing upon the company an additional burden, the effect of which is to require it to carry passengers for the same fare, not to, but beyond Cookman Avenue."

3. Because the Legislature of the State of New Jersey by virtue of Article 4 section 7 subdivision 11, has the right to repeal or alter the corporate powers granted by it.

40 4. Because the Board of Public Utility Commissioners,

created by the Legislature of the State of New Jersey is its legislative agent for certain purposes and acts; and among the powers delegated by the Legislature onto it the Board of Public Utility Commissioners has the power

“After hearing, upon notice by order in writing to fix, just and reasonable individual joint rates, tolls, charges or schedules thereof as well as commutation, mileage and other such rates which shall be imposed, observed and followed thereafter by any Public Utility as herein defined, whenever the Board shall determine any existing individual rate, joint rate, toll, charge or schedule thereof or commutation, mileage, or other such special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential.” (P. L. 1911 Chapter 195.)

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5. Because the contract or franchise entered into between the Borough of Bradley Beach and the Atlantic Coast Electric Railway Company was entered into by both parties chargeable with notice of the inherent right of the Legislature to alter or repeal the corporate powers of its creatures either directly or through its lawfully authorized agent.

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6. Because the Supreme Court refused to hold that the State's power to fix just and reasonable regulations concerning the operation of a public utility corporation is paramount to the contractual relation existing between the said public utility corporation and any person or private corporation.

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7. Because the Board of Public Utility Commissioners is empowered to enact regulations respecting the operation of public utility corporations irrespective and regardless of the existence of ordinances or contractual relations between the subjects of the Board's regulation.

8. Because the Supreme Court decided as follows:

“It has been suggested that in as much as it

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(the franchise) undertakes to apply to passage beyond the corporate limits of the Borough, it is ultra vires municipal. We think, however, there is no merit in the suggestion."

9. Because the order of the Board of Public Utility Commissioners was legal and should have been sustained by the Supreme Court.

10 10. Because there was error in the decision and opinion of the Supreme Court.

WARD KREMER,
Atty. for Borough of Bradley Beach.

Due and legal service of within notice as in time is hereby acknowledged this 21st day of October, 1917.

20 DURAND, IVINS & CARTON,
Atty. for Prosecutor.

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NEW JERSEY COURT OF ERRORS AND APPEALS

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY,

Prosecutor-Appellee,

vs.

THE BOARD OF PUBLIC UTILITY
COMMISSIONERS AND THE BOR-
OUGH OF BRADLEY BEACH,

Defendants-Appellants.

Notice of
Argument

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PLEASE TAKE NOTICE that we will bring on the argument of the appeal in the above stated cause, before the above-named court, at the State House, in the City of Trenton, on Tuesday the 20th day of November, 1917, at eleven o'clock in the forenoon of that day, or as soon thereafter as the court can attend to the same.

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WARD KREMER,

Attorney for Borough of Bradley Beach.

Dated, October 22nd, 1917.

To, Durand, Ivins & Carton,
Attorney for Prosecutor.

Due and legal service of the within notice is hereby
acknowledged this 22nd day of October, 1917.

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DURAND, IVINS & CARTON

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New Jersey Court of Errors and Appeals

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY,
Prosecutor-Appellee,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF
NEW JERSEY, AND BOROUGH
OF BRADLEY BEACH,
Defendants-Appellants.

Supplemental Brief for Borough of Bradley Beach.

Statement.

This appeal is to review a decision of the Supreme Court reported in 89 N. J. Law, 407, setting aside an order made by the Board of Public Utility Commissioners compelling the Atlantic Coast Electric Railway Company to issue transfers from one to another of its lines.

The Railway Company was organized under the Traction Act of 1893 (P. L., page 302; C. S., page 5021), and obtained from the Borough of Bradley Beach an ordinance granting a location of street railway tracks in said Borough in which the rate of fare was regulated.

The pertinent part of the opinion of the Supreme Court to which this appeal is directed is found in the opinion below, delivered by Mr. Justice Trenchard:

“The effect, then, of this ordinance, with its acceptance and action thereunder by the

trolley company, being to constitute a contract between the company and the municipality, it is incompetent for the board of public utility commissioners, just as it is incompetent for the municipality itself, to violate that contract by imposing upon the company an additional burden, the effect of which is to require it to carry passengers, for the same fare, not to, but beyond Cookman avenue."

The question thus presented has been and is at present perhaps the most important question before the courts of many states in which regulation of public utilities has been adopted. The policy of state regulation is new and the problems which have developed thereunder are numerous, but they are gradually being settled by the courts. Prior to the enactment of the laws creating public utility commissioners, rates to be charged by public utility companies, when regulated at all, were regulated directly by the Legislature by statute or by the State in granting a corporate charter or through a municipality clearly and unmistakably authorized to bind the State in this respect. Where the State has in any of these methods fixed or determined rates to be charged by public utilities and where subsequently the State reposed the power to regulate rates in an administrative board, it becomes apparent at once that the question arises as to the jurisdiction of such a board over rates thus fixed, and it resolves itself to the query, "Did the State by its action forever bar itself during the term of the contract thus created from jurisdiction over rates, either to increase or decrease the same?"; this particularly with reference to contracts made prior to the passage of public utility regulatory laws.

It would appear to be settled that commissions have complete power to regulate rates fixed by private contract made before the passage of an act. Neither the company nor the individual patron may make a contract to bar the subsequent exercise of the power of the State through its commission, nor does there seem to be any question where the rates have been fixed by the State in its grant of a charter to a utility. Where prior to the passage of a public utility regulatory law a municipality was clearly and unmistakably authorized to bind the State, it has been generally conceded that the State's future jurisdiction thereover is barred. The dispute always arises as to the extent to which the State thus barred itself in authorizing a municipality to make a contract with a utility fixing rates, or whether the State in its enactment authorizing a municipality to fix rates reserved to itself its jurisdiction over rates when it determined to exercise it. There can be no doubt as to the contract entered into, in any event, by the municipality with a utility fixing rates to be charged by the utility as being binding *inter se* upon the municipality and the utility. A different question, however, arises when the State seeks to interfere either on behalf of the municipality or the utility. The streets and other highways of the city are part of the other and general highways of the State, and as such, and to the extent that the interests involved are not purely local, the city's powers may be modified or withdrawn by the State from the municipality, unless the State has waived its right to do so.

The appellant seeks to maintain the principle that the right of the State to exercise its power in the present case was not barred by the enact-

ment of the Traction Act authorizing the municipality to pass the ordinance in question; in other words, that the ordinance does not constitute an inviolable contract, and that (a) the State's power to regulate rates was not affected thereby, and (b) that the State's power to fix a just and reasonable rate, irrespective of the ordinance, has been delegated to the Board.

The Law.

I.

The statute under which the ordinance in question was enacted.

The ordinance in question was enacted under the authority of an act entitled:

“An Act to authorize the formation of traction companies for the construction and operation of street railways, or railroads operated as street railways, and to regulate the same.”

Section 7 of this act provides:

“And be it enacted, That the Board of Aldermen, Common Council, or the body having control of streets or highways, or other governing body of any city, town, borough, village, township or county, upon the petition of the directors of any company incorporated under this act, or a majority thereof, *for a location of the tracks* of any extension or new line of its railway *conformably to the route* designated in description of the route of such extension or new line, and the map exhibiting the same filed as aforesaid in the office of the secretary of state, shall give notice to all parties interested by publication in one or more

newspapers published and circulated in said municipality, or if none be published there, then by posting in five of the most public places in such municipalities or township at least fourteen days before their meeting, of the time and place at which they will consider such application for location and after hearing they shall either pass a resolution refusing such location or pass a resolution or ordinance, as may be necessary or proper, granting the *said location or any part thereof*, under such lawful restrictions as they deem the interests of the public may require, and *the location thus granted shall be deemed and taken to be the true location of the tracks of the railway*, if an acceptance thereof in writing by said directors shall be filed with the secretary of state within thirty days after receiving notice thereof, and a copy thereof delivered to the clerk or other equivalent officer of the municipality or township."

Section 32 of this act further provides:

"And be it enacted, That any consent required by this act to be given by any public body may be given by a resolution or ordinance of such body, which consent, when accepted by any corporation created under this act in a writing under its corporate seal, filed with the clerk of such body, or in the office of the clerk of the county in which such body exists shall have the force and effect of a contract."

The indicated questions arise under these statutory provisions. The questions are important and of novel impression in this state, and we therefore consider them broadly.

II.

The power to fix and regulate the rates charged in the conduct of a business "affected with a public interest" is an undoubted power of government, continuing in its nature.

(1876) *Chicago, Burlington & Quincy Railroad Co. v. Iowa*, 94 U. S., 155.

(1886) *Stone and others v. Farmers' Loan & Trust Co.* (Railroad Commission Cases), 116 U. S., 307. Mr. Chief Justice Waite (325):

"This power of regulation is a power of government, continuing in its nature."

III.

The State did not by the statute referred to renounce its governmental power to fix and regulate rates, nor did it empower the municipality to restrict in anywise the subsequent exercise of such power by the State.

It is conceded that the State itself may make a contract to bar its future power to regulate utilities; it may also authorize a city to make a contract to have a like effect. An actual illustration of the latter situation is found in *Detroit United Railway Company v. Michigan* (1916) 242 U. S., 238. The source of the city's authority, however, must be closely scrutinized.

In *Home Telephone Company v. Los Angeles* (1908), 211 U. S. 265,

Mr. Justice Moody said:

"The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to

make it, must be closely scrutinized. No other body than the supreme legislature has the authority to make such a surrender, unless the authority is clearly delegated to it by the supreme legislature. The general powers of a municipality or of any other political subdivision of the state are not sufficient. Specific authority for that purpose is required."

What then is the statutory construction of the pertinent sections of the Traction Act under which the ordinance was passed, and to what extent is the principal, the State, bound? The application that is provided for by the statute is a mere application for a "location" of tracks, which application the municipalities may refuse or grant in whole or in part. If granted, the municipalities may impose "such lawful restrictions as they deem the interest of the public may require." It is this consent of the municipalities to the location which the statute declares shall, when "accepted by the corporation, have the force and effect of a contract."

By force of the statute it is the consent of the municipality granting the location, and that alone, which is given the force and effect of a contract. The purpose of the provision giving the consent such force is apparent. It had been contended at the time of the enactment of the statute, that special rights to the use of public highways constituted licenses revocable at will. The statutory provision was enacted to give such rights the character of vested rights of property arising out of a contract.

In granting its consent to location, the municipality was given the power to impose "such

lawful restrictions as they deem the interest of the public may require." The power thus conferred was a power *to restrict* the rights of the corporation and the exercise thereof. No power was conferred to restrict the powers of State. The restrictions which might be imposed were with respect to the subject of the grant of consent, *viz.*, the location of the tracks. This would include methods of construction, maintenance of way, and methods of operation. All this falls far short of the delegation by the State, to the municipalities, of power to restrict a future exercise by the State of the governmental power to fix and regulate rates. Action by the municipality fixing a rate which for time and circumstances the corporation would be entitled to exact, irrespective of whether or not such rate so fixed would at a given time, and under given circumstances, be just and reasonable, would not be a restriction upon the right granted, or upon its exercise, but would be a restriction upon the power of the State, and an enlargement of the power of the company. If no such provision were contained in the ordinance, the State could from time to time fix a just and reasonable rate. With such a provision in the ordinance, and that provision given the effect of an inviolable contract binding the State, the State could not fix and establish at any time, a just and reasonable rate, though it were conclusively demonstrated that the rate fixed by the ordinance was in excess of a just and reasonable rate.

(1908) *Home Telephone and Telegraph Company v. City of Los Angeles*, 211 U. S., 265.

Mr. Justice Moody, referring to the power of the State to authorize one of its municipal cor-

porations to establish rates by an inviolable contract, said (273):

“But for the very reason that such a contract has the effect of extinguishing *pro tanto* an undoubted power of government, both its existence and the authority to make it must clearly and unmistakably appear, and all doubts must be resolved in favor of the continuance of the power.” * * *

(274) “It is obvious that no case, unless it is identical in its facts can serve as a controlling precedent for another, for differences, slight in themselves, may through their relation with other facts, turn the balance one way or the other. Illustrations of the truth of this may be found in the cases of *Freeport Water Co. v. Freeport City* (180 U. S. 587); *Rogers Park Water Co. v. Fergus* (180 U. S. 624), and *Knoxville Water Co. v. Knoxville* (189 U. S. 434), where no authorized contract was found, as contrasted with *Detroit v. Detroit Citizens’ St. Ry. Co.* (184 U. S. 368) and *Cleveland v. Cleveland City Ry. Co.* (194 U. S. 517), where a contrary conclusion was reached.”

(1885) *Stone v. Illinois Central Railroad Company*, 116 U. S. 347 (Railroad Commission Cases).

Held, that an act of incorporation of a railway company which provides that the president and directors may “adopt and establish such a tariff of charges for transportation of persons and property as they may think proper,” and the same “alter and change at pleasure,” does not deprive the State of the power, within the limits of its general authority as controlled by the constitution of the

United States, to act upon the reasonableness of the tolls and charges so adopted and established.

(1886) *Stone and Others v. Farmers' Loan and Trust Co.* (Railroad Commission Cases), 116 U. S. 307.

Held, that a statute which granted to a railroad company the right "from time to time to fix, regulate and receive, the tolls and charges by them to be received for transportation" did not deprive the State of its power, within the limits of its general authority, as controlled by the constitution of the United States, to act upon the reasonableness of the tolls and charges so fixed and regulated, and that an act of incorporation which conferred upon the directors of the company the power to make by-laws, rules and regulations touching the disposition and management of the company's property, and all matters appertaining to its concerns, conferred no right which was violated by the creation of a State Railroad Commission charged with the general duty of preventing the exaction of unreasonable or discriminating rates.

Mr. Chief Justice WAITE (329):

"The case turns consequently on Sec. 12 (of the charter), which is, 'that it shall be lawful for the company from time to time to fix, regulate and receive the toll and charges by them to be received for transportation,' etc. This would have been implied from the rest of the charter if there had been no such provisions, and it is argued that, unless it had been intended to surrender the power of control over fares and freights, this section would not have

been inserted. The argument concedes that the company under this section is limited by the rule of the common law which requires all charges to be reasonable. In *Munn v. Illinois*, 94 U. S. 113, and *Chicago, Burlington & Quincy Railroad Co. v. Iowa*, above cited (94 U. S. 155), this court decided that as to natural persons and corporations subject to legislative control, the state could, in cases like this, fix a maximum beyond which any charge would be unreasonable, and that such maximum when fixed would be binding on the courts in their adjudications, as well as on the parties in their dealings. The claim now is that by Section 12, the state has surrendered the power to fix a maximum for this company, and has declared that the courts shall be left to determine what is reasonable, free from all legislative control. We see no evidence of any such intention. Power is granted to fix reasonable charges, but what shall be deemed reasonable in law is nowhere indicated. There is no rate specified, nor any limit set. Nothing whatever is said of the way in which the question of reasonableness is to be settled. All that is left as it was. Consequently, all the power which the state had in the matter before the charter it retained afterwards. The power to charge, being coupled with the condition that the charge shall be reasonable, the state is left free to act on the subject of reasonableness within the limits of its general authority as circumstances may require. The right to fix reasonable charges has been granted, but the power of declaring what shall be deemed reasonable has not been surrendered. If there

had been an intention of surrendering this power, it would have been easy to say so. Not having said so, the conclusive presumption is there was no such intention."

(1890) *Chicago, Milwaukee & St. Paul Railway Co. v. Minnesota*, 134 U. S. 418.

Mr. Justice BLATCHFORD (455):

"There is nothing in the mere grant of power, by Section 9 of the charter, to the directors of the company to make needful rules and regulations touching the rates of toll and the manner of collecting the same, which can be properly interpreted as authorizing us to hold that the state parted with its general authority itself to regulate, at any time in the future when it might see fit to do so, the rates of toll to be collected by the company."

(1890) *Minneapolis Eastern Railway Company v. Minnesota*, 134 U. S. 467.

Mr. Justice BLATCHFORD (481):

"The Minneapolis Eastern Railway Company was organized as a corporation in June, 1878, under title 1, chapter 34 of the General Statutes of Minnesota. By Sec. 2 of an act of the legislature, approved March 3, 1869 (Laws of 1869, c. 78, 95), it was provided 'that any railroad company or corporation organized under the title to which this is an amendment, may charge and receive for the transportation of passengers and freight on their road such reasonable rate as may be from time to time fixed by said corporation or prescribed by law.'

“By Sec. 8 of chapter 103 of the General laws of Minnesota of 1875, it was provided as follows: ‘No railroad company shall charge, demand or receive from any person, company or corporation an unreasonable price for the transportation of persons or property, or for the hauling or storing of any freight, or for the use of its cars, or for any privilege or service afforded by it in the transaction of its business as a railroad corporation.’ We do not perceive that these statutory provisions constitute such a contract with the corporation as to the fixing by it of its rates of charges as to deprive the legislature of its power to regulate those charges.”

(1913) *Southern Pacific Company v. Campbell, et al.*, constituting the Railroad Commission of Oregon, 230 U. S. 537.

Held, that a general charter provision, giving power to charge and collect tolls, necessarily implies that the charges shall be reasonable, and does not detract from the power of the State to prescribe reasonable rates.

Mr. Justice HUGHES (550):

“It is also urged that the railroad commission act of Oregon (February 18, 1907, laws of 1907, chapter 53, p. 67), and the order in question were void as against the Oregon & California Railroad Company and the lessee of its property, upon the ground that the act and order impaired the obligation of the contract contained in the charter of the first mentioned company. That company was incorporated in 1870 under the general incorporation act of Oregon, approved Oct. 14, 1862, which,

in Sec. 34, provided: 'Every corporation formed under this act for the construction of a railroad, as to such road shall be deemed common carriers, and shall have power to collect and receive such toll or freight for transportation of persons or property thereon as it may prescribe.' Reference is also made to the following provision of the constitution of Oregon pursuant to which this incorporation act was enacted: 'Corporations may be formed under general laws, but shall not be created by special laws except for municipal purposes. All laws passed pursuant to this section may be altered, amended or repealed but not so as to alter or destroy any vested corporate right (Article XI, Sec. 2.)' The sole question presented on this branch of the case, it is said by counsel for the appellants, 'is whether the judgment of the carrier in fixing rates for transportation of persons or property shall be supervised, regulated and supplanted by the judgment of the state exercised through a railroad commission, or shall it remain as it was at common law, within the exclusive power and jurisdiction of the carrier to fix the rates, subject only to the power of the courts upon judicial inquiry, to denounce and decline to enforce rates that are excessive and unreasonable.'

"As to this question, it is sufficient to say that it is well established that a general charter provision such as the one quoted, giving power to charge and collect tolls, necessarily implies that the charges shall be reasonable and does not detract from the power of the state through its legis-

lature, or the agency lawfully constituted thereby to prescribe reasonable rates to be observed by the carrier.”

There is a great difference in authorizing the city to bind itself and authorizing it to bind the State. The principle is established that the State may authorize the city to grant away the State's legislative power to regulate rates.

Vicksburg v. Vicksburg Water Works Company (1907) 206 U. S. 496; *Los Angeles v. Los Angeles Water Company*, (1900) 177 U. S. 558.

Most of the important cases, however, which have been before the courts have been cases in which there was involved the inviolability of a contract between the city and the utility *inter se*.

Cleveland v. Cleveland Street Railway Company (1904) 194 U. S. 517; *Minneapolis v. Minneapolis Street Railway Company* (1910) 215 U. S. 415, and the cases *supra*; *Wyandotte County Gas Company v. Kansas*, 231 U. S. 625; *Manitowoc v. Manitowoc & N. Traction Co.*, 145 Wis. 13; *Dawson v. Dawson Telephone Co.*, 137 Ga. 62.

In all of the above cases the controversy was whether the State had authorized the city to bind itself, and no question arose of the State being bound in any way.

If, then, this is the extent to which the city was authorized, that is, to bind itself but not the State, then any contract made by it does not thereafter deprive the State of its power to regulate the rates, either directly or through some administrative board or commission.

In *Milwaukee Electric Ry. & Light Co. v. Railroad Commission* (1913), 153 Wis. 592, the franchise fixed the rates of railway fare. There was statutory authority to the municipality by the State to make a contract fixing rates of fare, but it was held that the statute conferred no authority upon the city to bind the State, but only to bind the municipal authorities. The prevailing opinion by the Chief Justice of the Court expressly drew this distinction:

“Assuming that under this language a city might make a contract with a public utility, fixing rates or tolls for a definite period, which would bind the city itself and prevent any change of rates by the city authorities during the contract period, the question remains whether the section can be construed as giving the city authorities any power to bargain away the sovereign right of the State to regulate fares and tolls and lower them, if found to be excessive.”

The language of the street railway act in question was: “Any municipal corporation * * * may grant to any such corporation * * * the use, upon such terms as the proper authorities shall determine of any streets, * * * for the purpose of laying * * * tracks and running cars thereon for the carriage of freight and passengers.”

Mr. Justice Day wrote the opinion in the case when it came before the Supreme Court of the United States (1915), 238 U. S. 174, and approved, as follows:

“The language of the section certainly lends itself to this construction, and there

is nothing in specific terms conferring the right to contract by agreement between parties, much less to make such contract during its existence *exclusive of any further right of the state to act upon the subject in the exercise of its legislative authority.*”

This case followed in principle the decision of an earlier case, *Manitowoc v. Manitowoc & Northern Traction Co.*, 129 N. W., 925. The ordinance there under review was similar and was also authorized by the legislature of Wisconsin, and it was held that it authorized the city to make a contract as to rates binding upon the city and the company, but not upon the State.

In the Supreme Court of the United States, the most recent case on the subject is that of the *Puget Sound Light & Power Company v. Charles A. Reynolds, et als*, constituting the Public Service Commission of the State of Washington, June 11, 1917, 37 Supreme Court 705, in which it was held that a franchise term as to transfers was validly set aside by the Public Service Commission against the wishes of the company where the State had not clearly delegated to the city the power to suspend, by contract, the State's right of regulation. The opinion of the court was delivered by

Mr. Justice PITNEY:

“Assuming (what is not clear) that the provision in the franchise ordinances respecting the rates of fare and the transfer privilege are contractual in form, still it is well settled that a municipality cannot, by a contract of this nature, foreclose the exercise of the police power of the state

unless clearly authorized to do so by the supreme legislative power. * * *

“The present case is very clearly distinguishable from *Detroit United Railway v. Michigan*, 242 U. S. 238, 248, where the state legislature had expressly provided that the municipal corporation might make a binding agreement with a street railway respecting the rates of fare.”

Still more recently, the Supreme Court of Indiana treated the subject fully in an opinion in the case of *Winfield, et al, v. Public Service Commission of Indiana* (January 11, 1918, 118 N. E. Rep. 531).

The City of Logansport granted to the Home Telephone Company a “franchise, license, and permit” to construct and operate a telephone exchange and system of wires, poles, etc., in said city over and through highways thereof. The term of the franchise was forty years and fixed the maximum rates to be charged for telephone service.

HARVEY, J., speaking for the Court, says:

“The State’s power of control of such matters is one of the elements of the State government, in the exercise of which the people are represented by the Legislature. This element of government is commonly called the State’s police power, and in the present case applies to the general interest of the citizens of the State in proper public service. *The State may deprive itself of the power to exercise this power by granting directly to the public service companies in charters, or by franchises, freedom from the exercise thereof, but inasmuch as such grant of freedom is in derogation of common right, it is never presumed to have*

been made by the State, and the State will not be held to have abandoned the right to exercise its police power, unless the State's intention so to do is expressed in terms so clear and unequivocal as to exclude doubt; and if doubt exists, it must be resolved in favor of the State.'

In the majority of these cases, the power of the commission to reduce the franchise rates was upheld. In most of them there was practically no serious question made of the power of the commission, the question being as to whether the State had in authorizing the grant of the franchise authorized such a contract by the city as would bar the State's right of future regulation of rates agreed upon between the company and the city. Where it did not appear that the authority of the city was clear and unmistakable, it was held that the State did not bar its exercise of future control over the rates. The Board of Public Utility Commissioners of this State have heretofore proceeded on this theory. In 1913, in the *City of Long Branch v. Monmouth County Electric Co.*, 2 Reports Board of Public Utility Commissioners N. J. 102, it decided that the provisions of a street railway company's franchise as to rates were not binding upon the board. It held it had power to reduce them against the protest of the company. In its report in that case it said:

"The power of the municipality to exact such a condition limiting the rate of fare flows, however, merely from the statutory necessity of the municipality to consent to the construction of the line. The power does not find its source in any statute authorizing the municipality to enter into a contract fixing the rate of fare.

“It is unreasonable to suppose that the legislature in merely making the municipal consent or permission a condition precedent to the construction of the line intended to surrender the governmental power of fixing rates.

“In this view the ordinance, so far as it fixes a rate of fare, continues effective as between the municipality and the company until such time as the State sees fit to exercise its paramount authority and until such time only.”

It would seem under the authorities of such cases as that of the *Milwaukee Electric Railway & Light Co. v. Railroad Commission, supra*, that the Traction Act under which the ordinance was passed should not be construed as authorizing the city to contract away the power of the State to regulate railway fares. A contrary conclusion, however, is reached in the present case. In the course of the opinion in the present case,

Mr. Justice TRENCHARD said:

“Such a contract neither party can violate without the consent of the other. Should the company apply to the Utility Board to have the rate of fare increased, it would undoubtedly be met with its contract. * * *

“The effect then of this ordinance, with its acceptance and action thereunder by the trolley company and the municipality, it is incompetent for the Board of Public Utility Commissioners, just as it is incompetent for the municipality itself, to violate that contract by imposing upon the company an additional burden, the effect of which is to require it to carry passengers, for the same fare, not to, but beyond Cookman Avenue.”

In no place in the opinion does the learned Justice refer to the distinction between (a) statutes authorizing and enabling a city to make a contract as to utility rates which shall be binding upon the city and the company only until the State may act under its police power, and (b) on the other hand statutes authorizing a city to make a contract, the effect of which will be to bar the State itself from such a step during the contract term.

The most recent case in this State is that of the *Northampton, Easton and Washington Traction Co. v. Board of Public Utility Commissioners*. In this case application had been made to the Board of Public Utility Commissioners for an increase in the rates of fare. The application was opposed by the municipalities through which the company operated and in which municipalities ordinances were in effect similar to the ordinance in the present case limiting the rate of fare to be charged by the company in the various municipalities. Upon the authority of the present case, the Board construed its duty to deny the application, holding that it was without authority because of the presence of this ordinance. The Supreme Court set the order aside and remitted the case to the Board for further proceedings. The reasons for the action of the Supreme Court were stated in the opinion filed at the same time in the case of *Collingswood Sewerage Company v. Borough of Collingswood* (Feb. 7, 1918). The opinion of the Court in the latter case was delivered by

Mr. Justice SWAYZE, who said:

“The first doubt to be resolved is whether the Board had jurisdiction to settle this question. Its jurisdiction is challenged be-

cause it is said that to alter the rates would impair the obligation of the contract between the borough and the company. We think this question is settled so far as this court is concerned, in favor of the jurisdiction of the Board by what was said in at least three prior decisions," citing *Public Service Railway Company v. Public Utility Board*, 85 N. J. Law, 123; *North Wildwood v. Public Utility Commissioners*, 88 N. J. Law, 81; *Atlantic Coast Electric Railway Co. v. Public Utility Board*, 89 N. J. Law, 407.

"We might rest on these cases but in view of the importance of the question, striking as it does at the root of a statute founding for good or ill a new public policy, we venture to add some additional considerations. In one sense, an ordinance embodying a municipal consent upon certain terms to the creation of a franchise, whether the general franchise to be a corporation or the special franchise to use the public streets, may be called a contract, accurately enough for practical purposes since it constitutes an enforceable agreement. It is, however, ordinarily an agreement of a peculiar kind. The municipality as such, although a party, indeed often as in this case the only party on one side, has little or no direct beneficial interest. It contracts, or rather imposes conditions, for the benefit of individuals, as in this case the Borough, for the benefit of its citizens who might thereafter contract for connections with the sewerage system, provided for a maximum. But no citizen was bound to connect with the company's sewers, nor was there any express language requiring the company to supply the connec-

tion. There could not be any such requirement until the price was determined; the ordinance and consent did not fix a price, but only the maximum and minimum between which the price must fall. So far as the ordinance or consent goes, there might be within those limits a different price for each connection depending on its distance from a central point or a discharge point, on the size of the building, the number of toilets or water taps, or perhaps other consideration. In case of disagreement between land owner and sewerage company, the price would have to be fixed by some tribunal. It would not naturally be the other party to the agreement; it would properly be some outside tribunal, which might at least be supposed to be impartial. This might be a court, a commission, or since 1911 the Public Utility Commission. We know of no other way in which the individual rate could be fixed and a contract made for sewerage service. The legislature has in terms given that power to the Public Utility Commission, and while the Borough had power to impose fixed individual rates and a detailed schedule as a condition precedent to its consent, it chose not to exercise that power but to impose more elastic and less certain conditions.

“Even if the ordinance had fixed the rate for each connection, there would have been no effective way for enforcing it as a contract by action, since the other contracting party is not injured and could only recover nominal damages.

“*Summit v. Morris Traction Company*, 85 N. J. Law, 193.

“Regarding the ordinance solely as a contract, the individual citizens of Collingswood would have no right of action thereon because they are not parties to the agreement. *Hall v. Passaic Water Company*, 83 N. J. Law, 771, at page 776; *Baum v. Somerville Water Company*, 84 N. J. Law, 611. The truth in an ordinance of this kind is a grant upon conditions rather than a contract. It creates public duties which can be enforced by mandamus. *Rutherford v. Hudson River Traction Company*, 73 N. J. Law, 227, 243. Whether upon a mandamus to compel a connection with a house sewer or drain, the court could fix the price somewhere between the maximum and minimum, is a question not now before us. The question now raised is whether the state through its legislative arm could provide a tribunal which might fix rates in the face of such an ordinance. Since some tribunal must fix rates where the public utility corporation and the individual citizen cannot agree, and the rate is not fixed by ordinance as it is not in the present case, we see no reason why the legislature may not clothe a public commission with that power, reserving, as the legislature has reserved in this case, the right of the Supreme Court to review by certiorari.

“These considerations seem conclusive in favor of the general jurisdiction of the Public Utility Commission provided the language of the statute is apt for the purpose. It is obvious from a mere reading of the act that the legislature meant to invest the Commission with full power, and that intent and the use of language apt for the purpose is not questioned. The point made

is that it is beyond the power of the legislature to impair the obligation of the contract between the municipality and the sewerage company by fixing a rate higher than the maximum fixed by the ordinance. This contention requires careful consideration. We have shown that the ordinance and consent of 1900 did not create a contract for actual service by the sewerage company to any customer, and that as to the municipality its effect was rather to create a public duty to be enforced by mandamus, than a contractual relation to be enforced by action. Fixing limits between which the actual price of the service might be established by agreement or otherwise, is rather in the nature of a legislative act to prevent extortion, than of a contract. The ordinance was the legislative act of the municipality. As a legislative act, it was subject to the control of the legislature itself, and that body could make changes as long as it did not infringe the rights of the Sewerage Company, arising under the ordinance. It makes little difference whether we say that the ordinance created by way of legislative grant a property right called a franchise, protected by the 14th Amendment, or a contract protected by the contract clause of the Federal Constitution and our own State Constitution. In either case, the question is whether a municipal corporation, an agency of the state, is protected by either the 14th Amendment or the contract clause. It is well settled that such protection does not extend to the rights of the municipal corporation against its own creator. *Rader v. Southeasterly Road District, etc.*, 36 N. J. Law, 273. The rule was there stated by Justice Depue:

'The power of the legislature over corporations created for purposes of local government is supreme. From a grant of this character, no contract arises with the incorporators which exempts it from legislative control. The legislature may alter, modify or repeal the charter at any time in its discretion. The only limitation on the operation of such repeal is as to creditors, that it shall not operate to impair the obligation of existing contracts which existed when they were made.'

"This statement of the law has been frequently followed, has never been questioned in our state, and is supported by abundant authority in the United States Supreme Court. It is enough to cite *Worcester v. Street Railway Company*, 196 U. S. 539.

"The rule has been recently applied in Massachusetts to the case of increase of street railway fares. *Board of Survey v. Bay State Railway Co.*, 113 N. E. 273. It applies with all the more force to changes of the terms of municipal ordinances granting rights to public utility companies, so far as concerns the rights of the municipalities themselves, because of the fact that in fixing the terms, the municipal authorities do not act for the local interests of the municipality, but 'as public officers exercising a quasi judicial authority.' *Hewett v. Inhabitants of Canton*, 65 N. E. 42 (Mass.). As to contracts for service that may have been made with individuals, we are not informed. There were such contracts, it appears, but we are not advised of their terms. They may all be terminable at the will of the Sewerage Company, and it is probable that they were

merely contracts for service without any definite term being fixed. Whether for no definite term, for a definite term, or nominally in perpetuity, all were made subject to the power of the state to regulate rates. This is a governmental function and cannot be contracted away, even by a municipality, unless specifically authorized by the legislature; and the authority must be clear. *Home Telephone Company v. Los Angeles*, 211 U. S. 265. Much less can their governmental power be hampered without clear legislative authority, by a contract between a private corporation and private citizens. We do not know that it has even been suggested that such a contract was not subject to legislative control. To hold that such a contract could tie the hands of the legislature would be to establish diversity in rates. Consumers, by favor, or by skill in bargaining might obtain advantageous rates, and would thwart the establishment of uniform rates to which so much of our legislation has been directed. The government has never granted this governmental power to private citizens, and in the absence of such a grant, no contract can diminish the government's right of control.

"We think, therefore, that the power of the legislature is untrammelled by any possible impairment of the obligations of contracts within the meaning of the Federal or State Constitutions.

"It is equally untrammelled, so far as the rights of the municipality are concerned, by the 14th Amendment. If the ordinance and consent of 1900 can be said with any propriety of language to have created a property right in the municipality, that right was

subject to legislative control. *Hunter v. Pittsburgh*, 207 U. S. 161, 178."

In the *Northampton, Easton and Washington Traction Company* case, *supra*, the opinion of the Supreme Court was also delivered by

Mr. Justice SWAYZE:

"The prosecutor asked the consent of the Public Utility Commissioners to increase the fares in each fare zone from five to six cents. It was shown to the satisfaction of the Commission that the street railway was being run at a loss each year even without making the necessary allowance for depreciation. Obviously in such a situation the prosecutor could not perform its public duty to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so, P. L. 1911, Sec. 17, b. The Commission thought that this duty was of inferior obligation to what it conceived was an irrevocable contract in favor of inferior branches of the state government, — the municipalities through which the railroad runs. We are unable to take that view. Our reasons are stated in the opinion filed in *Collingswood Sewerage Co. v. Borough of Collingswood*. The order is set aside and the case remitted for further proceedings. No costs are allowed."

In the *Collingswood* case the ordinance fixed a maximum and minimum rate to be charged by the sewerage company. The statute under which the ordinance was passed by the Borough of *Collingswood* provided for the passage by the municipality of an ordinance granting the consent of the Borough fixing the maximum prices

or rents that might be charged property owners for the use of the sewerage system. The minimum fixed by the ordinance was not required by the statute, there being, however, in the ordinance a maximum and a minimum. The minimum not being prohibited by the statute, and having been embodied in the ordinance permitted a latitude for regulation in between. This feature, however, is not present in the case under review. The ordinance there only fixed a maximum to be charged, so that the reasoning of the learned Justice in the Collingswood case as to the right to regulate in between the maximum and minimum hardly applies. In so far as the opinion defines the ordinance as a conditional grant and not an absolute contract it is in direct variance with the present case, in which the ordinance was held to be an inviolable contract. The reasoning, however, is novel and leads to the conclusion that the State has not barred itself by the enactment of the Traction Act of its power to regulate rates either directly or through some properly constituted tribunal.

IV.

Where the action of the municipality does not establish an inviolable contract suspending the State's power to fix and regulate rates, the power of the Board of Public Utility Commissioners is complete.

The Board may in such case fix a just and reasonable rate whenever it determines the existing rate to be unjust or unreasonable, notwithstanding the fact that the existing rate has the sanction of prior municipal action assented to by the company.

The just and reasonable rate so fixed by the Board may be less than that limited by the prior municipal action or may exceed the rate so limited.

This follows from the fact that the existing rate may be unjust and unreasonable to the community served because it affords more than a fair return, or unjust and unreasonable to the utility furnishing the service because it fails to afford a fair return.

The power conferred upon the Board is (P. L. 1911, p. 374, Sec. 16, c) to fix a just and reasonable rate whenever it determines *any existing rate* "to be unjust, unreasonable, *insufficient* or unjustly discriminatory or preferential."

(1911) *City of Dawson v. Dawson Telephone Co.*, 137 Ga. 62, 72 S. E. 508.

Held, that the granting of a franchise to a telephone company by the municipal authorities of a city, wherein it is provided that the company "agrees and binds itself by this ordinance that the rates charged shall be \$1.50 per month for residence phones and \$2.50 per month for business phones," and an acceptance of such franchise by the company, does not prevent the telephone company from increasing such charges, if, permission to do so is subsequently granted it by the railroad commission, especially as it appears that the city was not specifically authorized by its charter or other legislative enactment to fix the charges to be made by telephone companies.

(1911) *City of Manitowoc v. Manitowoc & Northern Traction Co.*, 145 Wis. 13, 129 N. W. 125.

A contract of an interurban line with a city made, as a condition to the use of the streets

by the company, a stipulation that the fare between the cities should not exceed ten cents.

BARNES, J.:

“It is contended that this law (the railroad commission act), has superseded the contract involved in this suit and that therefore the contract no longer has any binding force or effect. We do not think so. The statute worked no change in existing rates. It simply provided that all rates should be reasonable, and left the railroad commission the power to determine the fact as to whether or not a given rate was reasonable. When that determination was reached the law became operative upon the particular rate called in question, and the rate arrived at then became the lawful rate, and continued so until set aside in the manner provided by the law. The railroad commission has made no determination in the case before us; at least, if it has, it is no part of the record. Until that determination is made, the contract is in force. *When it is made, the contract is superseded, if the rate is changed.*”

(1912) *State, Ex Rel Webster v. Superior Court of the State of Washington*, 67 Wash. 37, 120 Pac. 861, L. R. A. 1915 C. 287.

A franchise ordinance of the City of Seattle specified rates for telephone service to be provided by the Independent Telephone Company.

A patron of the company made complaint to the Public Service Commission alleging inefficient service, the charge of inefficient service being predicated upon an allegation that the rates were insufficient to support a proper service.

A hearing was had, and an order was made directing the company to inaugurate a new

schedule of rates somewhat higher than those fixed by the franchise ordinance of the city.

The order so made was sustained.

The questions submitted to and determined by the court were (1) "Has the legislature vested in the Public Service Commission authority to increase the rates specified in section 7 of Ordinance No. 6498 of the City of Seattle and ordinances amendatory thereof, under which the company is operating," and (2) "if such power has been vested in the Public Service Commission, whether the legislature acts assuming to grant such powers are unconstitutional and void?"

The court determined that the commission had such authority and that the legislature acts granting such authority were constitutional.

(1913) *Milwaukee Electric Ry. & Light Co. v. Railroad Commission of Wisconsin*, 153 Wis. 592, 142 N. W. 491.

St. 1911, Sec. 1862, providing that any municipal corporation may grant to a street railroad company, upon such terms as the proper authorities shall determine, the use of the streets for street railway purposes, such railroad to be subject to such reasonable rules and regulations * * * as the municipal authorities may from time to time prescribe. The City of Milwaukee by ordinance prior to 1900 granting franchises to a street railroad provided that the rate of fare should "not exceed five cents," and by ordinance of January 2, 1900, granting franchises in new streets, declared that the rate of fare for one continuous passage should "be not to exceed five cents" a single fare, except as to chartered cars, and that until January 1, 1905, the company should

sell tickets in packages of 25 for \$1.00 or 6 tickets for 25 cents. Thereafter the railroad commission of Wisconsin entered an order, not interfering with the cash fare, but providing that the company should discontinue the sale of 25 tickets for \$1.00 and should sell 13 tickets for 50 cents.

Held, that section 1862, did not empower the city to make any contract with the company fixing the rates of fare which could not be changed by the legislature, or by the agency of the railroad commission, and hence the ordinance of 1900 was not a contract protected from impairment by the State and Federal Constitutions.

(1914) *City of Benwood v. Public Service Commission* (W. Va.) 83 S. E. 295, L. R. A. (N. S.) 1915 C.

A water company made application to the Public Service Commission of West Virginia for a change in rates for water furnished to the public in the City of Benwood. The city resisted the application claiming that the commission was without power to change the rates, since at the time of the city's grant of the franchise under which the company operated, the rates for water were fixed and contracted for therein. The commission overruled this ground of objection and ordered a hearing upon the merits. Thereupon the city insisting upon this objection brought the present proceeding.

Held, that the Public Service Commission may change a public service rate which was fixed for a municipality by franchise ordinance prior to the enactment of the law creating the commission where authority to fix such rate was not expressly delegated to the municipal

corporation by the legislature, and that where, by franchise or ordinance public service rates within a municipality have been fixed and accepted as between a public service corporation and the public, without express delegation of power in such particular by the legislature to the municipality, a change of the rates by the Public Service Commission does not impair the obligation of a contract.

(1915) *Duluth Street Ry. Co. v. Railroad Commission of Wisconsin* (Sup. Ct. Wis.), 152 N. W. Rep. 887.

The franchise granted by a municipality to a street railway company to run for a term of thirty years provided that "the said company may regulate and establish from time to time such rates of fare for the transportation of passengers or freight over its lines of railway as it may deem proper; provided that the charge for carrying a person, including hand baggage, from one point to another, within the city limits, shall not exceed five (5) cents for a distance of two miles or less, nor five (5) cents over any continuous line operated as such.

It further provided that within 30 days after the publication of the ordinance the street railway company might file its acceptance thereof and the relinquishment of all rights and privileges acquired under a prior franchise, and that from and after the filing of such acceptance the ordinance should have the effect of and be a contract between the city and the street railway company which should be the measure of the rights and liabilities of said city as well as of said company.

Subsequently on complaint, after hearing, the railroad commission of Wisconsin ordered the

street railway company to sell through its conductors, six tickets for 25 cents, good on all lines at all hours, and subject to existing transfer privileges.

In this action to set aside this order, the order was sustained.

Held, that where a municipality under Stat. 1913, Sec. 1862, authorizing it to grant franchises to street railways upon such terms as it may deem proper, granted a street railway company a franchise providing that the rate of fare should not exceed five cents, the legislature did not lose its right to regulate street railroad rates.

BARNES, J.:

“Conceding that the ordinance and its acceptance constituted a contract empowering the appellant to exact a five-cent fare, and conceding that the act of the city in making such a contract was not *ultra vires* still the general provisions of section 1862, under which the city acted, did not abrogate the right of the legislature, acting directly or through the railroad commission, to exercise the function of regulating rates whenever it was deemed proper to assert it. The contract remained valid until the state saw fit to exercise its paramount authority to regulate such rates.”

V.

The jurisdiction of the Public Utility Commission is in no wise affected by the fact that the Borough of Bradley Beach, a party to the Ordinance-Contract, was the moving party before the Board.

It was suggested upon the oral argument that the fact that the Borough of Bradley Beach, a

party to the ordinance-contract, was the moving party before the Board was a factor which might influence the conclusion to be reached in this proceeding. It is respectfully submitted that this suggestion is without merit.

The public utility act confers upon the Board created thereby certain powers in the exercise of that jurisdiction. Such jurisdiction may be acquired and such powers may be put forth either by the Board of its own initiative or as the result of a complaint made to the Board. The jurisdiction and the power of the Board is in no wise affected by the fact that in one case it proceeds upon its own initiative and that in another case it proceeds upon complaint. Irrespective of the manner in which the matter is brought before the Board the jurisdiction and the power of the Board is the same.

Section 16 (c) of the public utility act provides that the Board shall have power, after hearing upon notice, by order in writing to fix just and reasonable rates which shall be imposed, observed and followed thereafter by any public utility as defined in the act, whenever the Board shall determine any existing rate "to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

Assuming that we have succeeded in establishing the jurisdiction and power of the Board to fix a rate other than the maximum rate prescribed by the ordinance-contract in question, and that such ordinance-contract does not in anywise obstruct the exercise of the jurisdiction and power of the Board, it would appear that the problem of the Board, irrespective of the manner in which that problem is brought before the Board is to determine:

(1) Whether the existing rate is or is not just and reasonable.

(2) If such existing rate is not just and reasonable, to fix and prescribe a just and reasonable rate thereafter to be imposed, prescribed and followed by the public utility.

It should be noticed that the section of the public utility act referred to clearly has in view the fact that an existing rate may be unjust and unreasonable on the one hand because it is excessive and affords more than a fair return upon the property reasonably devoted to the public use and on the other hand because it is insufficient and fails to yield a fair return upon the value of the property so reasonably devoted to the public use.

Assuming that the existing rate is a maximum rate prescribed by an ordinance provision and the claim is made that such rate is unjust and unreasonable because it is so low as to afford less than a fair return to the utility, and is therefore in the language of the statute insufficient, clearly no complaint would be made except by the public utility affected.

In such case the fact that the public utility was a party to the ordinance-contract which established the maximum rate should not operate to deprive it of the right to appeal to the Board of Public Utility Commissioners for relief through the establishment by such Board, in lieu of the existing rate, of an increased and sufficient rate to afford a fair return. If under such circumstances the fact that the utility had accepted the contract-ordinance should operate to preclude it from an application to the Board to fix a sufficient, and as sufficient a just and reasonable rate, the purpose of the statute would be defeated.

It is not likely that in such a situation the Board would act of its own initiative to bring about an increase in the existing rate, nor is it likely that the municipality, the other party to the ordinance-contract, would make an application to the Board to that end.

The right of a public utility under such circumstances to apply to the Board of Public Utility Commissioners under the section of the statute referred to for the fixing of a just and reasonable rate in lieu of a maximum rate prescribed by ordinance, which rate had in experience been proved to be insufficient, was recognized by this Board in the case of the *Borough of North Wildwood* against the *Board of Public Utility Commissioners*, Atlantic Reporter, page 749.

If the principle recognized in the case last referred to is sound, and if a public utility may invoke the jurisdiction of the Board to fix a just and reasonable rate, where an existing rate fixed by a contract-ordinance is proved to be insufficient, it must logically follow that the municipality may invoke the jurisdiction of the Board to fix a just and reasonable rate where it is proved that the existing rate fixed by an ordinance-contract is unjust and unreasonable in that it is excessive for the service rendered.

All that has been said with respect to the jurisdiction and power of the Board with respect to the prescribing of just and reasonable rates is equally applicable where question arises under Section 16 (c) of the public utility act, from which section the Board derives jurisdiction and power over the regulations and practices of the public utility which shall be determined to be unjust, unreasonable, unduly pref-

erential, arbitrarily and unjustly discriminatory.

The jurisdiction and power conferred by this section of the act is in no wise affected by the fact that in one case that Board could proceed upon its own initiative and in another case may be moved to act by the complaint of a party affected.

In the case in hand the action taken by the Board in the promulgation of the order now under review was based upon two grounds—the one that the existing rate was unjust and unreasonable, and the other that the existing practices and regulations with respect to carriage and transfer of passengers was unjust and unreasonable and arbitrarily unjust and discriminatory. The order under review does not operate to require the public utility to carry the passenger a prescribed distance free of charge. What it does is to find that the existing rates of transportation over the entire distance are unjust and unreasonable, and to prescribe in lieu thereof a single just and reasonable rate for transportation over the entire distance.

In addition to this the order finds that the failure to provide for the transportation of the passenger by the public utility over the entire distance for a single fare involves under the facts presented an unjust and unreasonable and arbitrary discrimination. These findings must be the same irrespective of whether the findings are based upon action initiated by the Board of its own volition or moved by complaint.

Conclusion.

The importance of the question in these abnormal times when utilities are seeking to be relieved of the burdens of improvident and inadequate franchise rates is at once apparent. Of course, relief may now be granted to them by the Board of Public Utility Commissioners by authority of the *Northampton, Easton and Washington Traction* case. Whether the reasoning of this case will apply in normal times to relief sought by municipalities or citizens thereof is to be determined in the present case.

To summarize, the appellant insists:

(1) The only rates beyond the jurisdiction of the State or a lawfully empowered tribunal for the State are those made directly by the State in granting a corporate charter or through a municipal corporation clearly and unmistakably authorized to bind the State in this respect.

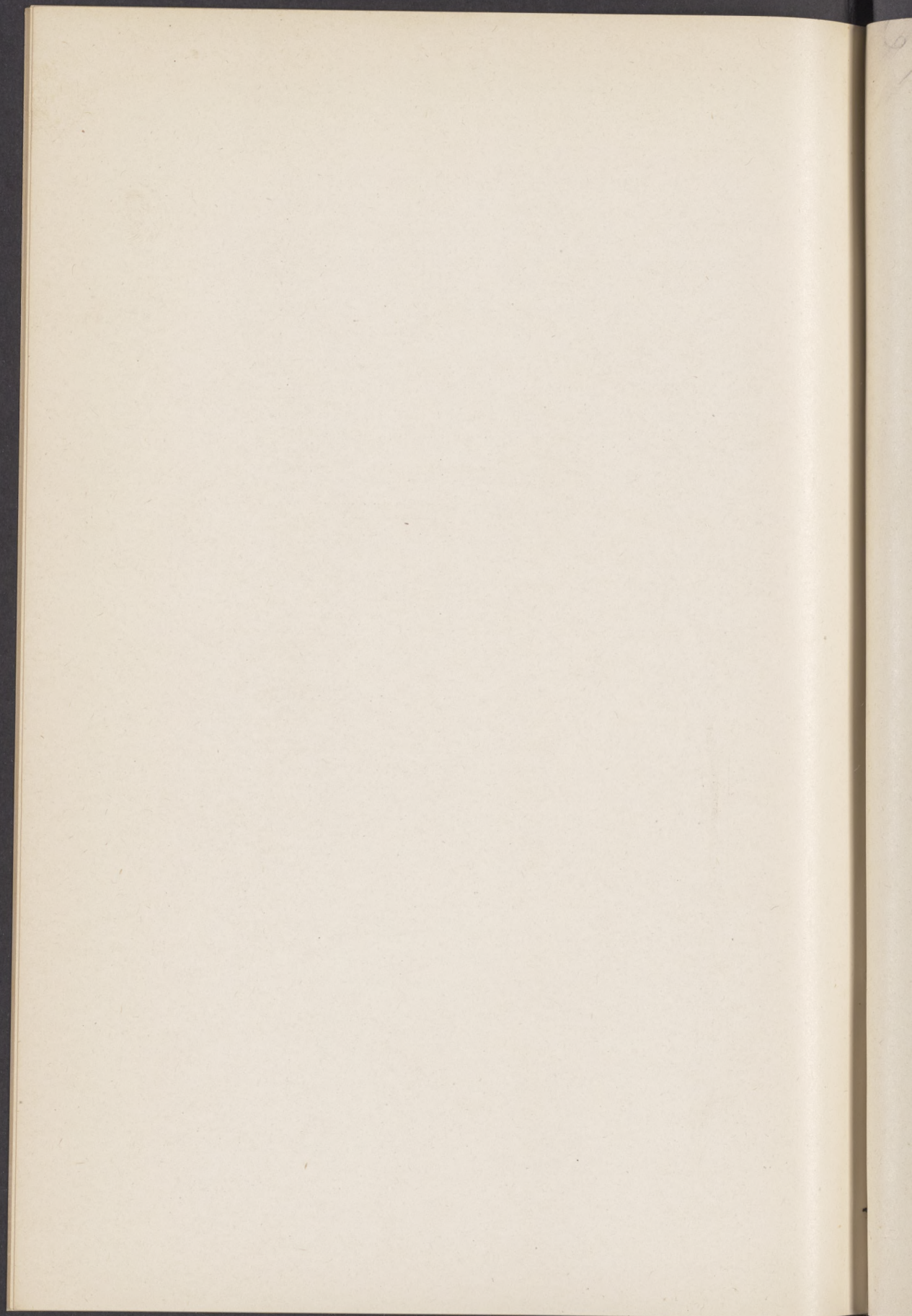
(2) The authority to the municipality may not empower it to bind the State's sovereign hand by such a contract, but merely to bind the hand of the municipality. Authority to the municipality will be construed in this limited manner rather than as authority to bind the State. Authority to make a contract binding the State and the instrument purporting to do so should be scrutinized with great caution and care.

(3) When only the limited authority exists, the State may, without unconstitutionally impairing the obligation of a contract, regulate the contractual rates directly or through a Public Utility Commission and against the protest of the company. The protest of the city is immaterial.

(4) The State having created the Board of Public Utility Commissioners and delegated to it the power to fix just and reasonable rates where the same are found to be unjust, unreasonable or insufficient, as the tribunal has power over rates despite the existence of the ordinance fixing maximum rates made by municipalities with utilities unless it clearly appears in the statute authorizing the making of such ordinance that the State intended to bar itself from exercising its future power over such rates.

Respectfully submitted,

L. EDWARD HERRMANN,
Of Counsel with Appellant.



68 MAR 1918/27/18

NEW JERSEY COURT OF ERRORS AND APPEALS

ATLANTIC COAST ELECTRIC RAIL- WAY COMPANY, Prosecutor-Appellee, vs. BOARD OF PUBLIC UTILITY COM- MISSIONERS AND BOROUGH OF BRADLEY BEACH, Defendants-Appellants.

Brief for
Borough of
Bradley Beach.

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Prefatory

This is an appeal from a decision of the Supreme Court setting aside an order of the Board of Public Utility Commissioners made on the petition of the Borough of Bradley Beach, the defendant-appellant in this case. The Borough of Bradley Beach is situated about a half mile south of Asbury Park on the Jersey coast. The Atlantic Coast Electric Railway operates an interurban trolley system, one branch of which leaves the corner of Cookman Avenue and Main Street in Asbury Park and proceeds southward through Bradley Beach to other summer resorts as far as Sea Girt. The southbound line runs parallel to the sea and about five-eighths of a mile from the shore. Another branch of the company's lines leaves the junction at Cookman Avenue and Main Street in Asbury Park and runs to within a block of the beach front in Asbury Park, then proceeding northward through Allenhurst, Deal and Elberon to Long Branch.

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The petitioner below alleged that the practice of the company in charging Bradley Beach patrons who boarded its northbound cars at points in Bradley Beach a five cent fare for the ride to Cookman Avenue in Asbury Park, a distance of a half mile, and another five cent fare for the second ride of a half mile to the beach front in Asbury Park, making a total ride of one mile for 10 cents, was

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*Filed after the Oral Argument
by leave of Court.*

unreasonable, unjust and discriminatory in view of the fact that at other points along the company's lines where similar conditions prevailed, so-called "lap-overs" were permitted and passengers were permitted to ride from one fare zone a short distance into another without the payment of an extra fare. The Board of Public Utility Commissioners, after hearing, determined that the practice of the company was unjust, unreasonable and unduly discriminatory and ordered the company to give Bradley Beach patrons on its north-

10 bound lines transfers good on the belt line in Asbury Park as far as the beach front; and it likewise ordered that the company give persons boarding its belt line cars in Asbury Park transfers good on the southbound cars as far as Bradley Beach.

From this order the company prosecuted a writ of certiorari, alleging that the order of the Board of Public Utility Commissioners impaired a contractual right vesting in the company, by virtue of a franchise or ordinance granted to it by the Borough of Bradley Beach, by the terms of which it

20 was provided that "no more than five cents shall be charged by the company for the transportation of any passenger for one continuous ride in either direction on the cars of the said company from Cookman Avenue in Asbury Park to any point in Belmar on the route of said railway, or to any other point on said route whenever said railway of said company shall be constructed and in operation over its said route between Asbury Park and the southern boundary line of the Borough of Belmar."

The Supreme Court, in an opinion by Mr. Justice Trenchard, decided that the provision that a fare of "no more than five cents shall be charged by the company" gives the company when accepted by it a contract right to charge a five cent rate, which cannot be reduced without the consent of the company; and it decided that the imposition on the company of an additional burden, namely the extra haul, was analogous to the reduction of the company's rates. It further held that the franchise constituted a contract between the company and the municipality which during the

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40 life of the franchise remains inviolable and that it is incom-

petent for the Board of Public Utility Commissioners to impose upon the company an additional burden in violation of such contract respecting fares. The Supreme Court accordingly set aside the order of the Public Utility Commissioners and from this decision the Borough of Bradley Beach appeals.

The Law

The power of the Board of Public Utility Commissioners to act in cases like the one at hand is derived from the act creating it (Pamphlet Laws 1911, pages 374, 477), which is as follows: 10

“After hearing, upon notice, (the Board shall have power) by order in writing to fix just and reasonable individual rates, joint rates, tolls, charges or schedules thereof as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility as herein defined, whenever the Board shall determine any existing individual rate, joint rate, toll charge or schedule thereof or commutation mileage or other special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential.” 20

That this jurisdiction may be exercised, despite the existence of a contract between the municipality and the company, is settled in favor of the jurisdiction of the Board by the following cases: Public Service Railway Co. v. Public Utility Board, 85 N. J. Law 123; North Wildwood v. Public Utility Commissioners, 88 N. J. Law 81. 30

The Wildwood case establishes the right of the Board to increase rates in the face of an ordinance between the company and the municipality, where the power to make the contract was not specifically conferred by the legislature upon the municipality. Parker, J., speaking for the court and holding that the Board acted within the jurisdiction conferred upon it, said: 40

“ While the municipality itself has not assented to a change in rate, the State, its creator and parent, has done so through a special constituted agency. If the water company were the complaining party, complaining that its contract rights were being impaired, a different question would be presented. but the contract right of one of the State’s creatures may be waived by the creator.”

10 In the case of Atlantic Coast E. R. Co. v. Bradley Beach supra, which it was claimed by the company could not be impaired by any regulation of the Board of Public Utility Commissioners the franchise was granted by the municipality under a specially conferred power, namely the act for the formation of companies for the construction of street railways. In this case Mr. Justice Trenchard, speaking for the court, said :

20 “ Such a contract neither party can violate without the consent of the other. Should the company apply to the Utility Board to have the rate of fare increased it would undoubtedly be met with its contract.”

30 More recent cases, however, and cases upon which the appellant chiefly relies in prosecuting this appeal, vest the Utility Board with power to make rate adjustments upwards, even in the face of a contract granted by a municipality under an expressly conferred power and where the consent to the change is not given by both contracting parties. In Northampton, Easton and Washington Traction Co. v. Board of Public Utility Commissioners, the Supreme Court of this State spoke as follows :

40 “ The prosecutor asked the consent of the Public Utility Commissioners to increase the fares in each zone from five to six cents. It was shown to the satisfaction of the Commission that the street railway was being run at a loss each year without

even making the necessary allowance for depreciation. Obviously in such a situation the prosecutor could not perform its public duty to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so, P. L. 1911, sec. 17b. The Commission thought that this duty was of inferior obligation to what it conceived was an irrepealable contract in favor of the inferior branches of the State government, — the municipalities through which the railroad runs. We are unable to take that view.”

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The power of the Board to fix just and reasonable rates, despite the existence of a contract between the company and the municipality, or an ordinance granted by such municipality under an authority expressly conferred by the Legislature and despite the absence of the mutual consent of the contracting parties is thus firmly established. This power to fix just and reasonable rates, it is submitted, must of necessity include the right to regulate downward as well as upward. Any other conclusion leads unfailingly to the proposition that the utility may, upon necessity, be relieved from the burdensome terms of a contract, but not the municipality. Certainly such was not the legislative intent.

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WARD KREMER,

Attorney for Defendant Borough of Bradley Beach.

L. EDWARD HERRMANN,

Of Counsel.

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New Jersey Court of Errors and Appeals.

ATLANTIC COAST ELECTRIC
RAILWAY COMPANY,
Prosecutor-Appellee,

VS.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND BOROUGH OF
BRADLEY BEACH,
Defendants-Appellants.

On Appeal from
Supreme Court.

On Certiorari.

BRIEF FOR APPELLEE.

This is an appeal prosecuted by the Borough of Bradley Beach from a judgment of the Supreme Court setting aside an order of the Board of Public Utility Commissioners, requiring the Atlantic Coast Electric Railway Company:

“To give to all persons boarding its west-bound cars on Cookman Avenue, who on payment of fare of five cents on such cars request transfers to its cars operating southerly on its Belmar Line, said transfers, the same to be accepted by the company for a ride on its Belmar Line to the southerly boundary of Bradley Beach.”

The proceedings were originally instituted before the Board of Public Utility Commissioners on the petition of the Borough of Bradley Beach (p. 3). This petition was answered by the Trolley Company

(p. 5) to which a reply was interposed by the municipality. The opinion of the Utility Board (p. 12), and the order (p. 17) indicate truthfully that the proceedings were wholly based upon the complaint of Bradley Beach, and, as before stated, that Borough has alone appealed to this Court from the order of the Supreme Court setting aside the order of the Board of Public Utility Commissioners; the Commissioners, although a party to the proceedings, having failed to appeal from the determination of the Supreme Court.

The northerly terminus of Bradley Beach is about a half mile south of the southerly terminus of Asbury Park. Issue was joined by the prosecutor before the Commission, and testimony taken, which was sent up with the return. In order that the Court may intelligently understand the situation it is necessary to review the history of the street railway company.

The line operated by the prosecutor extends from North Long Branch and Pleasure Bay southwardly through Long Branch, Elberon, Deal, Allenhurst, Loch Arbour, Asbury Park, Ocean Grove, Neptune Township, Bradley Beach, Neptune City, Avon, Belmar, Wall Township, Spring Lake, Sea Girt, and through the State Camp to Manasquan. The entire system represents an interesting development, of which the following is a short history.

The first line was the so-called Belt Line, built in Asbury Park by the Seashore Electric Railway Company, organized in 1887 under the Street Railway Act of 1886. It was granted a franchise by the then Borough of Asbury Park on the sixth of June, 1887 (Case, p. 147), to operate a belt line in Asbury Park. The ninth section of this ordinance authorized the company to charge a five cent fare for the carrying of passengers on that belt line.

In 1893 a single track horse car line (entirely independent of the belt line in Asbury Park) was

built by the Asbury Park and Belmar Street Railway Company, extending from Wesley Lake Bridge in the southerly boundary of Asbury Park to Shark River. This was done under an ordinance from the Township of Neptune (Case, p. 101), dated February 11, 1893. Section 10 of this ordinance authorizes the company to charge a five cent fare over its line. There was a gap of about six hundred feet between the northerly terminus of this line and Cookman Avenue, the southernmost point of the belt line. Bradley Beach was a part of Neptune Township at the time of the last ordinance above referred to.

In 1895 the Atlantic Coast Electric Railway Company built the line from the north end of Asbury Park to Pleasure Bay, absorbing the West End Railroad, which had previously been built northerly to West End.

In 1897 it was determined to convert the horse railroad running from Asbury Park to Belmar into a trolley line, and, Bradley Beach in the meantime having been organized as a Borough, on September 8th, 1897, passed an ordinance (Case, p. 126) granting permission to the Atlantic Coast Electric Railway Company to build a trolley line through that borough. Section 12 (p. 133) of this ordinance provides:

"That the rate of fare shall be five cents for the transportation of any passenger for one continuous ride in any direction within the corporate limits of the borough, and no more than five cents shall be charged for the transportation of any passenger for one continuous ride in either direction on the cars of the company from Cookman Avenue in Asbury Park to any point in Belmar on the route of the railway."

In 1901 the Atlantic Coast Electric Railway Company, which at that time owned and operated

under a lease the belt line in Asbury Park, and the Asbury Park and Belmar Line, became insolvent and a receiver was appointed, who subsequently sold out to the present Atlantic Coast Electric Railway Company.

In 1904, the Seacoast Traction Company was organized to extend the line from Belmar to Sea Girt, and ordinances were procured from both Wall Township (Case, p. 110) and Spring Lake (Case, p. 113), giving the desired permission. The Wall Township ordinance (p. 113, line 31) provides:

“The rate of fare shall not exceed five cents for the transportation of any single passenger for one continuous ride between Belmar and Sea Girt Camp.”

The Spring Lake ordinance (p. 119, line 1) provides:

“The rate of fare shall not exceed five cents for the transportation of any single passenger for one continuous ride between Belmar and the Borough of Manasquan.”

Meantime, the Boroughs of Neptune City and Avon-by-the-Sea had been created, and the company desiring to double track its line through these boroughs, in 1906 secured permission so to do by ordinance from Neptune City (Case, p. 121) and Avon-by-the-Sea (Case, p. 136). The Neptune City ordinance (p. 124, line 5) provides:

“The rate of fare shall not exceed five cents for the transportation of any single passenger for one continuous ride between Asbury Park and Belmar, and between Belmar and Sea Girt Camp.”

The ordinance of Avon-by-the-Sea provided (p. 139, line 28):

“The rate of fare shall not exceed five cents for the transportation of any single passenger

for one continuous ride between Asbury Park and Belmar, and between Belmar and Sea Girt Camp.”

Later that portion of Neptune City through which the tracks extended was annexed to Bradley Beach. Session Laws 1908, page 192.

In 1912 an amendment (p. 165) was made to the ordinance of Bradley Beach, above referred to, providing for the double tracking of its road, and requiring the company to maintain a portion of the highway therein referred to, and to stop its cars at La Reine Avenue. The provision for fares contained in Section 12 of the original ordinance (p. 133) was in no way modified. A comparison of these several ordinances, including that of Bradley Beach, will show that they uniformly fix two fare zones, or divisions, for the payment of fares over the line; one extending from Cookman Avenue in Asbury Park south to and including Belmar, and the other from Belmar to Manasquan. These provisions for fare zones have been studiously followed by the company in practice. The length of the lower zone from Manasquan to Belmar is 3.95 miles; and of the upper zone from Sixteenth Avenue, Belmar, to Cookman Avenue, Asbury Park, is 3.20 miles (p. 26). The Cookman Avenue terminus is at the threshold of the business and amusement centers of Asbury Park. All of the banks, the principal stores and most of the places of amusement are within two or three blocks of it, except the beach-front, whose principal attractions are the boardwalk, and in summer, bathing.

The case shows that the prosecutor is in the peculiar condition of receiving 45.62% of its gross receipts in the three summer months. The present income from the Belmar Division (running from Cookman Avenue south to Sixteenth Avenue, Belmar) nets the company 4.25% upon its actual

cash cost. The record further shows that as between the years 1913 and 1914, the company in its Long Branch Division suffered a loss of 7.5%; in its Asbury Park Division a loss of 3.1%, and in its Belmar Division a gain of 1.7%. Owing to the increased popularity of the automobile, and to the introduction of the jitney, which operate between Asbury Park and Belmar, the figures for 1914, compared with those available for 1915, show that the Long Branch Division in the latter year lost 7.3% of revenue; the Asbury Park Division 8.5% and the Belmar Division 16.2%. See the evidence of Mr. Asay (p. 48, *et seq.*, and the tables, Exhibits R-1 to 7 inclusive, pages 76 to 90).

During the year 1915 the company paid to the different municipalities through which the Belmar Division runs, in franchise taxes as well as in license obligations, the following amounts:

Neptune Township	\$1,528.86
Bradley Beach	1,000.00
Avon	350.00
Belmar	400.00
Spring Lake	839.59
Wall Township	895.56
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	\$5,014.01

Mr. Asay further shows that the company's entire revenue amounts to 3.36% upon its capital of \$1,000,000. Of this revenue, however, \$102,800 is derived from the sale of power, so that the receipts from the company's legitimate business are about one-third less than the amount above given. Under these circumstances is there any possible propriety in the claim that a system of transfers should now be inaugurated at Cookman Avenue as directed? The undisputed figures indicate that the company cannot afford to comply with the order, and that its exaction would be most unfair, nor

indeed has the petitioner shown any real necessity for it. It is, of course, inevitable that inequalities should obtain in a route where fare zones are maintained. Surely it is no hardship to expect those who come to Asbury Park from points in the first fare zone extending to Belmar, and including Bradley Beach, for the purpose of shopping, or to be amused, to walk two blocks. On the other hand, to impose upon this company, whose revenues are so meager and dangerously decreasing, the burden of ticketing and transferring, and carrying free, any such one, as directed by this order, is unfair and unjust. It is insisted, however, that the system of lap-overs in vogue on the line north of Asbury Park shows the fairness of this contention. These lap-overs, however, are not transfers, but have grown up out of conditions existing near the division line, and are all on the through cars operating between Asbury Park and Pleasure Bay, and permit passengers in the Asbury Park zone to ride as far north as Roseld Avenue, Deal, and in the Elberon zone to ride as far north as Park Avenue, Long Branch, and in going south, as far as Pearl Street, Elberon, and then into Asbury Park, and were adopted when the travel was very light in these lap-overs.

The conditions existing here are entirely different from the conditions existing between Asbury Park and Bradley Beach, and entirely different from the conditions that would be created if passengers getting on at Bradley Beach were permitted to transfer to the Belt Line in Asbury Park. On the Long Branch line a passenger getting on a Long Branch car in Asbury Park for any point south of Roseld Avenue, Deal, rides continuously and gets off at his destination, without any change of cars, or transfer, and going further north rides from the Elberon district into the Long Branch district, passing Lincoln Avenue, getting off this side

of Park Avenue, for the same fare, and in riding south passes Lincoln Avenue and gets off at some point north of Pearl Street, and riding further south is permitted to continue into Asbury Park, and there alight, but there is no change of cars and the service is easily managed, because the passengers riding beyond these points into the next fare zone are few in number, while the passengers coming north to Cookman Avenue, on the Belmar line, make the heaviest volume of travel on the entire system, and alight at Cookman Avenue, as that is the terminus of the Belmar line, and has been made the terminus because it is the center of business and population in Asbury Park. And the only transfer of passengers in Asbury Park is where a passenger desiring to belt Asbury Park gets on a Long Branch car and is transferred to another Long Branch car, making the Asbury Park belt.

There is no lap-over on the Belmar division. The ordinances provide for carrying passengers from Cookman Avenue to Belmar, and from Belmar to Manasquan, so that passengers getting on anywhere along the line are permitted to ride into Belmar, but not beyond the southerly boundary of Belmar, but getting on south of Belmar are permitted to ride into Belmar, as provided by the ordinances.

The Long Branch cars go no further south than Cookman Avenue, and in order to return make the loop in Asbury Park, and passengers getting on a Long Branch car south of Roseld Avenue in Deal are permitted to ride into Asbury Park without paying an additional fare. And passengers getting on these Long Branch cars in Asbury Park are permitted to ride as far as Roseld Avenue, Deal, for one fare, but they are not permitted to step from one car to another, that is, to transfer. In other words, a passenger getting on a belt line car is not permitted to step therefrom to a Long Branch car. We, therefore, insist and claim that no valid or suf-

ficient reason exists, regardless of the question hereinafter discussed, for the making of this order by the Utility Commission, and that it is a burdensome and unjust hardship, for which no justification, either in law or fact, exists.

We contend, however, most strenuously, that the order is plainly illegal, in that it violates the contract right which the company acquired with the Borough of Bradley Beach in its ordinance above referred to. As already shown, this ordinance (Case, p. 126) was approved September 8th, 1897. It recites the application of the company, for permission to construct, operate and maintain a new line of street railway through certain streets in accordance with a designated route, and (p. 128, line 21) grants such permission "to construct, operate and maintain a new line of street railway, in, through and upon the public street or highway in said Borough of Bradley Beach, commonly known as the main public road leading from Asbury Park through the Borough of Bradley Beach to Belmar, called Main Street, and extending therein from the extreme northern boundary line of said Borough of Bradley Beach southwardly to the extreme southern boundary line of said Borough, conformitively to the route designated," etc. This is the line in question. Sections 2, 3, 4, 5, 6, and 7, provide for the number of tracks, the location of the poles, that electricity shall be the motive power, the character of overhead wiring, etc. The 11th section fixes the schedule for the operation of the cars. The 12th section, as we have already seen, provides:

"That the rate of fare shall be five cents for the transportation of any passenger for one continuous ride on the cars of said company in any direction within the corporate limits of said borough, and no more than five cents shall be charged by said company for the transportation of any passenger for one continuous

ride in either direction on the cars of said company from Cookman Avenue in Asbury Park to any point in Belmar on the route on said railway, or to any other point on said route whenever said railway of said company shall be constructed and in operation over its said route between Asbury Park and the southern boundary line of the Borough of Belmar."

The 13th to the 18th sections cover details as to the operation of the cars. The 19th section provides that the permission, rights and privilege thereby granted to the company shall continue for a period of fifty years. The 20th section provides as follows:

"That as compensation for the rights and privileges hereby granted the said railroad company shall, at its own cost and expense, in a good and workmanlike manner, to the satisfaction and under the direction of the said council of the Borough of Bradley Beach, grade and gravel with good quality of gravel, so much of said Main Street in said Borough as lies between the east rail of the said tracks of said railroad company in said Main Street and the curb line of the west side of said street the entire length of said Main Street in said borough. The said gravel to be six inches in depth when rolled to grade, and said grading and graveling to be done while the work of laying the tracks is being done; all of said work of grading and graveling to be done under the supervision of the council of said borough of Bradley Beach or some person who shall by resolution of said council be appointed and authorized to supervise the same; the wages of such person to be paid by the said company and shall not exceed three dollars per day for each day's service while actually employed in the supervision of said work. And the said railroad company shall as further and additional compensation for the said rights and privileges hereby granted, pay to the borough of Bradley Beach for the use

of said borough, the sum of two hundred and fifty dollars annually, on the first day of September in each and every year after January first, eighteen hundred and ninety-eight, during said period of fifty years for which the franchise is granted."

This ordinance was in all respects accepted by the company, and, as already shown, the company beside paying in the year 1915 the sum of One thousand dollars, pursuant to the provisions of the ordinance, to the Borough of Bradley Beach, has not only complied with the provisions of section 20 as to graveling the highway, but (p. 59) has, pursuant to the provisions of the amendment of the ordinance (pp. 165-167), paid between twenty-two thousand and twenty-five thousand dollars in the last three or four years for paving within the limits of Bradley Beach.

It is our contention that this ordinance, accepted as it was, and complied with in all respects by the company, constitutes a contract between the Borough and it, under which the company is authorized to charge a fare of five cents for the transportation in either direction of a passenger for one continuous ride from Cookman Avenue in Asbury Park to any point in Belmar; and that the action of the Borough of Bradley Beach in applying for this order, and the action of the Utility Board in making the order, are illegal, and constitute violations of this contract.

It was, of course, under the law, necessary for the street railway company to secure the permission accorded in the ordinance before it could build its trolley line through Main Street in Bradley Beach. The Legislature, 4 C. S. 5035, in section 128, provides:

"That any consent required by this act to be given by any public body may be given by the resolution or ordinance of such body,

which consent when accepted by any corporation created under this act * * * shall have the force and effect of a contract."

In *Long Branch Commission v. Tintern Manor Water Co.*, 70 N. J. Eq. 71, affirmed 71 *Id.* 790, it was held that where a water company was organized to supply certain municipalities under the Act of 1876, requiring the consent in writing of the corporate authorities proposed to be supplied, a municipality had power to impose terms as to the rates to be charged for both public and private consumption. And this court has many times held that the effect of ordinances to traction companies was to constitute a contract between the company and the municipality. *Rutherford v. Hudson River Traction Co.*, 44 Vr. 227, 236, and cases cited. *Jersey City v. North Jersey Street Railway Co.*, 43 *Id.* 384. *Jersey City v. Jersey City & Bergen Street Ry. Co.*, 42 *Id.* 367.

The effect then of this ordinance, with its acceptance and action thereunder by the trolley company, being to constitute a contract between the company and the municipality, it is incompetent for the Utility Commission, just as it is incompetent for the municipality itself, to violate that contract by imposing upon the company an additional burden, the effect of which is to require it to carry passengers for the same fare, not to, but beyond Cookman Avenue.

In *Cleveland v. Cleveland City Railway Co.*, 194 U. S. 517, the street railway company had similar rights under ordinances, one of which provided in section 7 (p. 524) that the company should not charge more than five cents fare each way for one passenger over the whole or any part of its line. The City of Cleveland undertook to reduce the fare to three and four cents. The Supreme Court, after showing that the legislature of Ohio lodged in the municipal council of Cleveland comprehen-

sive power to contract with street railway companies with respect to the terms and conditions upon which such roads might be constructed, operated, extended and consolidated, held that such ordinances when accepted and operated under became contracts between the company and the municipality, which the municipality or its legislature was powerless to abrogate under the constitution, and that the new ordinance seeking to reduce the fares impaired the contract. That Court had already held in *Detroit v. Detroit Citizens' Street Ry. Co.*, 184 U. S. 368, that the language of an ordinance which provides that the rate of fare for one passenger shall not be more than five cents does not reserve or give to the City any right to reduce such fare below the rate of five cents established by the company. To the same effect is *Cleveland v. Cleveland Electric Ry. Co.*, 201 U. S. 529.

In *Home Telephone Co. v. Los Angeles*, 211 U. S. 265, 273, Mr. Justice Moody, delivering the unanimous opinion of the Supreme Court of the United States, says:

"It has been settled by this court that the state may authorize one of its municipal corporations to establish by an inviolable contract the rates to be charged by a public service corporation, or natural person, for a definite term not grossly unreasonable in point of time, and that the effect of such a contract is to suspend during the life of the contract the governmental power fixing and regulating the rates. *Detroit v. Detroit Street Ry. Co.*, 184 U. S. 368, 382; *Vicksburg v. Vicksburg Water Works Co.*, 206 U. S. 496, 508."

In *Detroit v. Detroit Citizens' Street Ry. Co.*, 184 U. S. 382, the Court said:

"It may be conceded that clear authority from the Legislature is needed to enable the city to make a contract or agreement like the ordinances in question, including rates of fare.

But there can be no question in this court as to the competency of a state legislature, unless prohibited by constitutional provisions, to authorize a municipal corporation to contract with a street railway company as to the rates of fare, and so to bind during the specified period any future common council from altering or in any way interfering with such contract. *New Orleans Gas Company v. Louisiana Light Company*, 115 U. S. 650; *New Orleans Waterworks Co. v. Rivers*, 115 U. S. 674; *St. Tammany Waterworks v. New Orleans Waterworks*, 120 U. S. 64; *Walla Walla City v. Walla Walla Water Company*, 172 U. S. 1, 9; *Los Angeles v. Los Angeles City Water Company*, 177 U. S. 558, 570; *Freeport Water Co. v. Freeport City*, 180 U. S. 593. The contract once having been made, the power of the city over the subject, so far as altering the rates of fare or other matters properly involved in and being a part of the contract, is suspended for the period of the running of the contract. * * *

The opinion points out that the ordinances under consideration, passed pursuant to legislative authority, make out plain agreements entered into between the parties in relation to the rates of fare to be charged, and in the ordinance, and in the other ordinances under consideration there were provisions for the special taxation of the company. The opinion quotes from *City Railway Company v. Citizens' Street Railroad Company*, 166 U. S. 557, where the legislative body of Indianapolis had adopted an ordinance which said:

“Consent, permission and authority are hereby given, granted to and duly vested in the company organized with R. B. Catherwood as president, a body politic and corporate by the name of the Citizens' Street Railway of Indianapolis, and their successors, to lay a single or double track for passenger railway line', etc., under which ordinance the railway was built. This court said (p. 567) 'The

original ordinance of January 18, 1864, was plainly a proposition on the part of the city to grant to the company the use of its streets for thirty years, in consideration that the company lay its tracks and operate a railway thereon upon certain conditions prescribed by the ordinance. This proposition when accepted by the company and the road built and operated as specified became a contract which the State was not at liberty to impair during its continuance; but, if, at the expiration of the thirty years, the road had been sold to another company, and that company had applied for and obtained from the common council a franchise to occupy its streets for another period, it seems to be clear that such a contract would need no other consideration to support it than the continued operation of the road under such conditions as the city chose to impose.’”

The opinion, on page 389, further says:

“Nor does the language of the ordinance, which provides that the rate of fare for one passenger shall not be more than five cents, give any right to the city to reduce it below the rate of five cents established by the company. It is a contract which gives the company the right to charge a fare up to the sum of five cents for a single passenger, and leaves no power with the city to reduce it without the consent of the company.”

See also *Minneapolis v. Minneapolis Street Ry. Co.*, 215 U. S. 417, 436. *Dillon on Municipal Corporations*, 5 E., Sec. 1326, and cases cited in notes thereunder.

We, therefore, respectfully contend, that under these decisions of the highest tribunal it was and is incompetent for the Utility Commission—particularly on the application of one of the parties to the contract—to abrogate or violate the important term of the contract with reference to the fare

to be charged, and that insofar as the order here under review undertakes to require the company to carry passengers in either direction further than from or to Cookman Avenue, by the granting of a transfer, it violates the contract and is void. It was never intended by the Utilities Act to abrogate contracts, and the legislature under our State and Federal constitutions is powerless so to do, even if such intention did exist.

If we correctly understand the argument of the appellant, it admits, as indeed it had to admit, the power of the legislature to authorize inviolable contracts between municipalities and trolley companies as to rates that they shall charge, but it denies that in this state there is any legislation that has authorized the making of such contracts, and further denies that the ordinance in question, in fact, creates such a contract. The prosecutor was organized under the act of 1893, found in 4 Comp. Stat., page 5021. Its charter gives it power to construct and maintain a street railway from or near Asbury Park to and in Belmar, and, of course, in constructing its route it was bound to pass through the Borough of Bradley Beach lying intermediate the two termini of the road. The Traction Act leaves the amount of compensation to be charged by such a company entirely open. See Section 1 of the Act. There seems to be no other provision as to fares in the Act. The other provisions of the Act, however, require that the company before it shall construct its line through any given municipality within its termini shall present to such municipality a petition and plan of construction, and the municipality, after consideration, shall

“either pass a resolution refusing such location, or pass a resolution or ordinance, as may be necessary or proper, granting such

location, or a part thereof, *under such lawful restrictions as they deem the interests of the public may require.*"

Broader or more comprehensive language could not be used, and the only limit upon the character of the lawful restrictions that they are authorized to impose is that they shall be such as they deem the interests of the public may require.

In *Rutherford v. Hudson River Traction Co.*, 44 Vr. 227, Mr. Justice Pitney for the Supreme Court, speaking of this very legislative provision, says:

"The 'lawful restrictions' that are to be made in the interest of the public indicate, likewise, a legislative act. In short, the statute, as we take it, plainly imports that the common council or other governing body of the municipality is to perform a legislative function in granting a special user of the public highway to a traction company, and in setting bounds and limits to its user and imposing conditions thereon; while, on the other hand, the traction company likewise is dealt with as a public agency, and not a mere private entity; in its application to the council it not only seeks an opportunity for private profit, but it tenders itself a volunteer to the public service, offering to embark the capital of its stockholders in a public improvement and to assume correlative duties. The proceeding has for its purpose the completion of the general 'charter' of the company, by the acquisition of a local 'franchise'. It results that when the franchise is granted, subject to conditions and restrictions, and when the traction company proceeds to lay its tracks in the street and run its cars thereon, that property and these franchises become impressed with a public use that imposes the duty upon every successive holder to serve the public in accordance with the terms of the original grant."

In view of the further provisions of the Act that the consent required by the Act to be given by the

municipality, when accepted by the company "shall have the force and effect of a contract", it has, of course, been frequently held that the restrictions thus imposed, if lawful and reasonable, constitute a contract between the company and the municipality which thereafter remains inviolable.

Jersey City v. Jersey City & Bergen Ry.,
41 Vr. 360;

Jersey City v. North Jersey Street Ry. Co., 43 *Id.* 384;

Newark v. North Jersey Street Ry. Co.,
44 *Id.* 265.

The law was thus recently stated by Mr Justice Voorhees writing for the Court of Errors and Appeals, in *Reed v. Inhabitants of Trenton*, 80 N. J. Eq. 503-506:

"That a municipality, as a condition precedent to granting permission to a traction company to construct and operate a street railway within its corporate limits has power to impose lawful restrictions, in the interest of the public, that regulations of rates of fare are properly classed among such restrictions and come within the terms of the statute, and that the acceptance of such an ordinance by the company constitutes a contract, are too well settled to require discussion. The contract thus entered into is evidenced by the terms of the ordinance and is to be construed by the ordinary rules of law applicable to that subject."

Now, as stated by the Supreme Court of the United States in the *Detroit* case, 184 U. S. 382,

"The rate of fare is among the most material and important of the terms and conditions which might be imposed by the City in exchange for its consent to the laying of railroad tracks, and the running of cars thereon through its streets. It would be a subject for gravest consideration and conference between the parties, and when determined by mutual agree-

ment the rate would naturally be regarded as fixed until another rate was adopted by a like agreement. Can it be possible that under this language permitting consent upon such terms and conditions as the city might from time to time prescribe, the power was reserved to make a rate of fare which might ruin the whole enterprise? That a rate once deliberately and mutually agreed upon might be thereafter and from time to time altered at the pleasure of the city alone? Will it be believed that the parties thus understood the meaning of that provision?"

It will be observed that the Supreme Court of the United States in that case expressly held that where the ordinance provides that the rate of fare for one passenger *shall not be more than five cents*, a contract is thereby established, and there is no reserved right to reduce such fare below the excess named.

We think, therefore, that as the public are greatly interested in the amount of fare that shall be charged by a trolley company, one of the "restrictions" which the municipality under the legislative authority may impose, as a condition of its consent to the location of its tracks within its boundaries, is the rate of fare that shall be charged. Any other interpretation of these words is impossible, particularly in view of the further provisions to the effect that the ordinance when accepted with the restrictions shall constitute a contract. To argue, as does the appellant, that the language of the Act is not broad enough to prevent the State from thereafter minimizing the rate of fare, that the only person that is restricted is the company and not the state, and that the scope of the restrictions is

"with respect to the subject of the grant of consent, viz., the location of the tracks. This would include methods of construction, maintenance of way, and methods of operation."

is directly in the face of the authorities above quoted, and the language of the act. Indeed, Justice Voorhees, in the case of *Reed v. Trenton*, *supra*, was speaking of a restriction as to fare when he used the language above quoted.

This being the effect of the ordinance and its acceptance, neither the state, the municipality, nor the city, can do anything to violate the contract, and should the Company thereafter seek to apply to the Utility Board to have the rate of fare lessened it would undoubtedly be met with its contract. The case of *Borough of Wildwood v. Public Utility Commissioners*, 95 Atl. Rep. 749, in no way supports the contrary contention. There the commission had authorized a higher rate than had been previously prescribed, and the only question was as to the power so to do. The opinion says:

“While the municipality itself has not assented to a change in rate, the State, its creator and parent, has done so through a specially constituted agency. *If the water company were here complaining that its contract rights were being impaired, a different question would be presented, but the contract right of one of the state's creatures may be waived by the creator.*”

There the municipality was objecting to the increased rate authorized by the Utility Board, and the Court decided that as the municipality was the mere wing of the State, the latter, through the Board, could modify the municipality's contract for it, and if the company did not object, which it might, then no fundamental principle was violated.

We think it, therefore, may be safely assumed that the legislative act empowered the Borough of Bradley Beach, as a term or condition of its franchise to impose a lawful restriction upon the rate of fare to be thereafter charged by the company; that in this case such a restriction was imposed by

the language used and that the action of the Utility Board in requiring the company to issue transfers, and thereby carry passengers further than the ordinance prescribes, violates the restriction.

It remains, then, to consider whether or not the restriction is a lawful one, and it has been suggested that inasmuch as it undertakes to apply to passage beyond the corporate limits of the Borough, it is *ultra vires* the municipality. We believe, however, there is no foundation for this contention.

Here is a trolley company, chartered, and proposing, to run a line from Asbury Park to Belmar. It applies to Bradley Beach, an intermediate municipality, for permission to locate its tracks. That municipality is authorized to impose lawful restrictions in the interest of the public. Can it not reasonably be said, in the Public interest, that before permission will be accorded to the company to construct and operate its line through the municipality, a distinct arrangement will be made by which persons shall be enabled to ride to places beyond the mere corporate limits of the municipality for a given fare? As shown in our previous brief, an examination of the ordinances that were passed by the neighboring municipalities, will make manifest the fact that the sister municipalities almost invariably imposed similar restrictions, so that the distance between Belmar and Asbury Park constituted one fare zone. The ordinance from the Township of Neptune (pp. 101-104) exacted that the company should pay to that municipality 5% "of the gross receipts from all the business of the company for the year preceding each day of payment". While it is ordinarily true that a municipality will be presumed to be confined to its own limits, as a theatre for its operations and legislation, yet whenever it is necessary, in order to make effective its power to create and maintain sewers, drains, and even preserve public health, it

will be presumed to have been given authority to legislate *extra* its boundaries. *Dillon on Municipal Corporations*, sections 662 and 776. We see no reason why a municipality may not legitimately conclude that the "public interests" justify it in exacting as a condition of a privilege to a trolley company to operate within its boundaries, that a given sum of money shall be paid, without regard to whether that sum bears any proportionate relation to the receipts within its boundaries, or that a stated fare shall be exacted over a given territory, notwithstanding the fact that it may extend outside the corporate limits. It is unnecessary for the city in upholding its exactions to operate beyond its boundaries. It simply requires the trolley company, as a condition of its contract, to make a certain agreement with reference to its fare. Suppose the Singer Sewing Machine works were located in a different municipality from Elizabeth, and that a vast number of employes resided in Elizabeth, who daily would ride to and from the works, could not the City of Elizabeth exact, as a condition of a trolley company proposing to run its line through Elizabeth to the works, that not more than a five cent fare should be charged to the works, although they were located beyond its boundary? If not, why not? In *Reed v. Inhabitants of Trenton*, 80 N. J. Eq. 503, *supra*, the ordinance under review expressly provided that

"The rate of fare within the present limits of the City of Trenton for each passenger shall be three cents, and outside of the City limits, within a radius of five miles, five cents * * *"

It was not intimated, either by the Chancellor or by the Court of Errors, that the five cent provision applying outside of the city limits was for that reason illegal. All that the Court did decide was that the company in procuring the franchise from

the City of Trenton with that provision did not and could not bind other companies. It was not intimated or suggested that if the applicant itself extended beyond the city limits it would not have been bound by the rate.

In *Rice vs. Detroit Ry.*, 81 Northwestern, 927 (Mich. 1900), among other things, the franchise created by the township of Dearborn was under consideration. The franchise provided for the sale of trip tickets on cars of the company at a reduced rate between a village in the township and a city without the township. Montgomery, *C. J.*, said at page 928:

“We have, then, a case in which defendant is operating under a franchise imposing a duty to sell five tickets for 50 cents, good between the city hall, Detroit, and any point in the village of Dearborn. The franchise further provided ‘All such tickets shall be kept for sale upon each and every car operated by it’. It is contended that the franchise is in force only within the territorial limits of the township and does not cover territory in other townships. We do not think this contention can be sustained. The franchise is in the nature of a contract, and imposes obligations upon the company which those having occasion to ride from Dearborn to Detroit have a right to enforce. It is urged that the case of *Kissane* against the same defendant (Mich.) 79 N. W. 1104, is authority for defendant’s contention. No such doctrine is announced in that case. It was held, it is true, that the plaintiff was not compelled to rely on the restrictions contained in the franchise granted by the municipality in which he boarded the car, but that he might, under such franchise, pay his fare to a point in another municipality and there avail himself of the terms of a franchise granted by the latter. The plaintiff’s right under this franchise is not different than it would have been had the franchise in *Springwells* been silent on the subject of fares.

The defendant saw fit to contract with the village of Dearborn for a rate outside the limits of the village, and to agree that tickets should be sold on its cars. This contract it cannot repudiate."

State v. Nelson, 68 N. W. 1066 (Minn. 1896). This was an objection to a town ordinance regarding inspection of milk. Mitchell, *J.*, at pages 1067-1068 said:

"The objection is that the provisions of the ordinance are not within the limits prescribed for it by the statute, for the reason that it is attempted to make its operation extra-territorial, in that it provides for the inspection of dairies and dairy herds outside the city limits. There is no merit in this point. The manifest purpose of the statute under which this ordinance was passed was to enable the city council to adopt such reasonable police regulations as would prevent the sale of unwholesome milk within the city, and not merely to prevent the keeping of unhealthy dairy herds within the city limits. * * * The inspection of dairies or dairy herds outside the city limits provided for by this ordinance applies only to those whose milk product it is proposed to sell in the city. The provisions of the ordinance in that regard go only so far as it is reasonably necessary to prevent the milk of diseased cows being sold within the city. This inspection is wholly voluntary on part of the owner of the dairy or dairy herd. If he does not choose to submit to such inspection, the result merely is that he or the one to whom he furnishes milk cannot obtain a license to sell milk within the city. The ordinance has no extra-territorial operation, and there has been no attempt to give it any such effect. The only subject upon which it operates is the sale of milk within the city."

An analogous situation is shown in *Camden & Amboy Railroad Co. vs. Briggs*, 2 Zab. 623, where

a charter of a railroad company restricting rates to be charged by a railroad company beyond the limits of the State was sustained. The reasoning of this case, as well as of *Raritan & Delaware Bay R. R. Co. vs. The Delaware and Raritan Canal Co.*, 3 C. E. Gr. 546, is applicable. We know that it is quite customary for municipalities to make exactions of this character, and they are not lightly to be vitiated, for the suggested reason. A notorious one is the ordinance to the North Jersey Street Railway Company by the Town of Montclair, by which permission to construct and maintain its trolley road in the municipality was granted upon the express restriction that not more than six cents should be charged from Market Street Station in Newark to the corporate limits of Montclair.

But even if the restriction in question was illegal, because *ultra vires*, we contend that the Borough of Bradley Beach is estopped to make the contention. Under other terms of the ordinance the company has paid, and will be required to pay annually, a license fee to the municipality, and it has paid for, and will hereafter be expected to pay for the cost of paving the highway between and alongside of its rails. The ordinance must stand or fall as a whole. It cannot be good in part and bad in part.

In *Rutherford v. Hudson River Traction Co.*, 44 Vr. 227, this exact point was made, and Mr. Justice Pitney said, at page 231:

“Section 7 of the Traction act of 1893 (Gen. Stat., p. 3237) provides that upon application being made to the common council for a location of street railway tracks, the council, after advertisement and hearing, ‘shall either pass a resolution or ordinance as may be necessary or proper granting the said location, or any part thereof, under such lawful restrictions as

they deem the interests of the public may require'. Section 32 of the same act declares in effect that the consent of the council, whether given by resolution or ordinance, when accepted by any corporation created under the act, in a writing under its corporate seal, filed with the clerk of the public body, shall have the force and effect of a contract.

"It is insisted, however, by the respondent, that the power conferred by the legislature upon the common council is limited to either denying the application for a local franchise or granting it subject to reasonable restrictions; and it is insisted that the imposition upon the company of the duty to pave with six-inch macadam the whole width of the street is not a reasonable restriction, but an attempted exercise of the power of taxation. Hence it is said that this requirement was *ultra vires* the municipal corporation. * * *"

and at page 234:

"Were we to hold the requirement for paving Park avenue to be an unreasonable restriction, and therefore unjustified by section 7 of the Traction act, with the result of declaring section 9 of the ordinance *ultra vires* the municipality, then the whole of the ordinance, including its grant of privileges and franchises, must fall at the same time. For, undoubtedly, the provision for macadamizing is an essential part of the ordinance, without which it presumably would never have been adopted. The same reasoning applies here that is applicable to an act passed by the general legislature containing some unconstitutional feature. As was said by the Court of Errors and Appeals, in *Riccio v. Hoboken*, 40 Vroom. 662, 'In the absence of any express declaration to the contrary contained in the act itself, the presumption is that the legislature intended any given enactment to be effective in its entirety. *Iowa Life Insurance Co. v. Eastern Mutual Life Insurance Co.*, 35 Vroom, 340, 346. In seeking the legislative

intent, the presumption is against any mutilation of a statute, and the courts will resort to elimination only where an unconstitutional provision is interjected into a statute otherwise valid, and is so independent and separable that its removal will leave the constitutional features and purposes of the act substantially unaffected by the process.' * * *

"But in our view it is not open to the traction company to raise the question that the grant of its local privileges and franchises was *ultra vires* the municipal corporation, while at the same time the company retains and uses and enjoys those privileges and franchises. The plea of *ultra vires* is not admitted in such circumstances except where it is practicable to restore the status *quo ante*, and we therefore think the present respondent is estopped from setting up that plea. *Camden and Atlantic Railroad Co. v. Mays Landing Railroad Co.*, 19 Vroom. 530, 562; *Jersey City v. North Jersey Street Railroad Co.*, 43 *Id.* 383."

See also:

Pleasantville v. Atlantic City Traction Co.,
46 Vr. 279 (Supreme Court, 1907).

As already shown, this whole proceeding is a contest between the Borough of Bradley Beach and the Company. Indeed, the Borough is the only appellant to appear, and its counsel has conducted the proceedings, and here argues the case. Can it be tolerated that this Borough, which has enjoyed the annual payments of money which the same ordinance that contains the contract in question requires the company to pay annually into its treasury, and proposes in the future to require and enjoy the same, can repudiate the part of the ordinance which constitutes the contract as *ultra vires*, and cling to the other part which enriches its coffers? Surely the municipality, having had the benefit of the ordinance, and being in no position

to undo that benefit, is now estopped to repudiate the contract which is an essential and component part of it.

It signifies nothing that the Utility Commission has certain powers to act on its own initiation. Suffice it to say that this is not one of the cases where it has so acted.

Under all the circumstances, therefore, we contend that the order of the Utility Commission brought to this Court by the writ, should be vacated and set aside.

Respectfully submitted,

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