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In Chancery of New Jersey

Debitus

The defendant...

Whitney...

...



**PETITION OF APPEAL.**

[Filed Oct. 9, 1925.]

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

10

<p>FORT LEE TRANSPORTATION COMPANY, a corporation,</p>	<p><b>On Appeal from the Court of Chancery.</b></p>
<p><b>Complainant-Appellee,</b></p>	
<p><b>vs</b></p>	

<p>BOROUGH OF EDGEWATER, <b>Defendant-Appellant.</b></p>
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**To—The Honorable Court of Errors and Appeals  
in the Last Resort in all Causes:**

The petition of the Borough of Edgewater, the Appellant in the above entitled cause respectfully shows that:

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1: Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 1st, 1925, in a certain cause in said Court of Chancery wherein the said Fort Lee Transportation Company was complainant and the said Borough of Edgewater was defendant in this respect, to wit: that the said decree adjudges that the said defendant, the Borough of Edgewater and its officers, agents and servants and each and every one of them be enjoined and commanded henceforth and forever to desist and refrain from interfer-

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### Petition of Appeal.

ing with the Complainant-Appellee in its operation of its auto buses over the streets of the Borough of Edgewater in the manner set forth in said decree.

And your petitioner appeals from the decree of the Chancellor upon the ground that the same is erroneous in that the complainant was not entitled to the relief granted by said decree, but on the contrary complainant's bill of complaint should have been dismissed.

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Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this Court shall seem proper.

WENDELL J. WRIGHT,  
Solicitor for and Of Counsel with Appellant.

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Due service acknowledged.

GEORGE L. RECORD,  
Solicitor for Complainant.

### ANSWER TO PETITION OF APPEAL.

Filed October 9th, 1925.

The answer of the Fort Lee Transportation Company, the above named Appellee, to the petition of appeal of the Borough of Edgewater, the above named Appellant.

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This Appellee not admitting the truth of all or any of the matters in the said petition of appeal contained for answer thereto nevertheless admits, that a decree was on October 1st, 1925, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes of said petition mentioned and as therein set forth; but as to the substance and form of

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**Answer to Petition of Appeal.**

said decree this Appellee begs leave to refer thereto when the same shall be produced.

This Appellee is advised and believes that the said decree is agreeable to Equity; and it prays that the same may be affirmed with costs to be taxed in favor of this Appellee.

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GEORGE L. RECORD,

Solicitor for and Of Counsel with Appellee.

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**BILL OF COMPLAINT.**

Filed June 29, 1925.

IN CHANCERY OF NEW JERSEY.

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**To The Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.**

The complainant, the Fort Lee Transportation Company, a corporation of the State of New Jersey, respectfully shows that:

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1. Complainant is the owner of two buses of the value of thirteen thousand dollars, and has chartered the said buses to a club known as the West Fort Lee Workers' Club, composed of persons who reside or do business in the Township of Fort Lee, and as the agent of said Club carries the members of said Club from places in Fort Lee to the company's private terminal in Edgewater, and from said terminal to various places in said Township. That the route followed by the buses in carrying said passengers is as follows, viz: starting at Jones Road and Main Street in Fort Lee; east on Main Street to Anderson Avenue; south on Anderson Avenue to the State Highway known as Route No. 10; east on said State High-

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### Bill of Complaint.

way to the company's private terminal in Edgewater; returning west on said State Highway Route No. 10 to Palisade Avenue; north on Palisade Avenue to Main Street, and west on Main Street to Jones Road.

2. The business of carrying said passengers is conducted in the following manner: no passengers whatever are taken into the buses of complainant or discharged from said buses upon any street, highway or public place in the Borough of Edgewater, but complainant maintains a private terminal station near the ferry in said borough, and all passengers from said buses are discharged upon said private terminal, and all passengers taken into the buses within the limits of Edgewater are taken into the buses at said terminal; that no passengers anywhere outside the limits of the said Borough of Edgewater are taken into the buses or carried by the buses, except those passengers who have become members of the said Workers' Club. That any person residing or doing business in Bergen County is eligible to join said Club upon paying dues of ten cents a month as a membership fee, which entitles him to a membership certificate or identification card, and said member upon payment of ninety cents per week will be entitled to receive twelve tickets which entitle him to twelve rides upon the buses chartered by the Club. That no passengers other than members of the said Club holding said membership certificates are taken into the said buses in either the said borough or township, and no casual passenger upon the route in said borough or township is allowed to get upon the said buses and have transportation thereon upon the payment of a transportation charge for a single ride. That the drivers of the buses do not receive any

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**Bill of Complaint.**

money whatever from any passenger, either in the shape of a fare or as a gratuity or otherwise.

10 Complainant is advised and believes that the business thus carried on by it is not a jitney or bus business as defined in the ordinance in force in the Borough of Edgewater regulating jitney transportation hereinafter referred to in paragraph 4.

20 3. That the road traveled by the said buses within the limits of Edgewater Borough is a state road known as State Road No. 10, which road was constructed entirely by and at the expense of the State of New Jersey, and that the Borough of Edgewater contributed nothing to the cost thereof, and contributes nothing to the maintenance thereof, and complainant is advised and believes that said Borough has no right to control traffic thereon except that it has police jurisdiction to maintain order on the said road within the limits of the said Borough.

30 4. That on the 18th day of June, 1925, the Borough officials of the Borough of Edgewater caused the arrest of Joseph Testa and Philip Troversa, two of the drivers employed by the complainant in carrying on the business above described, alleging violation of Section 15 of the ordinance hereinafter described, and said drivers were convicted of said violation subsequently before the Recorder's Court in the said borough. That section 15 of said ordinance provides a penalty for the violation of section 2 of said ordinance, and said section 2 reads as follows:

40 "No auto bus or buses commonly called jitneys shall be operated in any of the public streets or places of the Borough of Edgewater

### Bill of Complaint.

unless the owner of it, his or its lessees, shall for the purpose of operating such auto bus or buses, have procured a license in the manner herein provided and shall have paid the fee therefor."

That the Chief of Police of said Borough informed complainant that it would not be allowed to bring any passengers into the Borough of Edgewater in buses, or to take any passengers out of the Borough of Edgewater, and that if said complainant made any further attempt to operate the said buses, the drivers thereof would be arrested and prosecuted. 10

5. Complainant Company is advised and believes that the Borough authorities of the Borough of Edgewater have no right to interfere with, obstruct or prevent the carrying on of complainant's business as described in this bill of complaint, and that the action of the said officials in preventing the operation of the said buses is entailing great and irreparable loss upon complainant. 20

Complainant is without adequate remedy at law, and therefore prays:

1. That the Borough of Edgewater, a municipal corporation, which is the defendant in this suit, may answer this bill of complaint and each statement therein. 30

2. That the said defendant Borough, and the officials of said Borough, or its agents, may be enjoined from interfering with the business of complainant in carrying out its said contract with the West Fort Lee Workers' Club.

GEORGE L. RECORD, 40  
Solicitor for and Of Counsel with Complainant.

**Bill of Complaint.**

**Affidavit of Sherman W. Reynolds.**

STATE OF NEW JERSEY }  
 COUNTY OF HUDSON } ss.

10        SHERMAN W. REYNOLDS, being duly sworn  
 on his oath says, that he is the Manager of the  
 Fort Lee Transportation Company, a corporation  
 of the State of New Jersey; that he has read the  
 foregoing bill of complaint in which the said com-  
 pany is complainant, and knows the contents  
 thereof, and that the same is true to the best of  
 his knowledge and belief.

20        Deponent further says that the said complain-  
 ant is the owner of two buses of the value of thir-  
 teen thousand dollars, and has chartered the said  
 buses to a club known as the Workers' Club, com-  
 posed of persons who reside or do business in the  
 Township of Fort Lee, and as the agent of said  
 Club carries the members of said Club from places  
 in Fort Lee to the company's private terminal in  
 Edgewater, and from said terminal to various  
 places in said Township. That the route followed  
 by the buses in carrying said passengers is the  
 route described in the bill of complaint, viz: start-  
 30        ing at Jones Road and Main Street in Fort Lee;  
 east on Main Street to Anderson Avenue; south on  
 Anderson Avenue to the State Highway known  
 as Route No. 10; east on said State Highway to  
 the company's private terminal in Edgewater;  
 returning west on said State Highway Route No.  
 10 to Palisade Avenue; north on Palisade Avenue  
 to Main Street, and west on Main Street to Jones  
 Road.

40        Deponent further says that the business of car-  
 rying said passengers is conducted in the follow-  
 ing manner: no passengers whatever are taken  
 on to the buses of complainant or discharged  
 from said buses upon any street, highway or

### Bill of Complaint.

#### Affidavit of Sherman W. Reynolds.

public place in the Borough of Edgewater, but complainant maintains a private terminal station near the ferry in said borough, and all passengers from said buses are discharged upon said private terminal, and all passengers taken into the buses within the limits of Edgewater are taken into the buses at said terminal; that no passengers anywhere outside the limits of the said Borough of Edgewater are taken into the buses or carried by the buses, except those passengers who have become members of the said Workers' Club. That any person residing or doing business in Bergen County is eligible to join said Club upon paying dues of ten cents a month as a membership fee, which entitled him to a membership certificate or identification card, and said member upon payment of ninety cents per week will be entitled to receive twelve tickets which entitle him to twelve rides upon the buses chartered by the Club. That no passengers other than members of the said Club holding said membership certificates are taken into the said buses in either the said borough or township, and no casual passenger upon the route in said borough or township is allowed to get upon the said buses and have transportation thereon upon the payment of a transportation charge for a single ride. That the drivers of the buses do not receive any money whatever from any passenger, either in the shape of a fare or as a gratuity or otherwise.

Deponent is advised and believes that the business thus carried on is not a jitney bus business as defined in the ordinance in force in the Borough of Edgewater regulating jitney transportation which is referred to in the bill of complaint.

Deponent further says that the road traveled by the said buses within the limits of Edgewater

**Bill of Complaint.****Affidavit of Sherman W. Reynolds.**

10 Borough is a state road known as State Road No. 10, which road was constructed entirely by and at the expense of the State of New Jersey, and that the Borough of Edgewater contributed nothing to the cost thereof, and contributes nothing to the maintenance thereof, and deponent is advised and believes that said Borough has no right to control traffic thereon except that it has police jurisdiction to maintain order on the said road within the limits of the said Borough.

20 Deponent further says that on the 18th day of June, 1925, the Borough officials of the Borough of Edgewater caused the arrest of Joseph Testa and Philip Troversa, two of the drivers employed by the complainant in carrying on the business above described, alleging violation of Section 15 of the ordinance described in the bill of complaint, and said drivers were convicted of said violation subsequently before the Recorder's Court in the said borough. That section 15 of said ordinance provides a penalty for the violation of section 2 of said ordinance, and said section 2 reads as follows:

30 "No auto bus or buses commonly called jitneys shall be operated in any of the public streets or places of the Borough of Edgewater unless the owner of, his or its lessees, shall for the purposes of operating such auto bus or buses, have procured a license in the manner herein provided and shall have paid the fee therefor."

40 That the Chief of Police of said Borough informed deponent that the said complainant would not be allowed to bring any passengers into the Borough of Edgewater in buses, or to take any passengers out of the Borough of Edgewater, and that if said complainant company made any

**Bill of Complaint.****Affidavit of Sherman W. Reynolds.**

further attempt to operate the said buses, the drivers thereof would be arrested and prosecuted.

Deponent further says that he is advised and believes that the Borough authorities of the Borough of Edgewater have no right to interfere with, obstruct or prevent the carrying on of complainant's business as described in the bill of complaint, and that the action of the said officials in preventing the operation of the said buses is entailing great and irreparable loss upon the complainant, for which complainant has no adequate remedy at law.

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SHERMAN W. REYNOLDS.

Sworn to and subscribed before me  
this 26th day of June, 1925.

FREDERICK A. TEESE,  
Attorney at Law of New Jersey.

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**ORDER TO SHOW CAUSE.**

Filed June 29, 1925.

Upon reading and filing the bill of complaint in the above entitled cause and the affidavit of Sherman W. Reynolds thereto annexed:

It is on this 29th day of June, 1925, on motion of George L. Record, solicitor of the complainant, ORDERED that the defendant, the Borough of Edgewater, show cause before this court, at the Chancery Chambers in Jersey City, on Monday, the 6th day of July, 1925, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue against the defendant, its officers and agents restraining the said defendant, from interfering with the business of complainant as prayed for in the bill of complaint.

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**Order to Show Cause.**

10      And it is further ordered that in the meantime and until the further order of this court, the defendant and its officers and agents be enjoined from interfering with the business of the complainant in carrying out its contract with the West Fort Lee Workers' Club to carry members of said Club along the State Highway No. 10 in the limits of said Borough of Edgewater to and from the private terminal of the said company in said borough.

And it is further ordered that a copy of this order and bill of complaint, which may be certified by complainant's solicitor, be served upon the defendant within three days from this date.

E. R. WALKER,  
C.

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Respectfully advised:  
JOHN BENTLEY,  
V. C.

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**ANSWER.**

Filed July 10, 1925.

30      The defendant, the Borough of Edgewater, a municipal corporation of the County of Bergen, State of New Jersey, answering the complaint herein, says:

40      1: It has no knowledge or information sufficient to form a belief as to the truth of the allegations of the first paragraph of the complaint, excepting that it admits that the buses owned by the complainant, on June 17th, 18th and 19th were operated over State Highway Route No. 10 from a point at the corner of Hudson Avenue and River Road in the Borough of Edgewater West-erly and Northerly through the Borough of Fort Lee.

**Answer.**

2: The defendant has no knowledge or information sufficient to form a belief as to the allegation in paragraph 2 of the complaint, except as follows; to wit: the complainant was in possession of a plot of land in the Borough of Edgewater on to which it, on July 17th, 18th and 19th when it was operating its buses, ran its buses and used as a terminal. That all passengers were taken on the buses and discharged from the buses on this piece of property. That no passengers were taken on or discharged elsewhere in the Borough of Edgewater. It denies specifically that no passengers other than members of the said Club holding said membership certificates are taken into the said buses. 10

3: It admits that the road traveled by the said buses within the limits of Edgewater is the State Route known as State Route No. 10 and that the said route was constructed by the State without cost to the Borough of Edgewater and that the said Borough contributes nothing to the maintenance thereof excepting as to the lighting of said road or street. It is advised and believes that it has the right to control traffic and particularly the operation of motor buses commonly called "jitneys" on, through or over said Street within the Borough limits. 20 30

4: It admits that on June 18th, 1925, the Chief of Police or other members of the Police Department of the Borough of Edgewater caused the arrest of two of the drivers employed by the complainant and who were operating buses of the complainant over the said street in the Borough of Edgewater upon the ground that such action was in violation of Section 15 of the Ordinance of the Borough entitled, "An Ordinance to 40

**Answer.**

license and regulate auto buses commonly called 'jitneys' and owners and drivers of such vehicles", and that said drivers were convicted of such violation in the Recorder's Court of said Borough. That it admits that Section 2 of the said ordinance reads as follows:

10 "No auto bus or buses, commonly called 'jitneys' shall be operated in any of the public streets or places in the Borough of Edgewater, unless the owner of his or its lessee (who shall for the purpose of this ordinance be considered 'the owner') operating such auto bus or buses shall have procured a license in the manner herein provided, and shall have paid the fee therefor". It alleges that Section 15 of said ordinance in part provides as follows:

20 "Any person, firm or corporation operating a motor bus in the Borough without a license granted in accordance with the provisions of this ordinance \* \* \* shall pay a fine not exceeding Two hundred (\$200.00) Dollars, or in the case of an individual be imprisoned in the County Jail for not more than sixty days". It admits that the Chief of Police of said Borough of Edgewater informed the complainant that the complainant would not be allowed to operate motor buses bringing passengers into the Borough or taking passengers out of the Borough in violation of the said ordinance.

30 5: That the complainant has no license granted by the Borough Council of the Borough of Edgewater, pursuant to the aforesaid ordinance of the Borough of Edgewater, permitting it to operate an auto bus or buses in any of the public streets or places in the Borough of Edgewater. That the said complainant made an informal application to  
40 the Borough Council of the Borough of Edgewa-

**Answer.**

ter for such a license, but that before the same was formally acted upon by the said Borough of Edgewater, it proceeded in violation of the said ordinance to operate the said buses, claiming that it was not obliged by law to comply with said ordinance. The defendant avers and charges that the complainant has no right to operate the said buses in or over the public streets or places or the route set forth in the bill of complaint within the Borough of Edgewater unless and until it shall have complied with the provisions of the aforesaid ordinance of the Borough of Edgewater, and obtain a license thereunder. 10

6: The defendant denies that the action of the said Borough and its officials in preventing the operation of said buses is entailing great and irreparable loss upon the complainant. 20

And it prays that it may be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

WENDELL J. WRIGHT,

Solicitor for and of Counsel with Defendant.

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**DEFENDANT'S AFFIDAVITS. 30**

Filed July 10, 1925.

STATE OF NEW JERSEY, {  
COUNTY OF BERGEN,    } ss:

FRANCIS B. FOX, of full age, being duly sworn upon his oath according to law, deposes and says:

1: On June 17th, 1925, at about 5.30 P. M., I was at the so-called terminal of the Fort Lee 40

## Answer.

10 Transportation Company on the West side of River Road, Edgewater, N. J. That at that time there was a bus of that Company at the terminal which bore the number 1. There were a number of people boarding the bus and every one was handing a ticket to the operator as they got on. I stepped into the bus and the operator asked me for a ticket. When I told him that I had none he informed me that I would have to have tickets in order to ride. I inquired where I could obtain some and he directed me to get them up on Main Street, Fort Lee. Subsequently on the same day I went to Fort Lee at the corner of Main and John Streets in that Borough and I inquired from a man standing in front of a grocery store at that corner, where I could get some bus tickets. He directed me to a bakery store three doors up the street. I went in and inquired of a man in the store regarding the tickets. He told me that he would not have time then to fix the tickets up, but gave me two tickets which he secured from the operator of a bus which he hailed and told me to use the two tickets and stop in in the morning for the regular tickets. The next morning June 20 18th, I again went to this same store in Fort Lee and saw the same man above referred to. He asked my name and I handed him a one dollar bill and in return he gave me ten tickets, taking out two to replace the ones which he had given me the previous evening. I asked him regarding the Club Plan of operation which he told me about and he told me that it was only a temporary plan until the Company was able to get its franchise. Shortly thereafter, I boarded one of the buses of the Fort Lee Transportation Company, marked No. 2; getting on the bus I was asked for a ticket which I gave to the operator. I rode down 30 40

**Answer.**

to Edgewater at the so-called terminal on the West side of River Road on this bus. I was accompanied on both June 17th and June 18th by one, Carl Ehmer.

FRANCIS B. FOX.

Subscribed and Sworn to before me  
this 2nd day of July, 1925. 10

JOSEPHINE S. BARNEY,  
Notary Public of New Jersey.

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**DEFENDANT'S AFFIDAVITS.**

STATE OF NEW JERSEY, }  
COUNTY OF BERGEN, } ss. 20

CARL EHMER, of full age, being duly sworn upon his oath according to law, deposes and says:

1: On June 17th, 1925, at about 5.30 P. M., I was at the so-called terminal of the Fort Lee Transportation Company on the West side of River Road, Edgewater, N. J. That at that time there was a bus of that Company at the terminal which bore the number 1. There were a number of people boarding the bus and every one was handing a ticket to the operator as they got on. I stepped into the bus and the operator asked me for a ticket. When I told him that I had none he informed me that I would have to have tickets in order to ride. I inquired where I could obtain some and he directed me to get them up on Main Street, Fort Lee. Subsequently, on the same day I went to Fort Lee at the corner of Main and John Streets in that Borough and I inquired from a 30 40

**Defendant's Affidavits.**

man standing in front of a grocery store at that corner, where I could get some bus tickets. He directed me to a bakery store three doors up the street. I went in and inquired of a man in the store regarding the tickets. He told me that he  
10 would not have time then to fix the tickets up, but gave me two tickets which he secured from the operator of a bus which he hailed and told me to use the two tickets and stop in in the morning for the regular tickets. The next morning June 18th, I again went to this same store in Fort Lee and saw the same man above referred to. He asked my name and I handed him a one dollar bill and in return he gave me ten tickets, taking  
20 out two to replace the ones which he had given me the previous evening. I asked him regarding the Club Plan of operation which he told me about and he told me that it was only a temporary plan until the Company was able to get its franchise. Shortly thereafter, I boarded one of the buses of the Fort Lee Transportation Company, marked No. 2. Getting on the bus, I was asked for a ticket which I gave to the operator. I rode down to Edgewater at the so-called terminal on the West side of River Road on this bus. I was accompanied on both June 17th and June 18th by  
30 one, Francis B. Fox.

CARL EHMER.

Subscribed and Sworn to before me  
this 2nd day of July, 1925.

JOSEPHINE S. BARNEY,  
Notary Public for New Jersey.

## Defendant's Affidavits.

STATE OF NEW JERSEY, }  
 COUNTY OF BERGEN, } ss:

FLORIE O'TOOLE, of full age, being duly sworn upon his oath according to law, deposes and says:

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1: On June 17th, 1925, in company with Cornelius Redyke, I boarded bus No. 2 of the Fort Lee Transportation Company at Anderson Avenue and Whitman Street, Fort Lee. On getting on we offered to pay our fares, but the driver informed us that we must have tickets as the bus was operated on a Club Plan. We told him that we would buy them. He referred us to a Mr. Reynolds who was riding as a passenger in the bus, and who, we were informed was the Manager of the Bus Company. Mr. Reynolds explained the Club Plan and stated that this was the only way of the Bus Company overcoming the existing injunction secured by the Public Service Company. I paid Mr. Reynolds One Dollar (\$1.00) while the bus was running on Anderson Avenue and received twelve tickets and a membership card. Mr. Reynolds said that it would not be necessary for Mr. Redyke to buy tickets as he could ride on the tickets which had been sold to me.

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2: At 5.45 P. M. on the same day I boarded Bus No. 1 of the Fort Lee Transportation Company at the so-called Edgewater Terminal on the West side of River Road. There were sixteen other people who boarded the bus at this place. Mr. Reynolds was at the terminal. I rode on the bus as far as Fletcher Street, Fort Lee, and on leaving the bus gave a ticket to the operator as did several others leaving at this same point.

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**Defendant's Affidavits.**

3: On June 18th, 1925, at about 8.05 A. M. I boarded bus marked No. 1 of the Fort Lee Transportation Company, at the so-called Edgewater Terminal. There were no other passengers on the bus. The operator asked for a ticket which was given to him. He did not ask to see the identification or membership card which I secured from Mr. Reynolds on the previous day. I rode on the bus from the terminal up through the Borough of Edgewater and the Borough of Fort Lee, to the corner of Main Street, Fort Lee.

FLORIE O'TOOLE.

Subscribed and Sworn to before me  
this 2nd day of July, 1925.

20                   JOSEPHINE S. BARNEY,  
                          Notary Public of New Jersey.

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STATE OF NEW JERSEY, }  
COUNTY OF BERGEN,    }ss:

30                   CORNELIUS REDYKE, of full age, being  
                          duly sworn upon his oath according to law, de-  
                          poses and says:

1: On June 17th, 1925, in company with Florie O'Toole, I boarded bus No. 2 of the Fort Lee Transportation Company at Anderson Avenue and Whitman Street, Fort Lee. On boarding the bus we offered to pay our fares, but the driver informed us that we must have tickets as the bus was operated on a Club Plan. We told him we would buy them and he referred us to a Mr. Reynolds who, I was informed was the Manager of the Bus Company, and who was riding as a pas-

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**Defendant's Affidavits.**

senger in the bus. Mr. Reynolds explained the Club Plan and stated that this was the only way the Bus Company had of overcoming the existing injunction secured by the Public Service Company. Mr. O'Toole paid Mr. Reynolds One (\$1.00) Dollar and received twelve tickets and a pink membership card. Mr. Reynolds stated that it was not necessary for me to buy tickets as I could ride on the tickets sold to Mr. O'Toole. We rode to Edgewater Terminal on this bus. 10

2: At about 6:00 P. M. on the same day, I boarded bus marked No. 1 of the Fort Lee Transportation Company at the Edgewater Terminal of the Bus Company and was asked by the operator if I had a ticket and when I said that I did not, Mr. Reynolds, who I am informed is the Manager of the Bus Company said he would take care of me and asked me for my name and address. He then wrote my name on a membership card and I gave him One (\$1.00) Dollar and he handed me a membership card and twelve tickets. I rode on the bus to John Street, Fort Lee and on leaving, handed the operator a ticket. There were five or six other passengers on the bus when I left Edgewater. 20

3: On June 18th, 1925, in company with Florie O'Toole, I boarded bus No. 1 of the Fort Lee Transportation Company at the Edgewater Terminal of the Bus Company. The operator asked for tickets which we gave to him. We rode up to Main Street, Fort Lee, where we left the bus. 30

CORNELIUS REDYKE.

Subscribed and Sworn to before me  
this 2nd day of July, 1925.

JOSEPHINE S. BARNEY,  
Notary Public of New Jersey. 40

## Defendant's Affidavits.

STATE OF NEW JERSEY, }  
 COUNTY OF BERGEN, } ss:

ROBERT W. YOUNG, of full age, being duly sworn upon his oath according to law, deposes and says:

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1: On June 17th, 1925, in company with one, Frank Marsch I boarded a bus of the Fort Lee Transportation Company marked No. 1 at Main and John Streets, Fort Lee. This bus was leaving East on Main Street directly in front of a car of the Public Service Railway which operates on the same street through Fort Lee. When we boarded the bus the operator asked us for our tickets. We informed him that we had none, but wanted to buy some. The man who left the bus at the point where we boarded it, stepped over to the bus again before it started and asked us if we were members. We told him we were not but were willing to join. He told us he could not fix us up then as he had no tickets, but that we could ride free today and if we stopped in his store tomorrow he would give us membership tickets. He pointed out his store which was a bakery store located on Main Street three doors West of John Street. He then told the operator of the bus to allow us to ride free to Edgewater which we did.

2: About 7.00 A. M., on June 18th, 1925, Frank Marsch and I went to the bakery store on Main street pointed out the previous evening as above set forth. The man whom we had seen and who had directed us there was in the store and recognized us and we asked him to fix us up with tickets for the bus. He asked us if we were together and we told him that we were. He said there was no need of each party having a membership

### Defendant's Affidavits.

card as one would be enough and we could there-  
 by save ten cents. He then asked Frank Marsch  
 for his name and address. He then wrote the  
 name on a pink membership card which he hand-  
 ed to Mr. Marsch and also wrote the name and  
 address on a piece of paper which was lying on  
 the counter. Mr. Marsch then handed the man  
 One (\$1.00) Dollar and received twelve tickets to  
 be used on the bus. He told be that it was not  
 necessary for me to buy tickets as I could ride  
 on the tickets he sold to Mr. Marsch. While we  
 were there a lady came into the store and pur-  
 chased some tickets, giving the man One (\$1.00)  
 Dollar for them. We walked to Jones Road in  
 Fort Lee, the starting point of the bus line and  
 there boarded bus No. 2 of the Fort Lee Trans-  
 portation Company at about 8.05 A. M. Several  
 people were in the bus when we boarded it and  
 while we were waiting to start, we saw Mr. Rey-  
 nolds, Manager of the Bus Line sell membership  
 cards and tickets to several people who wanted  
 to board the bus. Three or four persons who  
 wanted to board the bus and not having tickets  
 were referred by the operator to the Manager,  
 Mr. Reynolds. We each handed the operator of  
 the bus a ticket as we boarded, and rode down to  
 Edgewater. The bus carried on this trip about  
 twenty passengers.

ROBERT W. YOUNG.

Subscribed and Sworn to before me  
 this 2nd day of July, 1925.

JOSEPHINE S. BARNEY,  
 Notary Public of New Jersey.

## Defendant's Affidavits.

STATE OF NEW JERSEY, }  
 COUNTY OF BERGEN, } ss:

10 FRANK MARSCH, of full age being duly  
 sworn upon his oath according to law, deposes  
 and says:

20 1: On June 17th, 1925, in company with one,  
 Robert W. Young, I boarded a bus of the Fort Lee  
 Transportation Company marked No. 1 at Main  
 and John Streets, Fort Lee. When we boarded  
 the bus the operator asked us for our tickets. We  
 informed him that we had none but wanted to  
 buy some. A man who left the bus, at this point  
 stepped over to the bus again and asked us if we  
 were members. We told him we were not but  
 were willing to join. He told us he could not fix  
 us up then as he had no tickets, but that we could  
 ride free today and if we stopped in at his store  
 the following day, we could get membership  
 tickets. He pointed out his store which was a  
 bakery store located on Main Street three doors  
 West of John Street. He then told the operator  
 of the bus to let us ride free to Edgewater, which  
 we did.

30 2: The following day, June 18th, 1925, at about  
 7.00 A. M., Mr. Young and I went to the bakery  
 store above referred to and saw the man we had  
 seen the previous evening. He recognized us and  
 asked us if we were together and we told him we  
 were and he said there was no need of each party  
 having a membership card as one would be  
 enough. He then asked me my name and address  
 and wrote the name on a pink membership card  
 which he handed to me. He also wrote my name  
 and address on a piece of paper lying on the coun-  
 40 ter. I paid him One (\$1.00) Dollar and received  
 twelve tickets to be used on the bus. He told Mr.

**Defendant's Affidavits.**

Young that it was not necessary for him to buy tickets as he could ride on the tickets sold to me. While we were there a lady came in and gave the man One (\$1.00) Dollar and received some tickets. Mr. Young and I boarded bus No. 2 at Jones Road, the starting point of the bus at Fort Lee at about 8.05 A. M. On boarding, we each handed a ticket to the driver. Several people were in the bus when we boarded it and while we were waiting to start we noticed Mr. Reynolds, the Manager of the Bus Line selling membership cards and tickets to several people who wanted to board the bus. Three or four persons attempted to board the bus without tickets and the operator referred them to Mr. Reynolds.

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FRANK MARSCH.

20

Subscribed and Sworn to before me  
this 2nd day of July, 1925.

JOSEPHINE S. BARNEY,  
Notary Public of New Jersey.

STATE OF NEW JERSEY, }  
COUNTY OF BERGEN, } ss:

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JOHN J. O'BRIEN of full age, being duly sworn according to law upon his oath, deposes and says:

1: I am the Chief of Police of the Borough of Edgewater.

2: I know John Setzer who has a bakery store on Main Street three doors West of John Street in the Borough of Fort Lee. On July 1st, I went to the store of Mr. John Setzer on Main Street,

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**Defendant's Affidavits.**

10 three doors West of John Street in company with Robert W. Young. Mr. Young pointed out Mr. Setzer as the man who had sold him bus tickets on June 18th, 1925. I asked Mr. Setzer if he was the President of the Fort Lee Transportation Company and he said that he was.

JOHN J. O'BRIEN.

Subscribed and Sworn to before me  
this 2nd day of July, 1925.

JOSEPHINE S. BARNEY,  
Notary Public of New Jersey.

20 STATE OF NEW JERSEY }  
COUNTY OF BERGEN } ss:

ROBERT W. YOUNG, of full age, being duly sworn according to law upon his oath, deposes and says:

30 1: On July 1st, 1925, I, in company with John J. O'Brien, the Chief of Police of the Borough of Edgewater, went to the bakery store on Main Street, three doors West of John Street and pointed out the man who sold me tickets on June 18th. Chief O'Brien asked the man if he was Mr. Setzer and was the President of the Fort Lee Transportation Company, to which he replied that he was.

ROBERT W. YOUNG.

Subscribed and Sworn to before me  
this 2nd day of July, 1925.

JOSEPHINE S. BARNEY,  
Notary Public of New Jersey.

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**COMPLAINANT'S ANSWERING  
AFFIDAVITS.**

Filed August 14th, 1925.

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } ss:

PATRICK DIGNAN, being duly sworn on his oath says, I am a resident of Fort Lee. My business is in New York and I am obliged to travel from my residence in Fort Lee to the Edgewater Ferry every morning and return the same way every evening. The only method until recently of reaching the ferry was by the trolley. To ride to the ferry by trolley takes from deponent's residence twenty-five minutes and the fare is ten cents. Recently the Fort Lee Transportation Company was organized for the purpose of running buses from Fort Lee to the Edgewater Ferry. The resolution of the Borough Council of the Borough of Fort Lee granting permission to the officials of the Fort Lee Transportation Company to operate said buses was certioraried by the Public Service Railway Company, and thereupon the bus service stopped. During the time the buses ran deponent patronized them and found that he could get to the ferry from his house in approximately ten minutes, and the charge was seven and a half cents if strip tickets were bought. After the buses stopped deponent conferred with a number of other commuters in the town of Fort Lee and decided to organize a club to charter the buses from the Fort Lee Transportation Company to carry deponent and other members of the Club to and from points on the route, commencing in Fort Lee, to the Edgewater Ferry in the morning and from the Edgewater Ferry, the end of the route, to Fort Lee in the evening. Deponent was one of the formal com-

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**Complainant's Answering Affidavits.**

mittee which negotiated a preliminary agreement with the officials of the Fort Lee Transportation Company, by which it was agreed that the Fort Lee Transportation Company should run for account of the Club two buses, starting at 5:30 A. M. and continuing until 9 A. M., and from 4:30 P. M. to 8 P. M., running over the route starting at Jones Road and Main Street in the Borough of Fort Lee, east on Main Street to Anderson Avenue, south on Anderson Avenue to Route 10 State Highway, east on Route 10 State Highway to the Company's private terminal at Edgewater, and returning leaving the terminal at Edgewater Ferry and then over State Road No. 10 to Palisade Avenue, north to Main Street, and then west to Jones Road. It was agreed that deponent and others should form the club and solicit the commuters in the neighborhood to join the same. This arrangement was carried out.

Deponent further says that on June 15, 1925, a meeting was held of commuters, who proceeded to form a club of residents of and employees of concerns doing business in the Borough of Fort Lee, for the purpose of making arrangements for transportation by bus as aforesaid. A copy of the minutes of the said meeting is hereto annexed. On the 17th day of June, 1925, this arrangement was carried out and the buses commenced to run. Deponent and other members of the Club during the following week induced a large number of members to join the club and to use the facilities of these buses.

On June 21, 1925, another meeting of the club was called and the business transacted appears by the copy of the minutes of the meeting hereto annexed. A copy of the by-laws adopted at said meeting is also hereto annexed.

**Complainant's Answering Affidavits.**

The next meeting of the Club was held on June 26, 1925, and the business there transacted appears by the copy of the minutes hereto annexed.

Deponent further says that the number of the members of the Club is now two hundred and sixty, who are regular patrons of the buses. Deponent says that no passengers, whether members of the Club or not, are picked up or discharged upon any public street or highway within the limits of Edgewater. That on the trip to the ferry all of the passengers carried by the buses are carried by the buses through the town and discharged upon the private terminal of the Fort Lee Transportation Company at Edgewater. That all of the passengers taken into the buses in Edgewater enter the buses while the same are upon the said terminal of the said Transportation Company. That to the best of deponent's knowledge and belief no other passengers are carried upon these buses in either borough or township except men who have become members of the Club and who pay their regular dues to the Club, and who pay to the Club the transportation rate fixed in the contract between the Club and the Company. Deponent says that he and the other members of the Club find the use of these buses to be a very great convenience, and make the trip in less than one half the time required by the trolley at price of seven and a half cents as against the price of ten cents charged by the trolley, and that the discontinuance of these buses would be a serious inconvenience to the members of the Club. That in pursuance of

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**Complainant's Answering Affidavits.**

the resolution contained in the minutes a letter was sent by the Secretary to the Fort Lee Transportation Company, a copy of which is also hereto annexed.

PATRICK DIGNAN.

10 Sworn to and subscribed before me  
this 7th day of July, 1925.

J. M. McCRAVE,  
Notary Public of New Jersey.

My commission expires  
February 1927.

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**MINUTES OF MEETING, JUNE 15, 1925.**

20 At a meeting held June 15th by several citizens who are residents of the Borough of Fort Lee it was suggested to form a club, the object of which was to obtain facilities for a better means of Transportation for residents and employces of concerns doing business in the Borough of Fort Lee.

Mr. M. Ashe was appointed temporary secretary and treasurer.

30 It was decided to call the name of this organization the West Fort Lee Workers Club.

Arrangements were to be made with the Fort Lee Transportation Co. to secure bus service from 5.30 to 9.00 A. M. and from 4.30 to 8.00 P. M. and a nominal sum be charged according to the number of passengers carried.

40 It was agreed to have a rate of 10c a month for dues and to tax each member 90c a week which enables them to have 12 rides a week. Tickets to be issued weekly and one ticket presented to the driver of bus for each ride.

### Complainant's Answering Affidavits.

This to be a means of keeping track of the number of rides each day to meet the expense of the hire of the bus.

The bus to be for members only and only such members as presenting membership card on demand of driver of bus.

This is exclusive for club members only.

Meeting adjourned, to meet June 21.

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### MINUTES OF MEETING, JUNE 21, 1925.

Meeting of the Fort Lee Workers Club called to order by President Dignan.

Reading of minutes of previous meeting approved as read.

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Motion made by Mr. Smith and seconded by Mr. Sampson that all members make an attempt to secure at lease two new members. Motion carried.

Motion made by Mr. Sampson and seconded by Mr. Smith that club membership be extended throughout members of the family entitling them to the same privileges as members.

A set of By Laws as presented by committee in charge was accepted.

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Meeting adjourned to meet Friday, June 26.

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### BY - LAWS

of

### THE WEST FORT LEE WORKERS' CLUB.

1. This organization shall be known as the West Fort Lee Workers' Club, and its objects shall be to provide methods of transportation for

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### Complainant's Answering Affidavits.

its members, and in general to do any and all things that may be of benefit to its members and promote the welfare of the communities in which they reside.

10        2. Any person residing or being employed in Bergen County is eligible to membership in the Club upon payment of such dues or initiation fees as may from time to time be adopted.

3. The officers of the Club shall consist of a president, secretary and treasurer, who shall hold office for one year and until their successors are elected.

20        4. The monthly dues shall be ten cents a month for each member, and each member in good standing shall be entitled upon the payment of an additional ninety cents a week to receive tickets entitling him to twelve rides a week on any conveyance which the Club may contract for for their transportation.

5. The President, Secretary and Treasurer shall perform the duties usually devolving upon such officers.

30        6. The meeting of the Club shall be held under the call of the President or Secretary.

7. During the intervals between the meetings of the Club, either the President, Secretary or Treasurer are authorized to accept applications for membership and to issue membership cards and tickets to said applicants, but all such applicants shall come up for election to membership at the ensuing meeting of the Club.

**Complainant's Answering Affidavits.**

**MINUTES OF MEETING, JUNE 26, 1925.**

Meeting called to order by President Dignan.  
Reading of minutes of previous meeting approved as read.

A report from the Fort Lee Transportation Co. offering a temporary arrangement for the charter of their buses to the West Fort Lee Workers Club was presented by Mr. Setzer, Pres. of the Fort Lee Transportation Company. Letter is as follows: 10

West Fort Lee Workers' Club,

Gentlemen:

In conformity with the temporary arrangement for the charter of our buses for the use of your Club, we hereby confirm our offer to charter to your Club two auto buses between the hours of 5:30 and 9 A. M. and 4:30 and 8 P. M., on each day, and to accept as full compensation for the chartering of said buses the sum of seven and one half cents for each ticket collected from your members for transportation on said buses, it being understood that said tickets are only to be accepted within the time limit expressed on said tickets, and it being further understood and agreed between us that each of your members must exhibit his membership card to the driver of the bus and deliver to him one of your tickets, and that no one shall be permitted to ride on said buses during said hours excepting such members of your Club as present their membership card and ticket. The purpose of this offer is that 20 30

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**Complainant's Answering Affidavits.**

the chartering of said buses shall be for the exclusive use of your Club members.

Yours very truly,

FORT LEE TRANSPORTATION  
COMPANY,

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By J. F. Setzer,  
President.

Dated, June 26, 1925.

Motion was made by Mr. George Jules and seconded by Mr. Hubschman to pass a resolution accepting this offer and that the Secretary be instructed to write a letter to Fort Lee Transportation Co. advising of same.

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Resolution is as follows:

RESOLVED, that this Club accept the confirmatory offer of the Fort Lee Transportation Company to transport members of this Club as set forth in the letter of said Company read at this meeting, and that the proper officers of the Club be authorized and directed to communicate with said Fort Lee Transportation Company accepting said offer.

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The following persons were proposed for membership of Club and were accepted:

Mr. Fritz,	612 Church Street,	West Fort Lee,	
" Fehrle,	Maple Street,	" " "	
" J. Stover,	448 North Street,	" " "	
" Comody,	Maple Street,	" " "	
" J. F. Mills,	Hefley Lane,	" " "	

Permission was asked of the Fort Lee Transportation Co. to display a sign in bus advising public that bus was for West Fort Lee Workers Club members only.

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This permission was granted.

### Complainant's Answering Affidavits.

It was decided to allow authorized members to obtain new members for club same to be passed at regular meeting after which meeting was adjourned.

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West Fort Lee Workers' Club,  
Fort Lee, N. J.,  
June 27, 1925.

Fort Lee Transportation Co.,  
Attention Mr. Setzer, President,  
Gentlemen:

Dear Sir:

I am herewith forwarding to you a copy of the resolution adopted at the meeting of this club on Friday, June 26, 1925, confirming your offer in reference to the two buses being hired. The resolution reads as follows:

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RESOLVED, that this Club accept the confirmatory offer of the Fort Lee Transportation Company to transport members of this Club as set forth in the letter of said Company read at this meeting, and that the proper officers of the Club be authorized and directed to communicate with said Fort Lee Transportation Company accepting said offer.

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Martin Ashe, Sec.

### REPLICATION.

Filed July 21, 1925.

The complainant joins issue on the answer of the defendant.

GEORGE L. RECORD,  
Solicitor of Complainant.

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**STIPULATION.**

Filed August 14th, 1925.

10 For the purpose of final disposition of this cause, the parties hereto stipulate and agree that the following are the facts as the same would be proved in open court on final hearing, and that this cause shall be finally decided upon the bill, answer, replication and the facts as herein stipulated.

1. Complainant is a corporation organized and existing under the laws of the State of New Jersey.

2. The defendant is a duly incorporated Borough of this State.

20 3. That complainant is the owner of two motor buses to the value of Thirteen thousand (\$13,000.00) Dollars, each of which is equipped for the carrying of passengers.

4. That Schedule "A" attached hereto is a true copy of the Ordinance of the Borough of Edgewater, known as the Bus Ordinance and that the same has been in force continuously down to the present time since the month of May 1922.

30 5. That complainant has no license for either of its motor buses issued in pursuance of said Ordinance.

6. The Borough of Fort Lee adjoins the Borough of Edgewater.

7. That the Borough of Edgewater is a long narrow municipality lying between the Hudson River and the top of the Palisades.

40 8. That the New Jersey Terminal of the Edgewater and Fort Lee Ferry Company (generally known as "The 130th Street Ferry"), is in Edge-

### Stipulation.

water and the New York Terminal is at the foot of West 130th Street, New York City.

9. That a large number of the residents of Fort Lee use said Ferry daily in going to and coming from their business and that a very large number of such residents use said Ferry in going to and coming from the City of New York. 10

10. That the Public Service Railway Company operates a street railway from Fort Lee to the Ferry Terminal. That said railway in the Borough of Edgewater runs upon a private right-of-way except two right angle crossings on River Road.

11. That Route 10 of the State Highway system begins at the said Ferry Terminal and extends North along River Road about one thousand (1000) feet and then runs Westerly up the face of the Palisades to and through a part of the Borough of Fort Lee. In the Borough of Edgewater, the said Route 10 after turning Westerly from River Road is intersected by an improved public street known as Undercliff Avenue which runs into said Route 10 in the first instance from the South, and runs from said Route 10 to the North and a point some thousand feet more or less Westerly from the point aforesaid. That a considerable amount of traffic enters said Route 10 from said Undercliff Avenue and also leaves said Route 10 at the two points where said Undercliff Avenue intersects Route 10. 30

12. That attached hereto is a map showing the location of said Ferry Terminal, River Road, Route 10 and the Undercliff Avenue intersection within the Borough of Edgewater. 40

**Stipulation.**

10 13. That complainant attempted to secure from the Borough of Fort Lee a permit to operate its two buses for the carrying of passengers from said Borough of Fort Lee to a point at or near the Ferry Terminal in the Borough of Edgewater. That a temporary permit was authorized by the Borough Council of the Borough of Fort Lee, but that such action has been taken to the Supreme Court by writ of certiorari and is now pending in said court.

20 14. That complainant owns a piece of land on the west side of River Road in Edgewater some 500 feet north of the Ferry Terminal, where shown on the map attached hereto, which piece of land is the property referred to herein and in the affidavits as the complainant's terminal in Edgewater.

15. That after the issuance of the aforesaid writ of certiorari the officers of the complainant assisted in the organization by a number of persons of a club known as "West Fort Lee Workers' Club. That attached hereto and marked Schedule "B" are true copies of the minutes and proceedings of said organization.

30 16. That in the morning and evening of June 17th, June 18th and June 19th, complainant operated its two buses under an arrangement similar to that set forth in Schedule "B", from Fort Lee to Edgewater and from Edgewater to Fort Lee over a road in the Borough of Edgewater beginning at the bus terminal of complainant on private property owned by it, and running thence northerly and westerly over said Route 10 to the Borough of Fort Lee.

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**Stipulation.**

17. That no passengers were admitted to or discharged from said buses on the public street or streets of the Borough of Edgewater, but that all the passengers were taken on or discharged while the bus was on the private property of the complainant known as its terminal in said Borough. 10

18. That said buses were operated by employees of complainant.

19. That on June 18, 1925, the Chief of Police of the Borough of Edgewater caused the arrest of two of the drivers employed by the complainant in carrying on complainant's business as aforesaid, alleging that they violated Section 15 of the ordinance attached hereto and marked Schedule "A". That said drivers were convicted of said violation in the Recorder's Court in said Borough. That an appeal was taken from said conviction to the Bergen Common Pleas Court, which appeal has not yet been decided. That said Chief of Police informed complainant that it would not be allowed to continue the operation of its buses unless it was duly licensed. 20

20. That the affidavits filed by complainant and defendant in this cause on the application for a preliminary injunction shall be taken as evidence in this cause with the same effect as if taken in open court on final hearing. 30

21. That attached hereto and marked "C" is one of the tickets given by Sherman W. Reynolds, Manager of the complainant and also a member of the West Fort Lee Workers' Club and authorized to accept applications for membership, to Florie O'Toole, one of the affiants, on June 17, 1925, and one of which tickets was collected by the operators of the said buses for each ride. 40

**Stipulation.**

22. That attached hereto and marked "D" is the "membership" or "identification" card issued to said O'Toole by said Reynolds on June 17, 1925.

10 23. That all persons applying for passage on said buses were informed that only members of the said Fort Lee Workers' Club were allowed to ride on said buses.

-C-

**West Fort Lee Workers Club  
PASS ON BUS**

For Week Ending June 23 1925

20 **MEMBER IN GOOD STANDING**

Name \_\_\_\_\_

M A \_\_\_\_\_ **Sec. & Treas.**

-D-

30 **West Fort Lee Workers' Club**

**THIS CERTIFIES THAT**

F. O'TOOLE

.....  
is a member in good standing, for the month of  
JUN 1925..... and is entitled to all the privileges  
thereof.

D. 10 M.

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..... M ASHE.....  
**Sec. & Treas.**

## SCHEDULE "A"

## BOROUGH OF EDGEWATER

## Ordinance No. 160

AN ORDINANCE TO LICENSE AND REGULATE AUTO BUSES, COMMONLY CALLED "JITNEYS", AND OWNERS AND DRIVERS OF SUCH VEHICLES. 10

BE IT ORDAINED by the Council of the Borough of Edgewater:

1. No auto bus, commonly called "Jitney", shall be operated in the public streets or places of the Borough of Edgewater, unless the provisions of this ordinance are complied with.

2. No auto bus or buses, commonly called "jitneys" shall be operated in any of the public streets or places of the Borough of Edgewater, unless the owner of his or its lessee (who shall for the purposes of this ordinance be considered "the owner") operating such auto bus or buses shall have procured a license in the manner herein provided, and shall have paid the fee therefor. 20

3. Any person, firm or corporation desiring to operate an auto bus or auto buses, commonly called "Jitneys" in, over and through the public streets or places of the Borough of Edgewater, shall make an application in writing to the Council of the Borough of Edgewater, which application shall state the name of the owner, or person, firm or corporation intending to operate such auto bus or buses; the residence and business address of such applicant; the number of buses which said applicant intends to operate within the Borough of Edgewater; the seating capacity of each bus, the streets, avenues and public places 30 40

## Schedule "A".

upon which such buses will be operated ; an agree-  
ment to comply with the requirements contained  
in this ordinance or any supplement or amend-  
ment thereof. Said application shall be accom-  
panied by a license fee, which fee shall be as fol-  
10 lows: For each bus or "jitney" the sum of \$10.00  
per year.

The Council of the Borough of Edgewater shall  
at its next meeting, after the presentation of such  
application, consider and pass upon such applica-  
tion, and, if in its judgment, it is proper for the  
good government, order and protection of per-  
sons and property and for the preservation of the  
public health and safety of the Borough of Edge-  
water, and its inhabitants, refuse such applica-  
20 tion, or may grant the same with or without mod-  
ifications as to the number of such buses to be  
operated within the Borough of Edgewater, and  
the route or routes to be traveled. Upon the  
granting of any such application either with or  
without modifications as aforesaid, a license shall  
be issued to such applicant, signed by the Bor-  
ough Clerk, which license shall set forth the date  
of application therefor, and the date of the grant-  
ing of such license by the Council of the Borough  
of Edgewater, and the seating capacity of the  
30 bus. Every license granted shall expire on De-  
cember 31st of the year in which it is issued. Such  
license may be renewed to the same licensee with-  
out further application, upon the payment of the  
license fee herein provided for. In case of an ap-  
plication granted after the first day of July in  
any year, the license fee to be paid for the re-  
mainder of such year shall be one-half of the  
yearly rates as hereinbefore set forth. Any  
40 license granted as herein provided may be re-  
voked after a hearing upon notice for a violation

**Schedule "A".**

of any of the Laws of the State, or any of the terms and provisions of this ordinance or any ordinances amendatory hereof or supplemental hereto.

4. No license hereunder shall become effective or remain in force, and no operation of any auto bus under any such license shall be permitted until the owner of such auto bus shall have filed with the Borough Clerk an original insurance policy written by a company duly authorized and licensed to transact business under the insurance laws of the State of New Jersey, in the sum of \$5,000, insuring the owner against the loss from liability imposed by law upon the auto bus owner for damages on account of bodily injury or death or property damage suffered by any person or persons as a result of the ownership or operation or use of such auto bus within the Borough of Edgewater; and further providing, that the liability under such policy shall be exclusively for damages sustained within the limits of the Borough; and further providing, for the payment of any final judgment to be recovered by any person, firm or corporation against the owner or operator of such auto bus growing out of the ownership, operation or use of such auto bus within the limits of the Borough; and further providing that such insurance and the conditions of such policy shall be for the benefit of every person, firm or corporation suffering loss, damage or injury as aforesaid.

5. No license shall be issued until there shall have been filed with the Borough Clerk by the owner of such auto bus, a power of attorney wherein and whereby such owner shall constitute and appoint the Borough Clerk of the Borough

## Schedule "A".

10 of Edgewater, for the time being, or his successors in office, as a true and lawful attorney of such owner for the purpose of receiving services of any process out of any court of competent jurisdiction against such owner with the same force and effect as though such service had been made upon such owner personally, if an individual or upon an officer, director or registered agent thereof, if a corporation. Such power of attorney shall remain in force and effect so long as such owner shall operate as owner any bus within the Borough of Edgewater. The power of attorney herein provided for need not be filed as a condition precedent to the renewal of a license previously issued to the same owner.

20 6. Every person, firm or corporation operating any auto bus or auto buses within the Borough of Edgewater shall operate the same over a route or routes set forth in their application, and over no other routes, except pursuant to permission of the Council of the Borough of Edgewater, evidenced by a resolution duly adopted by said Council of the Borough of Edgewater; provided however, in case any portion of any such route shall be temporarily obstructed or closed  
30 to traffic, then in such case such auto bus or buses may be operated upon such other street or streets or public places as to make a detour to the nearest open portion of such route, as directed by the Chief of Police.

40 7. Every person, firm or corporation operating an auto bus or buses within the Borough of Edgewater, shall with the application herein provided for, file with the Borough Clerk, a schedule showing the regular stopping places for taking on and letting off passengers within the Borough; a

## Schedule "A".

schedule showing the time when such bus or buses will arrive at such stopping points; a statement of the entire route, both within and out of the Borough to be traveled by such auto bus or buses; and a schedule showing the time when such bus or buses will leave their prospective termini of each route. The aforesaid schedule will be subject to change due to unforeseen causes and reasonable delays, but in no case shall any auto bus leave any fixed stopping place before the time shown by such schedule. A copy of the Time Schedule shall be posted in a conspicuous place in each auto bus. The Time Schedule may be changed upon ten days' notice in writing, which notice shall be filed with the Borough Clerk at least ten days before such proposed change will take effect, and shall also within the same time be published in a newspaper circulating within the Borough of Edgewater.

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8. There shall be posted in a conspicuous place in each auto bus, a statement of the rates of fare between the various points upon the routes of each bus.

9. No auto bus shall stop within fifty feet of any corner in the Borough for the purpose of taking on or letting off passengers. All stops for taking on or letting off passengers at corners shall be on the near side of the intersecting streets.

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10. Every auto bus operated within the Borough shall be equipped with pneumatic tires and shall have one or more lights on the inside thereof, which shall be kept lighted at all times from one hour after sunset until daylight. Every such bus shall have a door at each end thereof.

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## Schedule "A".

11. Every auto bus operated within the Borough shall carry on the inside thereof in a rack or other place where it can be readily procured by the passengers, an axe for use in case of emergency.
- 10 12. No driver of an auto bus shall talk to or carry on a conversation with the passengers or any other person, except to answer necessary questions.
13. Every auto bus shall be operated carefully and within the speed limits provided for by law and shall be equipped with chains or other devices approved by the Chief of Police to prevent skidding, when necessary because of ice, snow or slippery condition of the streets.
- 20 14. No auto bus shall be operated within the Borough which shall carry more passengers than the number stated in the application for the license for such auto bus, nor shall any passenger be permitted to stand on the steps of such auto bus when the same is in motion.
- 30 15. Any person, firm or corporation operating a motor bus in the Borough without a license granted in accordance with the provisions of this ordinance, or having a license shall fail to operate such motor bus in accordance with the provisions of this ordinance, or shall fail to equip, maintain and operate any motor bus in violation of any provision hereof, may on conviction, forfeit any and all licenses issued hereunder, and in addition, thereto shall pay a fine not exceeding Two Hundred Dollars (\$200.), or in case of an individual be imprisoned in the County Jail for not more than sixty days. The Magistrate before whom
- 40 the violator is convicted shall have power to im-

### Schedule "A".

pose any fine or term of imprisonment, not exceeding the maximum herein fixed. In the default of the payment of any fine imposed herein, the person convicted hereunder may in the discretion of the Magistrate be imprisoned in the County Jail for any term not exceeding sixty days.

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16. This ordinance shall take effect immediately upon publication as required by law.

Approved, May 2nd, 1922.

HENRY WISSEL,  
Mayor.

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### SCHEDULE "B".

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#### MINUTES OF MEETING, JUNE 15, 1925.

At a meeting held June 15th by several citizens who are residents of the Borough of Fort Lee it was suggested to form a club, the object of which was to obtain facilities for a better means of transportation for residents and employees of concerns doing business in the Borough of Fort Lee.

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Mr. M. Ashe was appointed temporary secretary and treasurer.

It was decided to call the name of this organization the West Fort Lee Workers' Club.

Arrangements were to be made with the Fort Lee Transportation Co. to secure bus service from 5.30 to 9 A. M. and from 4.30 to 8.00 P. M. and a nominal sum be charged according to the number of passengers carried.

It was agreed to have a rate of 10c a month for dues and to tax each member 90c a week

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### Schedule "B".

which enables them to have 12 rides a week. Tickets to be issued weekly and one ticket presented to the driver of bus for each ride.

This to be a means of keeping track of the number of rides each day to meet the expense of the hire of the bus.

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The bus to be for members only and only such members as presenting membership card on demand of driver of bus.

This is exclusive for club members only.

Meeting adjourned, to meet June 21.

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### MINUTES OF MEETING, JUNE 21, 1925.

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Meeting of the Fort Lee Workers Club called to order by President Dignan.

Reading of minutes of previous meeting approved as read.

Motion made by Mr. Smith and seconded by Mr. Sampson that all members make an attempt to secure at least two new members. Motion carried.

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Motion made by Mr. Sampson and seconded by Mr. Smith that club membership be extended throughout members of the family entitling them to the same privileges as members.

A set of By Laws as presented by committee in charge was accepted.

Meeting adjourned to meet Friday, June 26.

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## Schedule "B".

## B Y - L A W S

of

## THE WEST FORT LEE WORKERS' CLUB.

1. This organization shall be known as the West Fort Lee Workers' Club, and its objects shall be to provide methods of transportation for its members, and in general to do any and all things that may be of benefit to its members and promote the welfare of the communities in which they reside. 10
2. Any person residing or being employed in Bergen County is eligible to membership in the Club upon payment of such dues or initiation fees as may from time to time be adopted.
3. The officers of the Club shall consist of a president, secretary and treasurer, who shall hold office for one year and until their successors are elected. 20
4. The monthly dues shall be ten cents a month for each member, and each member in good standing shall be entitled upon the payment of an additional ninety cents a week to receive tickets entitling him to twelve rides a week on any conveyance which the Club may contract for for their transportation.
5. The President, Secretary and Treasurer shall perform the duties usually devolving upon such officers. 30
6. The meetings of the Club shall be held under the call of the President or Secretary.
7. During the intervals between the meetings of the Club, either the President, Secretary or Treasurer are authorized to accept applications for membership and to issue membership cards and tickets to said applicants, but all such applicants shall come up for election to membership at the ensuing meeting of the Club. 40

Proceedings of West Fort Lee Workers' Club.

MINUTES OF MEETING, JUNE 26, 1925.

Meeting called to order by President Dignan.

Reading of minutes of previous meeting approved as read.

10 A report from the Fort Lee Transportation Co. offering a temporary arrangement for the charter of their buses to the West Fort Lee Workers Club was presented by Mr. Setzer, Pres. of the Fort Lee Transportation Company. Letter is as follows:

West Fort Lee Workers' Club,

Gentlemen:

20 In conformity with the temporary arrangement for the charter of our buses for the use of your Club, we hereby confirm our offer to charter to your Club two auto buses between the hours of 5:30 and 9 A. M. and 4:30 and 8 P. M., on each day, and to accept as full compensation for the chartering of said buses the sum of seven and one half cents for each ticket collected from your members for transportation on said buses, it being understood that said tickets are only to be accepted within the time limit expressed on said tickets, and it being further understood and agreed between us that each of your members must exhibit his membership card to the driver of the bus and deliver to him one of your tickets, and that no one shall be permitted to ride on said buses during said hours excepting such members of your Club as present their membership card and ticket. The purpose of this offer is that

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**Proceedings of West Fort Lee Workers' Club.**

the chartering of said buses shall be for the exclusive use of your Club members.

Yours very truly,

FORT LEE TRANSPORTATION  
COMPANY,

By J. F. Setzer,  
President.

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Dated, June 26, 1925.

Motion was made by Mr. George Jules and seconded by Mr. Hubschman to pass a resolution accepting this offer and that the Secretary be instructed to write a letter to Fort Lee Transportation Co. advising of same.

Resolution is as follows:

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RESOLVED, that this Club accept the confirmatory offer of the Fort Lee Transportation Company to transport members of this Club as set forth in the letter of said Company read at this meeting, and that the proper officers of the Club be authorized and directed to communicate with said Fort Lee Transportation Company accepting said offer.

The following persons were proposed for membership of Club and were accepted:

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Mr. Fritz, 612 Church Street, West Fort Lee,  
" Fehrle, Maple Street, " " "  
" J. Stover, 448 North Street, " " "  
" Comody, Maple Street, " " "  
" J. F. Mills, Hefley Lane, " " "

Permission was asked of the Fort Lee Transportation Co. to display a sign in bus advising public that bus was for West Fort Lee Workers Club members only.

This permission was granted.

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**Proceedings of West Fort Lee Workers' Club.**

It was decided to allow authorized members to obtain new members for club same to be passed at regular meeting after which meeting was adjourned.

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West Fort Lee Workers' Club,  
Fort Lee, N. J.,  
June 27, 1925.

Fort Lee Transportation Co.,  
Attention Mr. Setzer, President,

Gentlemen:

Dear Sir:

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I am herewith forwarding to you a copy of the resolution adopted at the meeting of this club on Friday, June 26, 1925, confirming your offer in reference to the two buses being hired. The resolution reads as follows:

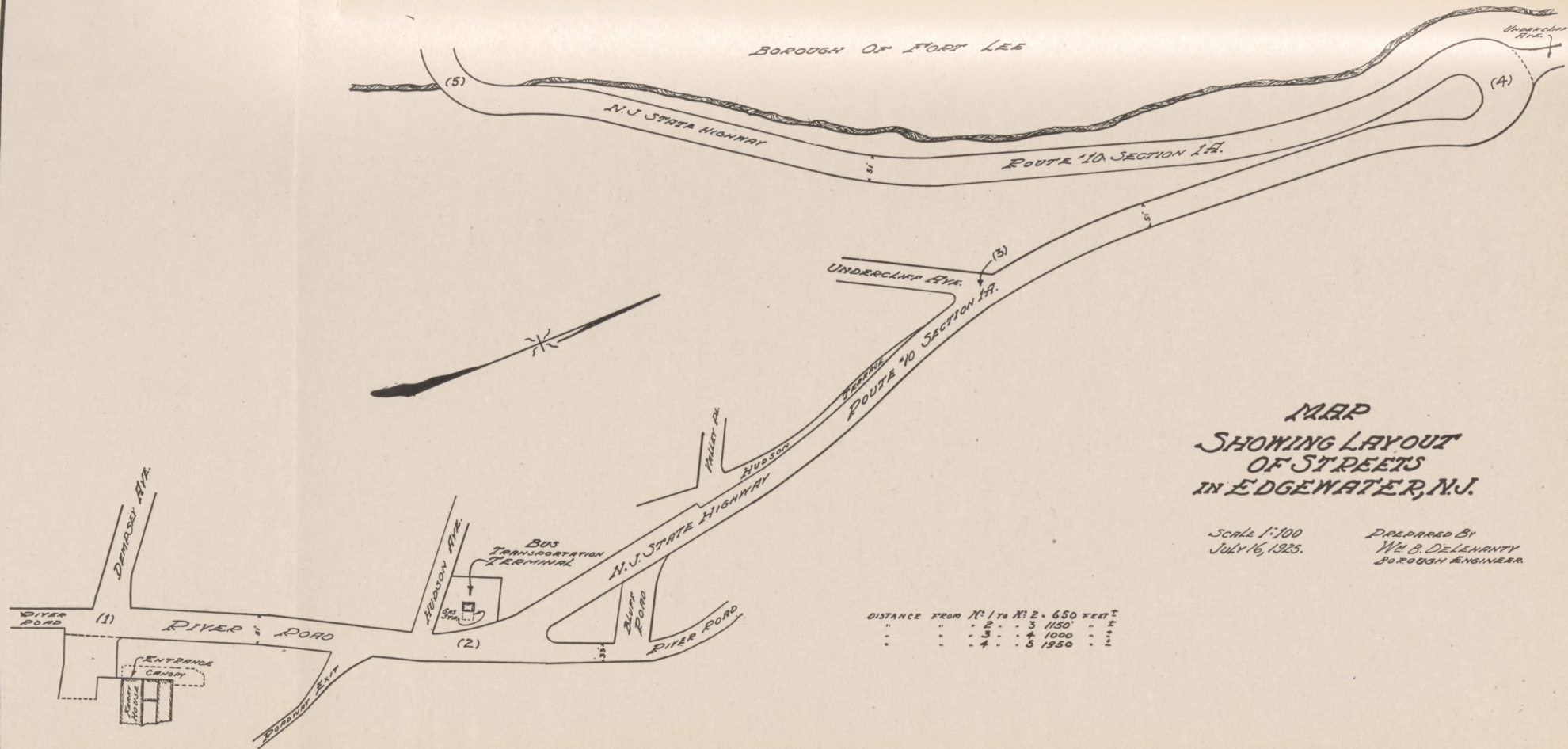
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RESOLVED, that this Club accept the confirmatory offer of the Fort Lee Transportation Company to transport members of this Club as set forth in the letter of said Company read at this meeting, and that the proper officers of the Club be authorized and directed to communicate with said Fort Lee Transportation Company accepting said offer.

Martin Ashe, Sec.

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BOROUGH OF FORT LEE



MAP  
SHOWING LAYOUT  
OF STREETS  
IN EDGEWATER, N.J.

Scale 1"=100  
JULY 16, 1925.

PREPARED BY  
Wm. B. DELENANTY  
BOROUGH ENGINEER

DISTANCE FROM N: 1 to N: 2. 650 FEET			
..	..	2	1150
..	..	3	1000
..	..	4	1950

## OPINION.

Filed August 14, 1925

GEORGE L. RECORD, Esq.,  
For the Complainant;

WENDELL J. WRIGHT, Esq.,  
For the Defendant.

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BENTLEY, V. C.:

This is a bill to enjoin interference by the Borough of Edgewater with the complainant running its motor buses along a public highway in the transportation of passengers. It is submitted upon the pleadings and a stipulation of facts.

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The complainant is a corporation of this state, operating two motor buses from which, in whole or in part, it secures its income. Until June 18th, 1925, the complainant carried on the business of transporting passengers from a point in Fort Lee to a point in the Borough of Edgewater, and vice versa. In the conduct of this business it accepted passengers indiscriminately in each of the boroughs named and charged a fare for the service rendered. In short, it clearly came within the terms of the business defined in Chapter 136 of the laws of 1916. On the date mentioned the drivers or operators of the complainant's buses were arrested for violations of an ordinance requiring any person, firm, or corporation to secure a license to operate "an auto bus or auto buses, commonly called 'jitneys' in, over, and through the public streets or places of the Borough of Edgewater." At the same time they were notified by the defendant's chief of police that any further operations would be visited with arrest.

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Recourse to this court is necessary and admitted.

### Opinion.

After such arrests the complainant ceased to either accept or discharge any passenger within the defendant's corporate limits and simultaneously organized an unincorporated association or, as it is called, club, of residents of the Borough of Fort Lee, adjoining Edgewater, whose affairs require them to travel through the latter municipality to use a ferry running to the City of New York. Any person may become a member upon making application and the payment of ten cents a month as dues, and a further sum of 90 cents each week, in return for which 12 tickets are issued, each one being accepted upon the complainant's buses in lieu of fare for a single trip from any point in Fort Lee along the complainant's route to the terminus of such route in Edgewater. No one except members are permitted to ride upon the buses, during the hours that they travel over the streets of Edgewater, and no fare will be received under any circumstances except in the form of tickets referred to. Upon arrival at its destination in Edgewater, each bus discharges passengers only upon a piece of privately-owned land which, I understood upon the argument, was leased by the complainant but which, the stipulation sets forth, is "owned" by it. This last-mentioned fact is of great importance, although I am inclined to the belief that the organization of a "club" is merely for the purpose of defeating the application of the Borough's ordinance. Much argument has been devoted, pro and con, to this portion of the proofs, but I consider it of no importance, for reasons that will subsequently be made apparent.

It seems to me, as I have already indicated, that the important feature of this case lies in the fact that the streets of Edgewater are used for

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**Opinion.**

no other purpose than the common one afforded to the public generally, namely, as an avenue of transportation to proceed to a destination, without imposing upon the public highway any other servitude. After once entering within the defendant's limits, all of the attributes of the business sought to be regulated by its ordinance are conducted upon the complainant's private property. None of Edgewater's citizens are then allowed to enter either bus, or permitted to descend therefrom upon any street. There is no exercise of police power necessary upon the part of the borough, other than such supervision as it is necessary for any municipality to enforce as against all vehicles of any sort or description which traverse its public streets. For this reason, it would not seem that the case upon which the defendant relies is applicable. That case is the *City of Bridgeton v. Zellers* (124 Atl. 520). There, a line of busses was operated from a point in Millville, into Bridgeton, and over some of its highways. One of the points made against the municipality in that case was, that no violation of an ordinance similar to the one under consideration appeared, because no passengers were admitted within the limits of Bridgeton. As to this point, the Supreme Court said: "This we deem to be frivolous; there was indubitably operation within those limits". From this, the defendant argues that the Bridgeton case is authority against the case attempted to be made out by the complainant herein. There is, however, as it appears to me, a decided distinction between the facts involved in the two cases. In the Bridgeton case there is nothing to indicate that the operation of the prosecutor's motor busses was in any way different from the ordinary custom of those

## Opinion.

engaged in operating what is known as jitney bus lines, and it is common knowledge that terminal stations are not operated in the conduct of such business, as, for example, they are in the conduct of a railroad. The usual jitney lines pick up and discharge their passengers upon the public streets over which they operate, at all points, including the termini of their routes. Now, there appears nothing in Mr. Justice Parker's opinion in the case cited, to show that the prosecutor terminated his route or routes anywhere except on the public highway. In the case **subjudice**, on the other hand, the complainant, at the Edgewater end of each journey, has its bus driven upon its own private terminal station and thus, from the time it enters the defendant borough, subjects its streets to no burden other than that of any other motor vehicle except as it is of heavier construction and greater weight than the majority of vehicles using its highways. The state has not delegated the right to discriminate for this reason, if any reading of the statute under which the ordinance was passed is correct.

The statute provides the defendant with power to license and regulate motor vehicles "and to prohibit the operation of all such vehicles in the public streets or places", unless the vehicles comply with the terms and conditions of an ordinance passed for the licensing and regulation thereof. Of course, this case must be determined upon the construction to be given to the language of the act. It is common knowledge that the present business of carrying passengers in motor driven conveyances over city streets for hire indiscriminately grew out of a practice in a city of one of the north central states in or about the year 1912, when certain private owners devoted

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**Opinion.**

10 their ordinary cars to transporting passengers  
along certain highways for short distances at a  
fare of five cents for each passenger per trip. The  
great advantage and benefit of this new form of  
service spread to all sections of the country and  
gradually evolved the commodious closed-in mo-  
tor busses now used so generally for both long  
and short journeys of their passengers. So rap-  
idly did the business increase that the legislature  
in 1916 found it necessary to regulate its conduct  
by the adoption of the statute commonly called  
the Kates Act. This act, by its terms, however,  
was restricted in its operation to cities, and hence  
it became necessary in 1920 to pass the Chapter  
20 eighty-nine to cope with the spread of the indus-  
try to all manner of municipalities, and by this  
time it also became necessary to cover the preten-  
tious routes of such motor vehicles operating be-  
tween or among two or more localities. At that  
time and still, I think I may take judicial notice,  
the great majority of such lines operated upon no  
private right of ways or termini whatsoever. Be-  
cause of the greatly increased number of vehicles  
used for the purpose under consideration, an intol-  
erable condition upon the public highways would  
30 have resulted had not the local authorities been  
clothed with power of supervision and regulation,  
and if each operator of such conveyance had been  
left to conduct his business in any manner he  
might have pleased. To meet this situation in  
municipalities other than cities, the 1920 statute  
was enacted. This being the mischief to be rem-  
edied, it would seem to me that the legislature  
did not intend to extend the powers of municipal  
corporations over the conduct of such business  
after its vehicles should have passed off the pub-  
40 lic streets and onto the private ground of the

### Opinion.

proprietor of the conveyance. The jitney business is not conducted along the highway in Edgewater, and the activities to be regulated are only carried on while upon complainant's own property.

The arrest of the complainant's drivers and the threatened future arrests which have caused this bill to be filed, are based upon that section of the ordinance which was adopted under the authority of the act of 1920 contained in the words "and to prohibit the operation of all such vehicles in the public streets or places of such municipality." Now, it seems clear that in the use of the word "operation" the legislature intended to limit the term to a use of the public streets by a jitney bus in carrying out all the activities necessary for the conduct of that business. For this, there was clear necessity. It is essential that some supervision should be exercised over the places at which busses might be stopped to receive and discharge passengers. The representatives of the traveling public are entitled to have their representatives insist upon the most advantageous routes being covered, which can be indirectly accomplished. It is likewise necessary for the convenience of passengers that a proper headway be established and maintained between busses, and many other incidental details should be under the control of the proper authorities in the conduct of a business upon which the local inhabitants are obliged to rely in the matter of public transportation. But none of these matters are of any importance where a conveyance simply uses the public highways for the purpose of proceeding from one point to another. Surely, in the use of the word "operation" it was not intended that the owner of such a bus as is now

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**Opinion.**

10 under consideration would require a license to drive the same while empty along the streets of a municipality for the purpose of visiting a service station at which it was desired to have repairs or adjustments made upon it. Yet if the word is to be given the broad meaning which the defendant seeks to have placed upon it, the bus would unquestionably be operated "in the public streets". So that, as I read the act, it does not seem that it was intended that a license should be required to permit a bus to use the public streets for transportation from a point without a municipality to private property within the same where no unusual servitude was imposed upon the public way. If such a result had been intended, it would have been clearly expressed. Of course, all such conveyances and their owners and operators remain subject at all times to compliance with all valid regulations adopted under the police powers for the public safety, health, morals, and welfare.

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**FINAL DECREE.**

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[Filed October 1, 1925.]

This cause coming on to be heard in the presence of George L. Record, Solicitor of the Complainant and Wendell J. Wright, Solicitor of the Defendant, and the Court having examined the pleadings and read the stipulation of facts submitted herein and heard and considered the argument of Counsel thereon;

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And it appearing that the complainant is a corporation of this State operating two motor buses from which it in whole or in part secures its in-

**Final Decree.**

come; that until June 18th, 1925 it carried on the business of transporting passengers from a point in Fort Lee to a point in the Borough of Edgewater and vice versa; that in the conduct of its business it accepted passengers indiscriminately in each of the Boroughs named and charged a fare for the service rendered; that on June 18th, 1925 the drivers or operators of the complainant's buses were arrested for violations of an ordinance of the defendant requiring among other things a license for the operation of an auto bus or auto buses commonly called "jitneys" in, over and through the public streets or places in the Borough of Edgewater; at the same time the complainant was notified by the defendant's Chief of Police that any further operation would be visited with an arrest and that after such arrests on June 18th, 1925, the complainant ceased to either accept or discharge any passengers within the Borough of Edgewater and simultaneously organized an unincorporated association known as the "West Fort Lee Workers' Club" composed of residents of the Borough of Fort Lee, adjoining Edgewater, whose affairs require them to travel through the Borough of Edgewater to use a ferry running to the City of New York; that any person could become a member of such club upon making application and the payment of ten cents a month as dues and a further sum of ninety cents each week in return for which twelve tickets are issued; each one being accepted upon the complainant's buses in lieu of fare for a single trip from any point in Fort Lee along the complainant's route to the terminus of such route in Edgewater; that no one except members are permitted to ride upon the buses during the hours that they travel over the streets in Edge-

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### Final Decree.

10 water; that no fare is received except in the form  
of the aforesaid tickets; that upon arrival at its  
destination in Edgewater, each bus discharges  
passengers only upon a piece of privately owned  
land; that all passengers taken upon such buses  
within the Borough of Edgewater enters such  
20 bus only upon said privately owned land; that a  
jitney business is not conducted by the complain-  
ant along the highway in the Borough of Edge-  
water; that a license issued under the provision  
of the aforesaid ordinance of the defendant is not  
required for the operation of said buses in the  
manner aforesaid; and that the defendant un-  
lawfully interfered with the complainant's busi-  
ness conducted as aforesaid and has threatened to  
continue such interference; and that the com-  
plainant is entitled to the relief prayed for by it  
in its bill of complaint filed herein;

It is on this first day of October, nineteen hun-  
dred and twenty-five, ORDERED, ADJUDGED  
and DECREED that the said defendant, the Bor-  
ough of Edgewater and its officers, agents and  
servants and each and every one of them be and  
they hereby are enjoined and commanded hence-  
forth and forever to desist and refrain from in-  
30 terfering with the complainant in its operation  
of its auto buses in the manner aforesaid.  
Respectfully advised:

E. R. WALKER,  
C.

JOHN BENTLEY,  
V. C.

## New Jersey Court of Errors and Appeals

FORT LEE TRANSPORTATION COM-  
PANY,

*Complainant-Appellee,*

*vs.*

BOROUGH OF EDGEWATER,

*Defendant-Appellant.*

*On Appeal  
from the  
Court of  
Chancery.*

### BRIEF OF DEFENDANT-APPELLANT.

This case originated in a bill by complainant to enjoin interference by defendant with the operation by complainant of its motor buses along a public highway of defendant in the transportation of passengers for hire. Vice-Chancellor Bentley granted the injunction sought by complainant, and defendant has prosecuted this appeal therefrom. There is really only one question involved, which is whether, admitting complainant-appellee or its lessee is operating an auto-bus or buses in certain of the public streets or places of the Borough of Edgewater without having procured a license therefor under Ordinance No. 160 of the Borough, said complainant-appellee is under any legal obligation to obtain such license. The Vice-Chancellor was of opinion and expressly decreed that "a license issued under the provision of the aforesaid ordinance of the defendant is not required for the operation of the buses in the manner aforesaid." "The manner aforesaid" was "that upon its arrival at its destination in Edgewater, each bus discharges passengers only upon a piece of privately owned land; that all passengers taken upon such buses within the Borough of Edge-

water enter such buses only upon said privately owned land." The Vice-Chancellor decided that the embarkation and disembarkation of passengers upon privately owned land made the ordinance above referred to inapplicable and that no license thereunder could be required of complainant for such operation, although he admitted they ran along the public highway of the borough, carrying thereon passengers for hire. He decided that therefore "a jitney business is not being conducted by complainant along the highway in the Borough of Edgewater." It is the contention of defendant-appellant that the Vice-Chancellor erred in so holding and that the decree should be reversed.

The so-called Kates Act, Chapter 136 of the Laws of 1916, p. 283 *et fol.*, is entitled "An Act concerning auto buses, commonly called jitneys, and their operation in cities." Its first section reads, "The words 'auto bus' as used herein shall mean and include any automobile or motor bus, commonly called jitney, engaged in the business of carrying passengers for hire which is held out, announced or advertised to run, or which is operated or run, over any of the streets or public places in any city of this State, and indiscriminately accepts and discharges such persons as may offer themselves for transportation *either at the termini* or points along the way or route on which it is used or operated or may be running. \* \* \*". The second section provides that "no auto bus as defined herein shall be operated wholly *or partly* along any street in any city until the owner or owners thereof shall obtain the consent of the Board or body having control of public streets in such city for the operation of such auto bus and the use of any street or streets of said city. \* \* \*".

The Kates Act by its terms being applicable only to cities, the legislature passed Chapter 89, Laws of 1920, p. 182, as follows: "The governing body of every municipality shall have power to make, enforce, amend or repeal ordinances to license and regulate auto-buses, commonly called jitneys, and the owners and drivers of all such vehicles, and to fix the fees for such licenses, which may be imposed for revenue, and to prohibit the operation of all such vehicles in the public streets or places of such municipality unless such ordinances are complied with, *whether such auto-buses, commonly called jitneys, are operated over routes wholly or partly within the territorial limits of such municipality*; provided, however, this shall not be in substitution of but in addition to whatever other right, power and authority any such municipality may at any time have as to licensing, regulating or control of the operation of such auto-buses, commonly called jitneys, and this act shall not be construed as modifying or repealing an act entitled 'An act concerning auto-buses, commonly called jitneys, and their operation in cities,' approved March seventeenth, one thousand nine hundred and sixteen, or any supplement or amendment thereof."

The last above-cited act extended the right of license and regulation to every municipality in the State, including, of course, the Borough of Edgewater. These two acts are in *pari materia* and declare too plainly to be misunderstood the legislative intention and policy. A license is required whether passengers are accepted and discharged "either *at the termini* or points along the way." It makes no difference whether the *termini* are private property or a public place. The bus may be operated

wholly or *partly* along any street in any city and the license is equally required. Suppose the bus operated *partly* on the street and partly on private rights of way where stops for loading and unloading passengers were made—the very language of the statute *requires* a license. It is thus the legislature has used, illustrated and defined the word “operate.” Its synonym in the 1916 Act is “run,” the words used are “operated or run.” The word had thus acquired a legislative definition when it was used in Ordinance No. 160 of the Borough of Edgewater. Section 2 of that ordinance declares, “No auto bus or buses, commonly called jitneys, *shall be operated in any* of the public streets or places of the Borough of Edgewater, unless the owner or his or its lessee (who shall for the purposes of this ordinance be considered ‘the owner’) operating such auto bus or buses shall have procured a license in the manner herein provided, and shall have paid the fee therefor.” The fee for such license was \$10 per bus per year. The character of the regulations of said ordinance demonstrates at once its necessity and its propriety in the interest of the public safety, comfort and convenience, and that it was a wise and necessary exercise of the police power of the borough. Shall those buses which have stops “at points along the way” be required to be subject to the regulations provided in this ordinance, and those which have termini on private property be relieved from obedience to them?

A reading of those regulations as to bond protection, posting rates of fare, speed, chains, lights, doors, emergency tools, number of passengers, etc., shows the utter futility of appellee’s contention and the decision of the Vice-Chancellor whereby the licensed class is sub-

jected to the regulations of the ordinance and the unlicensed class is free from all of them. It was doubtless considerations such as these, among many others, some of which will be noticed hereinafter, which induced the Supreme Court to say in *City of Bridgeton v. Zellers*, 124 Atlantic Reporter 522, "The next point is that there was no violation because no passengers were taken on within the city limits. *This we deem frivolous*; there was indubitably *operation* within those limits." Here we have an express adjudication that the word "operation" does not necessarily involve the taking on of passengers within the city limits. This decision is, therefore, a direct adjudication in favor of appellant's contention in this case. The effort of the Vice-Chancellor to distinguish the Zellers case from the one *sub judice* is interesting. It will be found on pages 56 and 57 of the printed case. It amounts to this: that there appears nothing in Mr. Justice Parker's opinion in the case cited to show that the prosecutor terminated his route or routes anywhere except on the public highway, whereas in the case *sub judice* it does appear that the route was terminated on private property. But this is no distinction whatever. The question is, "Was the auto-bus 'operated' on the public streets of the city or borough?" So far as "operation" in that city or borough is concerned all that happened in either case was that the auto bus ran over the city streets; it did not stop, either in the Zellers case or in this, to take on passengers "within the municipality," and Mr. Justice Parker, speaking for the Supreme Court, said that the contention that this did not constitute operation was frivolous. This case was unanimously affirmed in this Court, *City of Bridgeton v. Zellers*, 127 Atl. Rep. 924. *A case closely in point is Comm. v. Thaberge 121 N.E. Rep. 30*

Before leaving this phase of the case I should point out that the Vice-Chancellor's suggestion that it did not appear that prosecutor terminated his route anywhere except on the public highway is utterly without force, since the inference is irresistible that such route was *not* terminated on the public highway in the City of Bridgeton, for such terminus would inevitably have been a place for unloading and loading passengers, and Mr. Justice Parker points out that the contention was that "no passengers were taken on within the city limits." If none were received or deposited within the city limits in the Bridgeton case then the case is on all fours with the present, and the decision utterly invalidates the *ratio decidendi* of the case *sub judice*. On pages 55 (bottom) and 56 (top) the Vice-Chancellor says, "It seems to me, as I have already indicated, that the important feature of this case lies in the fact that the streets of Edgewater are used for no other purpose than the common one afforded the public generally, namely, as an avenue of transportation to proceed to a destination, without imposing upon the public highway any other servitude. \* \* \*" Here, it would seem, is a curious intermingling of faulty terminology and factual misconceptions. The automobiles, even when taking on and leaving off passengers within the limits of the borough and on its streets, do not impose any additional *servitude* on the street. They subject it to a greater wear and tear by their greater weight and larger loads than ordinary passenger autos, and by their greater size and unwieldiness require a greater and different regulation. It is precisely these things which the Vice-Chancellor says are "the important feature" of the case, which are at once the reason and legal justifica-

tion for requiring licenses and fees, and which furnish the basis of a proper classification for legislative purposes. A few cases upon this subject will be illuminating. A citizen may have the right to travel and transport his property upon the public highways by auto vehicle. But he has no right to make them his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the State in its discretion. *Packard v. Banton*, 264 U. S. 140-144. The same principle will be found admirably stated by Swayze, J., in *Morristown Auto Bus Co. v. Madison*, 56 Vroom 61. He said, "We think the object of the Motor Vehicle Act was to secure the right of the road to that new method of travel free from interference by conflicting regulations of municipalities through which the motor vehicles might run, but that it was not intended to prevent municipalities from regulating the conduct of business by means of licenses in the long-accustomed way." It was the principle enunciated in this case which, in part, made necessary the Act of 1920, *supra*, for one of the principles enunciated in this case was that the Act of 1912 authorizing municipalities to impose license fees for the purpose of revenue was applicable only to business conducted wholly within the municipality. The Act of 1920 therefore extended the power to all cases, "whether the auto-bus, commonly called jitney, was operated over routes wholly or partly within such municipality."

The highways belong to the State. It may make provision appropriate for securing the safety and convenience of the public in the use of them. *Kane v. New Jersey*, 242 U. S. 160. It may impose fees with a view both to raising

funds to defray the cost of supervision and maintenance and to obtaining compensation for the use of the road facilities provided. *Hendrick v. Maryland*, 235 U. S. 610; *Pierce Oil Co. v. Hopkins*, 264 U. S. 137. With the increase in the number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce in the absence of legislation by Congress which deals specifically with the subject. *Vandalia R. R. Co. v. Public Service Comm.*, 242 U. S. 255. Indeed, the growing body of law which disallows to the states the power to directly burden interstate commerce as carried on by auto-buses and like instrumentalities, but which allows reasonable regulation, licensing fees, etc., in the exercise of the State police power, is dispositive of the case *sub judice*, for in each of those cases where a solely interstate business is carried on the right to license and regulate is expressly admitted, and yet the vehicles in many instances do not even stop, let alone take on or let off passengers within the boundaries of the municipality imposing the regulation. See especially *Michigan Public Utilities Commission v. Duke*, 266 U. S. 271, and cases cited therein. *Buck v. Kuykendall*, 267 U. S. 307; *Bush Co. v. Maloy*, 267 U. S. 317; *Cannon Ball Transp. Co. v. Public Utilities Commission of Ohio*, 149 N. E. Rep. 713. A very recent case which quite exhaustively deals with some of the matters herein involved is "*In re Opinion of the Justices*," 147 N. E. Rep. 681, especially the matter of classification for legislation and the grounds of reasonableness therein.

The argument of complainant-appellee and the decision of the Vice-Chancellor would clearly seem to prove and comprehend too much, for if the function performed by the two buses in question is not "operation" then it would seem to follow that the buses are not "auto-buses, commonly called jitneys," since it is indulgence in "operation" as statutorily defined which constitutes the auto-bus a jitney. It is not all auto-buses that are subject to this law, it is only auto-buses, commonly called jitneys, which are operated or run, or advertised so to be, in the business of common carriage of passengers for hire as defined in the act. A case directly in point is *Newport Electric Corporation v. Oakley*, 129 Atl. Rep. 613.

It is clear, therefore, that full statutory authority for the ordinance exists; that the ordinance is a reasonable exercise of power by the municipality—indeed, it is the application and not the reasonableness of the ordinance which is challenged; that the running of auto-buses, commonly called jitneys, through the public streets of the borough in the transportation of passengers for hire, whether such passengers board and leave the buses at private termini or on the public highway, is "operation" within the statutory and reasonable definition of that term; that such is the definition of "operation" is foreclosed by the decision in the *Zellers* case; that the construction contended for by complainant-appellee would result in discrimination against others who were performing the same function of transportation for hire, and would leave the complainant utterly unregulated; that such character of license, fee and regulation are constantly upheld by our courts, and that the classification of auto-buses, commonly called jit-

neys, is a reasonable one. It is, therefore, respectfully submitted that the decree should be reversed.

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WILLIAM H. SPEER,  
Of Counsel.

New Jersey Court of Errors and Appeals.

FORT LEE TRANSPORTATION COM-  
PANY, a corporation,

*Complainant-Appellee,*

—vs.—

BOROUGH OF EDGEWATER,

*Defendant-Appellant.*

On Appeal  
from the  
Court of  
Chancery.

**BRIEF FOR COMPLAINANT-APPELLEE.**

***Statement of Facts.***

From the stipulated facts in this case it appears that certain commuters traveling daily from Fort Lee to the Edgewater Ferry and return, organized a club which chartered from the complainant-appellee the use of two buses during certain hours in the morning and evening, to carry members of the club for a stipulated fare. The Borough of Edgewater caused the arrest of the drivers of the complainant-appellee for an alleged violation of an ordinance of said Borough entitled, "An Ordinance to license and regulate auto buses commonly called 'jitneys' and owners and drivers of such vehicles." Complainant-appellee applied to the Court of Chancery for an injunction against the interference by the Borough with the operation of the buses, and it was granted. The defendant-appellant appealed from said injunction. The legal question involved is whether the said buses come under the provisions of the Borough ordinance.

## POINT I.

**The buses in question are not "jitneys" as defined in the ordinance because they do not transact a jitney business in Edgewater.**

It is admitted that the buses do not pick up or discharge any passengers upon any public street in Edgewater.

The complainant-appellee owns private property in Edgewater near the ferry, upon which all passengers brought into Edgewater are discharged, and all passengers to be taken out of Edgewater are taken on. We claim that this takes the buses out of the operation of the Borough jitney ordinance.

Section 1 of the ordinance provides:

"No auto bus, commonly called 'jitney,' shall be operated in the public streets or places of the Borough of Edgewater unless the provisions of this ordinance are complied with."

This section limits the entire ordinance to buses operated as "jitneys" in the public street or places of the Borough, and does not apply to such vehicles when operated other than as "jitneys" or upon private property.

Section 2 of the said ordinance provides:

"No auto bus or buses, commonly called 'jitneys,' shall be operated in any of the public streets or places in the Borough of Edgewater, unless the owner of his or its lessee (who shall for the purposes of this ordinance be considered 'the owner') operating such auto bus or buses shall have

procured a license in the manner herein provided, and shall have paid the fee therefor."

In order to properly construe this section it is necessary to determine what constitutes the operation of a jitney bus in the Borough of Edgewater. Similar ordinances are in force in all of the important municipalities of the State. The obvious intent of the municipal boards in each municipality in passing these ordinances is to regulate the business of transportation of passengers by auto buses as common carriers from one point to the other within the municipality when the said business is conducted upon the public streets. Jitney buses originally started in the large cities and were to transport people from one part of the city to another part of the city.

Subsequently the jitneys operated beyond the limits of the municipality in which they obtained the original permits, and then obtained permits from the adjoining municipalities through which they ran and in which they did the business of picking up and discharging passengers upon the public streets as common carriers.

Section 8 of the ordinance provides:

"There shall be posted in a conspicuous place in each auto bus, a statement of the rates of fare between the various points upon the routes of each bus."

Complainant could not comply with this section because it has no rate of fare, and only transports persons who are members of the Club. To be a jitney, an auto bus must be a common carrier.

It is admitted that there are certain kinds of transportation of passengers by motor buses

which do not come under the heading of the "operation of jitney buses," although the buses are exactly similar to those admitted to be jitneys. For example:

(a) In the Borough of Edgewater the Corn Products Company and some of the other manufacturers hire buses and transport their workmen from the ferry to their factories. Whether they charge their workmen for this transportation directly or charge it up to the expenses of the business, in either event it obviously would not be operating a jitney bus.

(b) In the same Borough and in many other places, the municipal authorities hire bus owners to transport school children from their homes to the schools and back again, paying these bus owners a fixed charge out of the public treasury. Obviously this is not a jitney business, although the bus owners transport passengers for hire daily over the same route.

(c) The Bergen Avenue Bus Association of Jersey City has an arrangement with the employees of the Ford Motor Company on the Newark Plank Road at Kearny, by which in the morning for a period of about ten minutes at seven o'clock, some ten or twelve buses are lined up at the Tube Station upon the Boulevard in Jersey City. The Ford workmen arrive at the Tube Station within a period of some ten minutes about this hour, and are taken by these buses directly to the Ford plant, and no other passengers are taken up, but a fare of ten cents is charged. In the evening the same arrangement is carried out in bringing the workmen from the factory to the Tube Station. No permission has been granted either by Jersey City or Kearny for do-

ing this business. While this is a transportation by bus owners of passengers for hire, it is obviously not a jitney business under the ordinance regulating jitneys.

(d) During the afternoon and evening and all day upon Sundays and holidays, buses of every kind are run from many of the cities and municipalities in North Jersey to the big amusement parks in the different municipalities of this section, such as to Columbia Park in Hudson County and Palisades Park in Bergen County. These buses pick up no passengers in the streets of the municipalities through which they operate and discharge their passengers upon the private grounds of the amusement parks, and they pick them up there on the return. In many cases they have a station on the public streets in the municipality in which they start and usually a hacking permit is obtained from the local authorities for that purpose. These buses accommodate indiscriminately all who apply at the starting point and charge a fixed fare. There is no attempt by any municipality through which these buses pass to interfere with them or to bring them under any local jitney ordinance.

(e) Many buses are now being operated from a starting point upon some street in a municipality to distant points. Such a line runs from the corner of Bergen Avenue and the Boulevard in Jersey City to Lake Hopatcong and return upon certain days in the week, starting at a fixed hour. Other buses run to Asbury Park and even as far as Atlantic City upon a fixed schedule publicly announced. These buses accommodate all who apply indiscriminately and charge a fixed fare. They are nowhere brought under any local jitney ordinance.

(f) Taxis which have a permit to operate in a town will take a passenger into the next town. The taxi is not a jitney in the town where it has a license, and is not required to have any permit in the town to which it takes its passengers. It serves all who apply indiscriminately.

(g) Motor vehicles, either buses or ordinary cars, operate between railroad stations and golf clubs, carrying passengers from the trains to the golf club and back again. These motor vehicles are not held to be jitneys.

(h) Joseph P. Day, the well known New York auctioneer, recently sold a large parcel of lots in Bergen County at a widely advertised auction one Saturday afternoon. He publicly advertised that buses would meet those desiring to attend the auction at the Edgewater Ferry, and convey them to the scene of the auction. These buses charged a fare for each passenger, taking indiscriminately those who applied for such transportation, but only those who were going to the auction. It is plain these buses could not be held to be subject to local jitney ordinances.

There are probably other illustrations equally in point. It appears to be conceded that these cases do not fall under the general terms of the ordinance regulating jitneys, and do not require any permit except a special permit to operate from a certain point on the streets as a terminal. In such cases the permit is not granted under a jitney ordinance, but is a special permit such as is issued to hacks, peddlers, taxis, etc.

The question to be decided is, what is the characteristic that distinguishes these operations plainly not included in any jitney ordinance, from

those bus operations which are within the terms of such an ordinance?

These distinguishing characteristics are two. First: the bus takes on all passengers who offer themselves upon the public streets of the municipality where the license is obtained, either at any point on such streets where such passengers offer themselves, or at fixed stopping places upon such streets, and they discharge passengers upon the streets of such municipality in the same way, and such buses operate upon a fixed schedule over a fixed route. Second: a jitney being a common carrier, is compelled to accept indiscriminately all who apply for transportation.

These are the characteristics which distinguish the jitney buses from buses which do a transportation business other than the jitney business sought to be regulated by the ordinance in question and similar ordinances. This characteristic does not apply to the operation of complainant's buses in Edgewater. No passengers are discharged upon any public street in Edgewater, but all passengers brought to Edgewater are discharged upon private property owned by the complainant, and all passengers taken on the complainant's buses within the limits of Edgewater are taken up upon this private terminal of the complainant. Further than that, as will appear in Point II, the passengers brought into Edgewater from Fort Lee and into Fort Lee from Edgewater, are not received and discharged upon the streets of Fort Lee indiscriminately, but only members of the club, which has been formed for the purpose of chartering the buses for the use of the members of the club, are transported.

Upon what theory then can this business be brought within the terms of the Edgewater ordinance? It is claimed that the carrying of passengers through the public streets in that Bor-

ough constitutes the operation of a bus as defined in the ordinance. The answer to this is found in the interpretation of the word "operate."

In a certain sense the bus operates in the Borough of Edgewater, that is to say, the driver of the bus drives or propels or operates it through the public streets. But this obviously is not the meaning of the word "operate" in the ordinance. That contemplates the operation of the bus in the sense of a jitney within the town. This is its plain meaning. It obviously does not mean that no person shall operate in the sense of driving a motor vehicle known as a bus through the streets of the borough. It would not include an empty bus that was being driven through the borough on a journey to another town. It would not include a bus loaded with passengers traveling through the borough to attend an auction sale of lots, or going to another town or to an amusement park or other resort in another town.

In other words, the ordinance is intended to prohibit the operation of buses in the sense of carrying on the actual business of jitney transportation upon the streets of the borough in distinction from the driving of a bus either empty or loaded through the streets of the borough to a destination outside the Borough.

If it is conceded that a loaded bus may pass through the streets of a town without taking up or discharging passengers in that town without the bus becoming subject to the terms of the ordinance, then it would seem to follow necessarily that if the bus stops within the limits of the town upon private property, it also would not come within the scope of the ordinance.

The characteristic that determines the exemption from the operation of the ordinance is that no jitney business is transacted upon the public places of the borough. The bus is not

“operated,” in the sense of doing jitney business upon any public street in the borough. It is driven through the streets but does not do a jitney business upon the streets. Its business as a jitney in the Borough is done upon its own private property in the borough.

Unless this meaning is given to the word “operate” in this ordinance, the ordinance would apply to all of the illustrations which we have heretofore cited, because in each of those cases the bus is operated within the town. If that meaning is given to the word “operate,” then it ought to be subject to the jitney ordinance of every town through which it is run.

In the case of *Bridgeton v. Zellers*, 124 At., page 520, cited by the Borough counsel, none of the reasoning here put forward is met. The conditions of that case also are different from the conditions of this case. In that case, so far as appears from the opinion, the passengers coming from outside the limits of Bridgeton were discharged upon the public streets of Bridgeton, and passengers were taken on in the public streets of Bridgeton for points outside of Bridgeton. I am informed that an inspection of the record in that case will show that these are the facts in that case. A further distinction is found in the fact that said buses took on passengers indiscriminately outside of Bridgeton for points in Bridgeton, and took on passengers indiscriminately in Bridgeton for points outside of Bridgeton, obviously doing a “jitney” business. In our case the passengers are confined to members of the club and taken subject to the provisions of the contract between the complainant and said club, as will appear in Point II.

## POINT II.

**The buses in question do not come within the ordinance because they do not do a jitney business anywhere.**

The buses in question here do not come within the ordinance. A necessary characteristic of the jitney referred to in the ordinance is that it must take up passengers indiscriminately, that is all who apply for transportation. This characteristic does not apply here. No person other than a member of the Club who shows his club certificate and offers a club ticket, is allowed to get into the bus. No one pays a cash fare and all casual riders upon the streets are refused transportation.

It is charged that the club in this case is a mere subterfuge. The facts as proved do not bear out this contention. The club is a *bona fide* club. The club members are commuters who pay so much a week as a membership fee, and these proceeds are devoted to the expenses of maintaining the club, viz.: printing the membership cards which the members must show to the bus driver as a means of identification, and the tickets which the members must give to the bus drivers, from the sale of which to the club members the Club derives the compensation paid to the complainant-appellee for the use of the buses.

The club authorizes each of its members to solicit membership in the club and to deliver tickets to those applying for membership until the names of such applicants can be passed upon at the next meeting of the club, which meetings are held weekly. It is to the interest of the club to enlarge its membership because the larger the membership the cheaper the charge will eventually

become. Even the members of the club cannot get upon these buses upon the streets of Edgewater, and no one not a member of the club can get upon the bus in Fort Lee, and no fares are collected by the driver from anybody. In what is this plan a subterfuge? When analyzed it is simply an arrangement of commuters among themselves to hire transportation facilities for the use of themselves. There are in Fort Lee a number of moving picture establishments and most of the employees come from New York daily. If these employees were by a voluntary association to purchase a bus and operate it at their own expense for their own use, would it be a subterfuge to avoid the jitney ordinance? If their association took the form of a regularly organized club, would it be any more of a subterfuge? A subterfuge properly defined would be a device by which we accomplish the same results as a regular jitney secures. It is common knowledge that the ordinary jitney carries two general classes of passengers, its regular patrons, and the casual patrons. While the former constitute the greater part of the jitney's business, the latter is an important part of the business, and helps materially to swell the daily income. This business we do not get because we refuse all casual passengers. The Club, therefore, does not do the volume of business which a regular jitney running over the same route would do, and therefore cannot be called a subterfuge, viz.: a device by which the same result (that is the same business), is secured.

This reasoning is strengthened by considering the definition of the word "jitney" or "auto bus" as it has been commonly used in this State.

Chapter 136 of the Laws of 1916, page 283, is entitled "An Act concerning auto buses, com-

monly called jitneys, and their operation in cities." This is substantially the language of the title of the Edgewater ordinance in question here. Section 1 of the act defines the word "auto bus" as follows:

"1. The word 'auto bus' as used herein shall mean and include any automobile or motor bus, commonly called jitney engaged in the business of carrying passengers for hire which is held out, announced or advertised to operate or run, or which is operated or run, over any of the streets or public places in any city of this State, and *indiscriminately* (italics ours) accepts and discharges such persons as may offer themselves for transportation either at the termini or points along the way or route on which it is used or operated or may be running."

The Fort Lee ordinance uses this exact language in its first section and many other ordinances in the state follow this rule. If this is not the definition of an auto bus commonly called "jitney," what is the definition of that vehicle?

This is a very carefully phrased definition, and it amounts simply to the definition of a common carrier. It is not possible to define an auto bus commonly called jitney in any language that will include the operation of the buses in question here, unless it also includes the operation of buses in such cases as we have shown in the illustrations heretofore, which are admittedly not vehicles which are commonly called jitneys. In other words, we are not common carriers and the buses used in the illustrations which we have cited are not common carriers. The characteristic that distinguishes us from the auto bus commonly called jitney, is that such buses are common carriers

and we are not. They serve all who apply and they transact their business, that is to say, take on and discharge passengers, in the public streets, and must accept all who apply for such service. We transport only particular persons, namely members of the club, and take on and discharge them in Edgewater on our own property. This reasoning seems to us conclusive.

“A motorist driving to and from work made a practice of carrying five others for an agreed compensation, but who transported no one else, was not a common carrier and was not required to secure a permit from the Public Service Commission for that purpose under a statute relating only to common carriers.”

*Towers et al. v. Wildason*, 135 Md. 677,  
109 Atl. 471.

“Common carriers of passengers are those who undertake to carry all persons indifferently who apply for passage. To constitute one a common carrier of passengers, it is necessary that he hold himself out to the public as such.”

*Shott v. Weiss*, 105 Atl. 192.

If the complainant had applied for and obtained the license provided for by the ordinance, it would defeat the objects of its charter by the West Fort Lee Workers' Club, because the buses would then become jitneys or public carriers and be compelled to indiscriminately carry any person who applied for transportation.

Section 15 of the ordinance provides a penalty of a fine of not exceeding \$200 or imprisonment of not more than 60 days in the county jail, for violation of any of its provisions. While there are numerous defects in said ordinance which need not be discussed here, it is submitted that it is

an ordinance providing for a penalty and must therefore be construed strictly and any doubt as to the complainant coming within its provisions, should be resolved in its favor by the Court.

The language used by Mr. Justice Parker in the *Bridgeton* case, that the contention made in the argument by defendants that no business was done in Bridgeton by the defendants was frivolous, does not mean that the Justice considered that the contention would be frivolous if in accord with the facts, but only that in light of the proof in the case it was a frivolous claim. This remark does not apply to this case, because the facts are different. In that case, as an inspection of the record will show, the proof was clear that defendants discharged and took on passengers in the streets of Bridgeton, indiscriminately. In this case the facts admitted by stipulation are that no passengers whatever are either taken on or discharged in the streets of Edgewater, and only a limited class of passengers are taken on and discharged in the streets of Fort Lee.

***For these reasons, the injunction granted by the Court of Chancery should be sustained.***

Respectfully submitted,

GEORGE L. RECORD,  
*Solicitor of Complainant-Appellee.*

