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THE HISTORY OF THE
CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOHN H. COLEMAN

VOLUME I
FROM THE FIRST SETTLEMENT
TO THE YEAR 1780

BOSTON
PUBLISHED BY
JOHN H. COLEMAN

1850

THE HISTORY OF THE
CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOHN H. COLEMAN

Notice and Grounds of Appeal of Prosecutors

NEW JERSEY SUPREME COURT

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE INHABITANTS OF THE
TOWN OF PHILLIPSBURG,
DEFENDANTS.

ON
CERTIORARI
ON APPEAL
TO THE NEW
JERSEY COURT
OF ERRORS
AND APPEALS.
NOTICE AND
GROUNDS OF
APPEAL OF
PROSECUTOR. 10

To Edward L. Katzenbach, Attorney-General, and Syl-
vester C. Smith, Jr., Attorney for the Town of
Phillipsburg,

TAKE NOTICE, that the prosecutor appeals from the
judgment entered in this cause affirming the taxation of
gross receipts for the year 1921 to the New Jersey Court
of Errors and Appeals, on the following grounds:—

1. That the Phillipsburg Transit Company should not
be required to include in its return of gross receipts for 20
the year 1921, cash fares collected by the Easton Transit
Company from passengers riding to and from Center
Square in Easton, Pa., to and from the inter-state line
between New Jersey and Pennsylvania.

2. That the Supreme Court affirmed the assessment
of the State Board of Taxes and Assessments against the
Phillipsburg Transit Company, compelling said Phillips-
burg Transit Company to include in its gross receipts
for 1921 cash fares taken in by the Easton Transit Com-
pany within its different zones in Easton, Pennsylvania, 30
from passengers destined for some point in New Jersey,
whereas it should have set said assessment aside.

3. That said assessment is in divers other respects irregular and illegal.

W. H. WALTERS,
Attorney for Prosecutor.

ENDORSED:

Service of the within notice and grounds of appeal is hereby acknowledged this 27th day of May, 1924.

EDWARD L. KATZENBACH,
Attorney-General.

10

S. C. SMITH, JR.,
Attorney for Town of Phillipsburg, N. J.

WRIT

New Jersey Supreme Court

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE INHABITANTS OF THE
TOWN OF PHILLIPSBURG,
DEFENDANTS.

WRIT OF
CERTIORARI

10

NEW JERSEY, To WIT:

State of New Jersey to the State Board of Taxes and
Assessments of the State of New Jersey:

(SEAL) We being willing, for certain reasons, to be
certified of an assessment of franchise taxes
made against Phillipsburg Transit Company,
a corporation incorporated under the laws of
the State of New Jersey, for the year Nine-
teen Hundred and Twenty One, by the State
Board of Taxes and Assessments of the State 20

of New Jersey. We do command you, that the said as-
sessment of franchise taxes so made by the State Board
of Taxes and Assessments of the State of New Jersey,
against the Phillipsburg Transit Company aforesaid, for
the year Nineteen Hundred and Twenty ~~Three~~^{One}, together
with all things touching and concerning same, as fully
and entirely as before you they remain, to our Justices
of our Supreme Court of Judicature at Trenton, on the
fourth day of June, next, you certify and send, together 30
with this writ, that therein may be done what of right
and according to the laws of this State should be done.

WITNESS, William S. Gommere, Esquire, Chief Justice
of our Supreme Court at Trenton, this 17th day of May,
A. D. Nineteen Hundred and Twenty-Three.

EDWARD J. KELLEHER,

Clerk.

W. H. WALTERS,

Att'y. for Prosecutor.

I allow this writ. Let it be sealed. May 17, 1923.

THOMAS W. TRENCHARD, J. S. C.

New Jersey Supreme Court

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE INHABITANTS OF THE
TOWN OF PHILLIPSBURG,
DEFENDANTS.

ON CERTIORARI.
ORDER TO TAKE
DEPOSITIONS.

10 Application being made for leave to take depositions,
to be used in the argument of the above stated cause;

It was ordered that the said prosecutor and defendants
have leave to take depositions, to be used in the said
argument.

Entered May 17, 1923.

On motion of

W. H. WALTERS, Attorney for Prosecutor.

Dated May 17th, 1923.

Let the above rule be entered on the minutes.

20

THOMAS W. TRENCHARD,
J. S. C.

RETURN

New Jersey Supreme Court

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE INHABITANTS OF THE
TOWN OF PHILLIPSBURG,
DEFENDANTS.

ON CERTIORARI.

10

The State Board of Taxes and Assessment doth herewith send to the Supreme Court of the State of New Jersey the petition, memoranda and proceedings in the matter of the appeal of the Phillipsburg Transit Company, from the decision of the State Board of Taxes and Assessment, with reference to the proper form of return to be made to the State Board of Taxes and Assessment, for the year ending December 31, 1921, under the provisions of Chapter 290, Laws of 1906 as amended.

STATE BOARD OF TAXES AND
ASSESSMENT.

20

By

Secretary.

Phillipsburg, N. J., Feb. 17, 1922.

State Board of Taxes and Assessments,
State House,
Trenton, N. J.
Gentlemen:

The Inhabitants of the Town of Phillipsburg, a municipal corporation, desire to call your attention to the following important facts in the matter of the return of

30

the Phillipsburg Transit Company for the year 1921 required by the Franchise Tax Law.

STATEMENT

The Phillipsburg Transit Company operates under a special charter granted in 1867 to the Phillipsburg Horse Car Railway Company. The name was changed by permission in 1916 to Phillipsburg Transit Company. For some years the Phillipsburg Company operated a street railway in the Town of Phillipsburg, Township of Pohatcong and the Borough of Alpha and also across the interstate bridge Northampton Street to Center Square, Easton, Pa. The total distance in Easton was two blocks. At Center Square, Easton, Pa., they started to return to Phillipsburg and New Jersey. The tracks in the City of Easton, Pa., and the overhead lines were owned by the Easton Transit Company and for the privilege of using those tracks, the Phillipsburg Company paid the Easton Company a rental. In 1919 a change was made and a new contract entered into between the companies whereby all the fares collected on the Pennsylvania side of the bridge were taken by the Easton Company and all fares taken in Phillipsburg were taken by the Phillipsburg Company. This division of fares is indicated by the fact that the reports made by the Phillipsburg Company for the year 1918 showed gross receipts \$146,414.88, while the report for 1919 showed only \$116,727.74.

In a hearing for an increase in rates before the Board of Utility Commissioners, the testimony showed the actual arrangement between the Phillipsburg Company and the Easton Company is exactly the same as it was during the years when the Phillipsburg Company operated to Center Square. The same cars, the same employees and the same terminal point are used and the same service rendered, but by a mere bookkeeping arrangement they have undertaken to pass free from Pennsylvania to New Jersey all the passengers who board these cars at Center Square, Easton, Pa., without any charge

for hauling them an average of fifteen times the distance in the State of New Jersey. (Pages 4 and 5, transcript of testimony in the hearing before the Board of Public Utilities Commission of the Phillipsburg Transit Co., 1920.)

The bookkeeping arrangement was entered into by a contract between the Phillipsburg Company and the Easton Company bearing date of December 22, 1919, and made by its terms retroactive to January 1, 1919. The Inhabitants of the Town of Phillipsburg contend that this contract is void as against public policy and void from its very terms, and that actually the same arrangement as existed before 1919 exists today. 10

A further review of the testimony and exhibits in the hearing before the Board of Public Utility Commissioners shows no transfers are given by the Phillipsburg Company at the interstate line or middle of the bridge, but that the fare paid in Phillipsburg carries through to the first transfer point which is Center Square, Easton, Pa., (See transcript of testimony pages 2 to 6, 1920.) It is illegal to grant free passes in interstate commerce without the consent of the Interstate Commerce Commission, and transfer granted at the interstate line would practically amount to that. 20

Exhibit P-20, submitted before the Board of Public Utility Commissioners, shows that in addition to carrying the cash fares paid free from Center Square, Easton, Pa., to the interstate line, the Phillipsburg Company carried free 436,444 transfer passengers who at Center Square, Easton, Pa., handed the conductor transfers from the Easton Transit Company's other lines, and the same exhibit indicates than an equal numebr of passengers used transfers from the Phillipsburg Company to ride on the Easton Lines of the Easton Company, so that the transfers issued by the Phillipsburg Company to be good from Center Square, Easton, Pa., equal in number the transfers honored by the Phillipsburg Company from passengers and handed to the conductor at Center Square, and therefore, this is not a transfer arrangement. 30

The Inhabitants of the Town of Phillipsburg further 40

call the attention of the State Board of Taxes and Assessments, that the opinion of the Board of Public Utilities Commissioners in granting the increase as an item for additional franchise and gross receipt taxes in New Jersey, amounting to \$6,944.48 as shown on page 8 of the Report of the Board of Public Utility Commissioners, dated August 26, 1921, and this is based upon the theory that the contract between the Phillipsburg Company and the Easton Company was injurious, inequitable and contrary to the public policy and that on the fair contract submitted by the Town of Phillipsburg these additional taxes would have to be paid.

The Inhabitants of the Town of Phillipsburg feel that this is an evasion of the decision of the Supreme Court as laid down in the case of the *Phillipsburg R. R. Co. vs. Board of Assessors*, 82 N. J. L. p. 49. L

The Inhabitants of the Town of Phillipsburg complain as follows:

1. That this bookkeeping arrangement, a new agreement, is a method of evading payment of franchise tax to the State of New Jersey, which is justly and legally due, by decreasing the revenue of the Phillipsburg Company.

2. Chapter 290, Laws of 1906 as amended, intends that the tax shall be levied upon the value of the franchise in Phillipsburg and can only be determined by a proper return of the gross income of the lines in both states.

3. The gross income of The Phillipsburg Transit Company actually consists of a portion of the income collected in Pennsylvania from passengers going into New Jersey and that this should be allocated and the tax paid on that return.

Therefore, the inhabitants of the Town of Phillipsburg petition the Board of Taxes and Assessments to investigate the matter of the return of the Phillipsburg Transit Company for the year 1921, and for such other years as the return may have been erroneous false.

Yours very truly,

SYLVESTER C. SMITH, JR.,

Town Attorney, Phillipsburg.

IN MATTER OF FRANCHISE TAX.

BEFORE STATE BOARD OF TAXES AND ASSESSMENTS IN RE INHABITANTS OF THE TOWN OF PHILLIPSBURG VERSUS PHILLIPSBURG TRANSIT COMPANY.	}	ANSWER OF PHILLIPSBURG TRANSIT CO.
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The Phillipsburg Transit Company, answering the petition of the The Inhabitants of the Town of Phillipsburg, say:—

1. It is true the Phillipsburg Transit Company operates under a special charter granted in 1867, granted to Phillipsburg Horse Car Railroad Company, and afterwards, to wit 1916, by proper proceedings took its present corporate name. 10

2. It is true that up to 1919 this company operated its cars in the Town of Phillipsburg, Pohatcong Township, Borough of Alpha, and outside of the State of New Jersey to Center Square in the City of Easton, Pennsylvania,—
But—

This Company shows that this company had no authority either under its charter or by any statute in New Jersey to operate in an adjoining State; that such operation of its business in the State of Pennsylvania was illegal and this company's attention was directed to the illegality of doing business in that State, for which reason this company cancelled and rendered null all its former agreements with the Easton Transit Company, and a new contract, the one now in force, was entered into in 1919 between the Easton Transit Company and the Phillipsburg Transit Company, because those who had recently been made responsible for the conduct of the affairs of the two companies believed it necessary to rectify the illegal act of Phillipsburg Transit Company in operating in another State, and at the same time retain, so far as the public was concerned, all the advantages of the interstate service. 20 30

It would have been possible for the Phillipsburg Company to simply run its cars to the State line or the nearest

convenient point in New Jersey and require all passengers destined for Easton to transfer to the Easton Transit Company cars; such an arrangement would have simplified the situation so far as the companies were concerned, but would have not taken into consideration the convenience of the traveling public. In order to avoid the inconvenience of a transfer at the State line, the arrangement provides for through service, each company collecting and retaining the fares paid by passengers
 10 originating in its territory. This in effect provides an equal division of the revenue. Investigation shows that the traffic in each direction is the same; that the transfers accepted by the Easton Transit Company from the Phillipsburg line equals the transfers issued by the Easton Transit Company and accepted by the Phillipsburg Transit Company.

Moreover, the agreement now in force provides "that the Easton Company shall operate cars of Phillipsburg Company, delivered to it at the State line between the
 20 States of Pennsylvania and New Jersey, on said Easton-Phillipsburg Bridge, in both directions to and from Center Square, Easton, and such other points as may be mutually agreed upon, under such schedule as the parties may from time to time agree upon, and Easton Company shall supply the necessary power and pay all the costs and expenses of such operation, including the entire rentals which may be exacted for the use of said bridge."

The Easton Company pays for the rentals of the interstate bridge, supplies a double track system from the
 30 west end of the bridge to Center Square in Easton, Pa., all overhead wires and power, and pays all the expenses incurred in operating the Phillipsburg Company's cars from the inter-state line to Center Square in Easton, Pa. The present agreement makes each of the companies operate and pay all the expenses of operation in its own territory, and a division of the revenue thereof, one half to each—is more liberal to the Phillipsburg Company than to the Easton Company. The plan for each company to collect the fares originating in its territory was
 40 designed merely to simplify accounts, as the movement

in each direction was found to be equal. The cars of the two companies are used indiscriminately in rendering the inter-state service, and it could be urged that the Easton Company is furnishing the service in New Jersey with the same degree of plausibility as that the Phillipsburg Company is operating on the Pennsylvania side. Neither contention is sound. Each company renders the service, bears the cost of doing it, and pays taxes on its gross receipts in its own State, and cannot be required to do more.

The reference in the petition of the Town to gross receipts rendered in 1918 and in 1919, represents the difference between an illegal contract and one which is based upon the laws of the two States. From the above recitation of facts, it will be noticed that the second paragraph of the Town's petition is not borne out by the facts, and is no ground for its allegation in the third paragraph.

Referring to the fourth paragraph of the Town's petition concerning transfers, and which the Town's petition refers to as "free passes" in inter-state commerce, the counsel for the Town in preparing the petition has misinterpreted the provisions of the contract. There is no such thing as "free passes" involved. Under the present seven cent fare, each company gets three and one-half cents for its proportion of the inter-state haul.

The ordinance granting permission to the Phillipsburg Horse Car Railroad Company to introduce electric power for propelling its cars, among other things provides:—

"Fourth—That the said company shall establish and maintain a system of transfers for a single fare on all lines and branches now or hereafter to be operated by them in the town, such fare not to exceed the sum of five cents; and the patrons of the Phillipsburg Horse Car Rail Road Company shall have all the privileges of transfer tickets now or hereafter allowed to the patrons of the Easton Transit Company, in the City of Easton."

In matter of reference to Exhibit P-20, the Phillipsburg Transit Company is unaware of the significance of the allusion thereto. The allegation in the sixth paragraph of the Town's petition is not borne out by anything in

the records before the Public Utility Commission. By referring to the report, it will be seen that the Board set up the table referred to merely to show the errors which the counsel for the Town had fallen into in attempting to show that the Phillipsburg Transit Company was making a profit on its business, even on the erroneous theory that it should operate to Centre Square in Easton, which it had no legal right to do. As the Board said at the end of that discussion the Easton Company might with equal justice assume that it should receive all the revenue on inter-state business and merely pay the Phillipsburg Company a mileage rate for the portion of the service rendered in New Jersey. This shows the fallacy of the present contention of the attorney for the Town. It would certainly be just as fair for the Easton Company to make this claim as to have the Town of Phillipsburg to insist that the Phillipsburg Transit Company render service in Pennsylvania and receive the revenue therefore, although it has no right to do so, and the facts do not back up the allegation made.

Under the present set-up, there is no evasion of the decision of the New Jersey Supreme Court in *Phillipsburg R. R. Co. v. Board of Assessors*, 82 N. J. L., Page 49, as the Town Attorney states, and no evasion of the letter or spirit of the tax laws.

The New Jersey Franchise Tax Law requires a street railway company to pay as an excise tax on its franchise a certain percentage of the proportion of its gross receipts which the length of its line upon highways in the state bears to the whole length of its lines. The Phillipsburg Company owns no line outside of the State, has no legal right to operate except in New Jersey and, in fact, does not operate outside the State. All of its revenues from either inter-state or intra-state service are now properly reported and subjected to taxation in New Jersey. Its revenue from inter-state business results from a fair division of the total received by the two companies engaged in this service. There is no basis for the contention that the revenue received and earned by a corporation operating in Pennsylvania on which gross receipts

are paid in that State should be turned over to the Phillipsburg Company in order that it may be subjected to assessment of the New Jersey franchise tax and yet this is, in effect, what the Town Attorney is asking. Should his view be supported, it will, of course, be necessary to discontinue through service and subject the riding public to the inconvenience of changing cars at or near the State line.

SUMMARY

1. The Phillipsburg Transit Company does not operate 10
its cars in the City of Easton, Pa., and it is illegal for it to do so.

2. The Phillipsburg Transit Company operates its cars to the dividing line between the States of New Jersey and Pennsylvania, at which point, for public convenience, instead of the passengers leaving the Phillipsburg Company cars and getting on the Easton Company cars, the latter company takes the cars and the passengers and delivers them to Center Square, Easton, Pa.

3. The Phillipsburg Company owns no tracks or overhead wires or other property in the City of Easton, except such as may be stored there for its convenience. 20

4. The Easton Company pays the rental for the tracks on the bridge between the States, and owns a double track system between the said bridge and Center Square in Easton, and also furnishes the overhead lines and the power contained in those lines, and pays all expenses of the Phillipsburg Company from the inter-state line to destination in Easton.

5. The Easton Transit Company, in the rush hours 30
of industries in Phillipsburg, furnishes cars to carry passengers from the Phillipsburg industries to Easton. The Phillipsburg Company gets the fares in same manner as the Easton Company takes the fares at Center Square in Easton.

The reference by The Inhabitants of the Town of Phillipsburg to additional franchise tax of \$6,944.48 referred to in the report of the Utility Board was mentioned merely to show the erroneous figuring of the counsel for the Town.

The Phillipsburg Transit Company maintains that the State Board of Taxes and Assessments is without jurisdiction to determine the validity of the contract made between the two companies in 1919, or at any other time; that the efficacy, the force, and interpretation of any of the contracts can only be interpreted by the Board of Public Utility Commissioners of the State of New Jersey.

Therefore the petition should be dismissed.

10

W. H. WALTERS,
Attorney for Phillipsburg Transit Company.

STATE BOARD OF TAXES AND ASSESSMENTS

THE INHABITANTS OF THE TOWN OF

PHILLIPSBURG

VS.

PHILLIPSBURG TRANSIT COMPANY

MEMORANDUM

STATEMENT

The Phillipsburg Transit Company operates an electric railway under a special charter granted to Phillipsburg Horse Car Railroad Company, which company changed its name in 1916 to Phillipsburg Transit Company, in the Borough of Alpha, Pohatcong Township and the Town of Phillipsburg, in Warren County. There are two lines or divisions: The North Main Street line runs from a terminus near the Ingersoll-Rand plant at the outskirts of Phillipsburg to Union Square, a distance of two and three-quarter ($2\frac{3}{4}$) miles; and the cars on this division run thence across the interstate bridge to Center Square, Easton, Pennsylvania, a distance of one-quarter ($\frac{1}{4}$) mile. The South Main line runs from the Borough of Alpha to Union Square, a distance of three and three-quarter ($3\frac{3}{4}$) miles and thence across the Interstate bridge to Centre Square, Easton, Pennsylvania. The tracks on the bridge are owned by the Interstate Bridge Commission. The tracks in Pennsylvania to Centre Square are two city blocks in length and are owned by the Easton Transit Company. The Easton Transit Company owns the entire stock of the Phillipsburg Transit Company. (*Testimony p-4.*)

The Phillipsburg Transit Company owns no franchise of any kind in the State of Pennsylvania.

The cars of the Phillipsburg Company run to Centre Square, Easton, Pennsylvania, where the conductor and motormen change platforms and return to Phillipsburg. This method of operation is the same as was carried on in 1911. Cash fare paid in New Jersey carries one to Centre Square, Easton, Pennsylvania, the first trans-

fer point. Passengers of the Phillipsburg Transit Company boarding the car in New Jersey are by ordinance entitled to transfer to any of four or five lines of the Easton Transit Company running from Centre Square, Easton, Pennsylvania, and vice versa the Phillipsburg Company by ordinance and agreement is bound to honor and carry in New Jersey over its lines the passengers of the Easton Transit Company transferred from any points in the first fare zone on any of these lines beyond Center Square, Easton. The transfers are issued at any point between the New Jersey Termini and Centre Square, Easton, and are good on lines from Centre Square as the *point of transfer*.

As to the method of bookkeeping in 1911 and before, until 1919, Phillipsburg Company reported *all of the cash collected between Centre Square and the New Jersey Termini as gross receipts*.

In December, 1919, the Easton and Phillipsburg Companies entered into a new operating agreement (Ex. P-1) whereby the Easton Company kept all the cash fares collected on the Pennsylvania side of the river, and made no report of the same to the Board under Chapter 290, Laws of 1906. The practical result was that the gross receipts dropped from one hundred and forty-six thousand and three hundred sixty-seven dollars seventy-one cents (\$146,367-71) to One hundred sixteen thousand seven Hundred twenty-seven dollars seventy-four cents (\$116,727.74), although the actual number of passengers carried in New Jersey over the lines operated under the New Jersey Franchises was greater than the year before.

The Inhabitants of the Town of Phillipsburg contend:

1. *That the purpose of the law 1906 was to fix a value of the franchise for the purpose of taxation.*

2. *That the value of a franchise to occupy the public streets rests largely upon the extent to which such franchise is used.*

3. *The gross receipts of all passengers carried on lines operating under the franchise is the index to the user under Chapter 290, P. L. 1906 as amended.*

4. *The Phillipsburg Transit has not returned in its*

report for 1921 the gross receipts of *all passengers carried* on lines operating under the franchise; but only of interstate passengers carried from New Jersey.

5. That the law uses the words "*its whole line*" and that this means the first point of *actual* transfer within or without the state.

6. The record shows the point of actual transfer is Centre Square, Easton, Pennsylvania. (Testimony P.36).

7. The record shows the agreement, whereby each 10 company receives three and one-half ($3\frac{1}{2}$) cents for each interstate passenger carried, is a mere bookkeeping arrangement, whereby the *intrastate* passenger pays the Phillipsburg Transit Company seven (.07) cents; and the interstate passenger three and one-half ($.03\frac{1}{2}$) cents. (Testimony p. 11).

8. That the State Board of Taxes should require a return based on the gross receipts of passengers carried anywhere in New Jersey; No matter where paid, nor to whom credited; if collected anywhere between Centre 20 Square Easton and the New Jersey Termini. (Except transfer passengers, which the Town will concede balance).

9. Specifically, the Town of Phillipsburg contends:

(a) That the return of the Phillipsburg Transit Company for 1921:—should set forth gross receipt of One Hundred Sixty Thousand Eight Hundred Seventy-seven Dollars and Seventy-four Cents (\$160,877.74), representing the cash passengers Eastbound from Centre Square to Phillipsburg, cash passengers Westbound from 30 Phillipsburg to Centre Square, and intrastate passengers.

(b) The whole line in Phillipsburg should be set forth and in addition thereto accurate information as to the length of the line in Pennsylvania from the State line to Centre Square.

(c) The fares should be proportioned according to the length of line of public streets in New Jersey to *the whole line*.

POINT 1.

THE SUPREME COURT IN 1911 DECIDED THAT SUCH A RETURN SHOULD BE MADE AND THAT DECISION STILL HOLDS GOOD.

The decision in *Phillipsburg Railroad Company vs. State Board of Assessors* in 82 N. J. L., 49, was on the indential question, and a reading of that opinion will show the actual conditions are identically the same. 82 N. J. L. 51 Mr. Patterson, who was connected with the
10 Phillipsburg Company in 1911, testified that the actual operation and use is exactly the same with the exception of the gauge. (Testimony P. 3 and 4.)

But the company, since 1911, made one change by which its bookkeeping showed less gross receipts. On December 23, 1919, the two companies executed a new operating agreement (Ex. P-1) which by its terms became retroactive to January 1, 1919. Prior to that the Phillipsburg Company operated its cars from the end of the bridge to Centre Square, Easton on a track and
20 line rental basis. (Ex. p-2). By the 1919 agreement this was changed. The reason for the change is said to have been that the Phillipsburg Company was advised it had no right to operate in Pennsylvania and that was first called to the company's attention in 1919 (Testimony P. 20) *But the Supreme Court in 1911 in its opinion pointed out that very fact. 82 N. J. L. 50* and Mr. Patterson admits the Phillipsburg Company carried on its business for at least twenty (20) years by a rental agreement. Naturally where the practical result of the
30 1919 contract shows a decrease from gross receipts of 1918 of One hundred fifty-seven thousand six hundred seventy-five dollars eighty cents (\$157,675.80) and a Tax of seven thousand three hundred twenty (\$7,320) dollars to one hundred twenty-one thousand one hundred fourteen dollars sixty-three cents (\$121,114.63 and five thousand eight hundred thirty-six \$5,836) dollars for 1919; and the further fact that the contract was retroactive to January 1, 1919, almost a whole year; there are justified suspicions that the real purpose of the new

agreement was to evade the franchise tax. No one can question the fact that its effect was to reduce its franchise tax. According to Mr. Patterson the agreement is a mere bookkeeping arrangement "just for the convenience of dividing those two interstate fares equally between the two companies, that is all." (Testimony p. 18) As to the suggestion that the Pennsylvania Company gets three and one-half (.31½c) cents for each interstate passenger, then the intrastate passengers riding just as far in New Jersey pay seven (.07c) cents and 10 interstate passengers pay only three and one-half (31½c) cents. The portion of the whole line in Pennsylvania is one-quarter (¼) mile long, in New Jersey is two and three-quarters (2¾) miles long. Such an allocation is unfair on its face and not an index of the value of the franchise of the company in New Jersey which is the sole purpose of gross receipts in levying the tax as stated in the Supreme Court opinion. So that to state it tersely, we have the Phillipsburg Transit Company operating its cars in identically the same manner as in 1911, 20 but reporting on the strength of a bookkeeping agreement only the cash fares received in New Jersey as gross receipts when the Supreme Court held that its franchise tax should be determined upon its gross receipts on its whole line in and out of the State.

POINT II

THE VALUE OF THE FRANCHISE TO OCCUPY THE PUBLIC STREETS RESTS LARGELY UPON THE EXTENT TO WHICH SUCH FRANCHISE IS USED; AND THE PHILLIPSBURG COMPANY 30 SHOULD REPORT THE GROSS RECEIPTS OF INTERSTATE PASSENGERS FROM CENTRE SQUARE SO THAT THE VALUE OF THE FRANCHISE MAY BE DETERMINED FOR TAX PURPOSES:

All of the passengers carried in New Jersey who pay cash from Centre Square, which is not included in the report, ride one-quarter (¼) mile to the Interstate bridge line and then they may ride two and three-quarter

- ($2\frac{3}{4}$) or three and three-quarter ($3\frac{3}{4}$) miles in New Jersey over the tracks under the franchise on which the value is to be placed. By this 1919 agreement, under the pretext of which the company fails to report this revenue collected on its whole line, Mr. Patterson says that the Easton Company delivers the car to the interstate bridge line and there (it would seem as if by magic or "Aladdin's Lamp") the Easton Transit Company's motorman and conductor and car in operation suddenly become the
- 10 Phillipsburg Transit Company's car, conductor and motorman and the Phillipsburg Company operates the car. Now the passengers who happen to be on the car at that crucial moment suddenly become *free passengers of the Phillipsburg Company* for whom the Phillipsburg company receives no revenue nor return upon its books. Likewise the Phillipsburg Company delivers the car, at a rate of speed of twelve (12) or fifteen (15) miles per hour, at the interstate bridge to the Easton Company and in a fraction of a second the Phillipsburg Company's conductor, motorman and car become the property of the Easton Company and the passengers of the Phillipsburg Company become passengers of the Easton Company to ride free over its lines.
- 20

- Such an arrangement is mere fiction. The cars are operated between Centre Square and the New Jersey termini as one continuous line. Practically *none of the passengers board the car between Centre Square and the Interstate line to ride intrastate in Pennsylvania*, and practically *all of the passengers ride in New Jersey at*
- 30 *some time.*

POINT III

THE WORDS "WHOLE LINE" USED IN THE STATUTES MEAN—THE WHOLE LINE TO THE FIRST POINT OF ACTUAL TRANSFER WITHOUT THE STATE, BOTH IN LAW AND PARTICULARLY UNDER THE EVIDENCE IN THIS CASE.

1. The evidence shows that the Phillipsburg Company's lines are used in connection with the line from the inter-

state line to Centre Square, Easton, as a unit. No transfers are actually given at the interstate line. Mr. Patterson admits the quarter of a mile of tracks to Centre Square, Easton, is really a part of the Phillipsburg Company's line. (Testimony p. 38-39). This is borne out by the important fact that almost twice as many passengers (783,682) board the cars at Centre Square, Easton, and travel the two blocks to the interstate line and thence in New Jersey than transfer to the Phillipsburg line at Center Square from other lines (477,820). Would 10 any one of these passengers get on the car at Centre Square and ride a distance of two city blocks to the State line for seven cents, the cash fare which is collected by the Easton Company, unless these tracks were used in connection and as part of the whole line over which these particular cars run? The answer is obviously 'no'. Compare the number of intrastate passengers (932,990) with the interstate passengers and one readily sees that the big business of this company consists of carrying passengers on its tracks in New Jersey 20 and to Centre Square, Easton, and no further. The town does not contend that this company should make return on the gross receipts of passengers that travel beyond that point on transfers or the gross receipts from those who travel in New Jersey, on transfers given on lines beyond Centre Square.

POINT IV

THE WORDS "GROSS RECEIPTS" MEAN CASH RECEIVED FROM PASSENGERS CARRIED ON LINE NO MATTER WHERE PAID. 30

Mr. Patterson says in his testimony that the actual result of the agreement is the receipt by the Phillipsburg Company of three and one-half cents for each interstate passenger carried. (Testimony p. 10). Isn't this the net amount of money received by the Phillipsburg Company? The gross receipt for carrying any one passenger between any two points in New Jersey is seven cents. Is it logical that the Phillipsburg Company can

make a gross receipt of three and one-half cents for carrying a passenger between the interstate line and any other point in New Jersey. The term "gross receipts" has been held to mean "receipts without any deduction" *N. J. Steamboat Co. vs. Pleasanton*, 8 Baltch. 259, 260.

10 The Easton Company owns and controls the entire stock of the Phillipsburg Company. It is the easiest thing in the world for it to make a contract which will make the bookkeeping advantageous to the Easton Com-
pany or Phillipsburg Company as may seem proper. We contend that the entire record shows that the attempt to credit the Phillipsburg Company with three and one-half cents for each interstate passenger carried on the lines in New Jersey, (pages 11, 12) shows that the division is a division of the net receipts for the operation of the whole line, so far as interstate traffic is concerned and not the "gross receipts."

20 Further attention is called to the ordinance submitted, which is only one of a number of like tenor. This franchise contract shows that the Easton Company, by its agreement with the Phillipsburg Company, is legally bound to honor and handle these interstate passengers traveling to Centre Square, Easton. It is no voluntary service, but required by the franchise.

30 What is the effect of the interstate traffic on the value of the New Jersey franchises? The intrastate passengers number in 1921 932,990, while the interstate passengers (omitting the transfer passengers number 1,577,364, and certainly the latter materially affect the value of the franchises which it is proposed to tax. To hold that the gross receipts of these passengers can be divided arbitrarily in half would be unjust. They are to be considered as gross before division, and the apportionment made according to the length of the lines in the public streets in New Jersey bears to the whole line, as we have heretofore defined it.

40 In conclusion, the Town of Phillipsburg insists that the return made to Board for the gross receipts of the year 1921, is inaccurate and incomplete, and that the Board should order a new return, in which the cash fares

collected from interstate passengers, between Centre Square, Easton and the interstate line, are included.

SYLVESTER C. SMITH, JR.,
Attorney for the Inhabitants of the
Town of Phillipsburg.

The Phillipsburg Transit Company renew its request for the dismissal of this cause, for the following reasons:

1. The statutes of New Jersey have reposed in the Board of Public Utility Commissioners of the State of New Jersey the following:—Sup. Com. Stat., Section 15, page 1277. “The Board shall have general supervision and regulation of, jurisdiction and control over all public utilities, and also over their property, property rights, equipment, facilities and franchises, so far as may be
10 necessary for the purpose of carrying out the provisions of this act,” etc.

2. That the Phillipsburg Transit Company, before said Board of Public Utility Commissioners, on its application for increase of rates, produced the agreement now attacked by the Town of Phillipsburg; that this agreement was the subject of attack by the Town in the proceedings for increase of rates; that voluminous and expert testimony was taken in that case and the records show more complete testimony than taken in this cause;
20 in that action the said Board of Public Utility Commissioners did not disapprove of this agreement, although requested by the Town to so do.

3. That if the Town of Phillipsburg was, in the proceedings to increase rates, dissatisfied at the refusal of the Board of Public Utility Commissioners to disapprove of this agreement, they had the right under the statutes to certiorari that cause and the records to the Supreme Court, and there have determined its validity, which they have failed to do.

30 4. That the said Phillipsburg Transit Company should not be compelled to twice produce evidence before two different commissions in substantially the same cause, namely, the attack upon this agreement.

5. That the Town, in the proceedings taken before the Board of Public Utility Commissioners on the increase

of rates, acquiesced in the validity of the agreement by abiding by the decision of the Board of Public Utility Commissioners.

W. H. WALTERS,
Attorney for Phillipsburg Transit Company.

STREET RAILWAY COMPANIES

Report of the Phillipsburg Transit Co. John A. Bachman, President; Chas. N. Wagner, Treasurer; Chas. N. Wagner, Secretary.

Date of Incorporation—April 9, 1867.

Principal Office in New Jersey—

City or Town—Phillipsburg, N. J.

Street and Number—Penna. Railroad Co. Building.

Name of Agent in Charge—W. H. Walters, Esq.

- 10 The gross receipts of the Association or Corporation making this report, for business done over its **whole line**, for the year ending December 31, 1921, are \$139,467.32

The length of **the whole line** is 7.06 miles.

The length of its lines along any street, highway, road, lane, or any other public place in the State of New Jersey is 6.82 miles.

The gross receipts of said Association or Corporation in New Jersey, for the year ending December 31, 1921, taxable under the provisions of aforesaid act,

- 20 are\$134,726.22

The following statement shows location and length of lines in, upon or under any public street, road, highway, lane or other public place in the State of New Jersey:

COUNTY	MUNICIPALITY	MILES OF TRACK
Warren	Phillipsburg, N. J.	5.48
	Township of Pohatcong, N. J., ..	.637
	Borough of Alpha, N. J.	.891
	Easton-Delaware Bridge	.052

30

7.06

STATE OF PENNSYLVANIA, }
LEHIGH COUNTY, } ss.

CHAS. N. WAGNER being duly sworn according to law, on his oath says that he is Treasurer of the Phillipsburg Transit Company, and that the foregoing report and

statements are correct and true, to the best of his knowledge and belief.

(Signed)— CHAS. N. WAGNER.

Address—14th and Gordon Sts., Allentown, Pa.

Sworn and subscribed before me this 23rd day of January, A. D. 1922.

E. F. RITTER, Notary Public.

Filed April 17, 1923.

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT.

IN THE MATTER OF THE COMPLAINT FILED BY THE INHABITANTS OF THE TOWN OF PHILLIPSBURG AGAINST THE RETURN OF GROSS RECEIPTS FOR THE YEAR 1921 MADE BY THE PHILLIPSBURG TRANSIT COMPANY, UNDER THE PROVISIONS OF CHAP- 10 TER 290, LAWS OF 1906.	}	MEMORADUM
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For the petitioner, Sylvester C. Smith, Jr.

For the respondent, W. H. Walters.

BY MR. JESS: The Inhabitants of the Town of Phillipsburg complain that the return of gross receipts made by the Phillipsburg Transit Company under the Franchise Tax Act of 1906 (Chapter 290, Laws of 1906) is inaccurate in that it fails to show all the gross receipts of the Company within the meaning of the Act.

The facts upon which the dispute arises are as follows:

- 20 The respondent corporation operates an electric railway under a special charter granted to Phillipsburg Horse Car Railroad Company. This company changed its name in 1916 to Phillipsburg Transit Company. It operates in the Town of Phillipsburg, Pohatcong Township and the Borough of Alpha, in Warren County. The system consists of the North Main Street Line, running from a terminus near the Ingersoll Rand plant on the outskirts of Phillipsburg to Union Square, a distance of about two and three-
- 30 quarter miles, ($2\frac{3}{4}$), and the South Main Street line which runs from the Borough of Alpha to Union Square, a distance of about $3\frac{3}{4}$ miles. The cars on both these divisions run from Union Square, in Phillipsburg, across the Delaware River bridge to Center Square, in Easton, Pa. The distance from the center of the bridge, or the inter-state line, to Center Square, Easton, is about one-quarter of a mile. The tracks on the bridge are owned by the Interstate Bridge Commission. The tracks in

Easton from the bridge to Center Square, a distance of two city blocks, are owned by the Easton Transit Company. The Easton Company owns all of the capital stock of the Phillipsburg Company and the latter company has no franchise in the State of Pennsylvania.

Prior to January 1, 1919, the Phillipsburg Company operated its cars from the Pennsylvania end of the bridge to Center Square in Easton on a rental basis. On December 23, 1919, the two companies entered into a new operating agreement, effective as of the preceding January 10 first. By this agreement it is provided that each company shall collect from every passenger boarding its cars in its territory the joint through interstate fares for the full trip within the city fare zones of both companies, and shall retain the amount so collected. This arrangement, it was stated, was entered into in order to simplify accounting and because the number of interstate passengers traveling from Pennsylvania into New Jersey had been determined to be substantially equal to the number passing from New 20 Jersey into Pennsylvania. Assuming that the number of interstate fares collected in either direction exactly balanced, the practical effect of the new arrangement was that each company received one-half of each interstate fare, or 31½ Cents. The revenues for interstate freight service within the city fare zones is likewise apportioned between the two companies. The agreement further provides that each company shall pay all of its fixed charges and all taxes and assessments, and that the Phillipsburg Company shall pay to the Easton Com- 30 pany monthly its proportionate share, on a car mileage basis, of the salaries of certain employees of the Easton Company and certain expenses incurred by the Easton Company for joint account. By the agreement the Easton Company undertakes to operate cars of the Phillipsburg Company from the inter-state line, to and from Center Square in Easton, the Easton Company supplying the power and paying all operating expenses, including the rentals for the use of the bridge. In actual operation, however, the motormen and conductors of the Phillips- 40

burg Company run the cars from New Jersey to Easton and thence back across the bridge to the termini in New Jersey. So far as the passenger is concerned there is no break or interruption of his journey across the bridge and no visible evidence of any change in the physical operation of the car from the time he starts his journey in New Jersey until he reaches the transfer point in Pennsylvania.

- The Town of Phillipsburg contends that the Phillips-
- 10 burg Company should be required to make a return for the assessment of the franchise tax based on gross receipts from passengers carried in New Jersey, that is, it should report the fares collected anywhere between Center Square and points in New Jersey. It is contended that the allocation of all such fares to the Easton Company, under the agreement above cited, results in a reduction of the New Jersey Franchise Tax not warranted by the taxing statute. We are of the opinion that this contention is well founded.
- 20 Section 4 of the Act of 1906, as amended by Chapter 239, Laws of 1918, provides: "Every street railroad corporation subject to taxation under the provisions of this act shall, on or before February first in each year, return to the State Board of Taxes and Assessment a statement showing the gross receipts from its business in this State for the year ending December thirty-first, next preceding, and any such corporation having a part of its road in this State and part thereof in another State or
- 30 States, or having part of its road on private property and part on any public street, highway, road, lane or other public place, shall make their report showing the gross receipts on the whole line, together with a statement of the length of the whole line and the length of the line in this State upon any street, highway, road, lane or other public place, and the franchise tax of such corporation for the business done in this State shall be levied by the State Board of Taxes and Assessment upon such proportion of its gross receipts as the length of the line in this State upon any street, highway, road, lane or other
- 40 public place bears to the length of the whole line."

Section 5 imposes an annual franchise tax of five per centum upon "the annual gross receipts of every street railroad corporation or upon such proportion of such gross receipts as the length of its line in this State upon any street, highway, road, lane or other public place, bears to the length of its whole line."

The purpose and effect of these sections were explained by our Supreme Court in the case of Phillipsburg Horse R. R. Co. vs. State Board of Assessors, 81 Atl. 1121. Speaking for the Court, Mr. Justice Trenchard 10 said that "it was intended by the Legislature to consider in providing for this tax, the value of the franchise of the company to occupy the streets, etc., with its tracks, and to impose a tax upon such franchise which should bear a relation to its value."

The value of the franchise in this case manifestly is enhanced by the Phillipsburg Company's connection with the Easton Company, and receipts resulting from that connection are a necessary factor in determining that value for the purposes of our franchise tax. 20

The explanation is made by the Phillipsburg Company that it entered into a new operating agreement with the Easton Company in 1919 for the reason that it found that it had no legal right to run its cars in Pennsylvania and that the allocation of receipts was decided upon as an equitable arrangement between the companies. Such an arrangement, however, cannot be permitted to run counter to the plain provisions of the New Jersey statute. This statute requires that the corporation affected shall report "gross receipts from its business in this State." 30 The fares which are collected on the Phillipsburg cars after they leave Center Square in Easton are from passengers whose destination is some point in New Jersey. It is for the business of carrying these passengers into and in New Jersey that the fares are paid. It is because the company has lines into and in this State that the passenger revenues are collected. Whether the line from Center Square to the middle of the Delaware River bridge is owned by the Easton Company or the Phillipsburg Company is immaterial so far as this aspect of the 40

case is concerned. If the fare limit were the center of the interstate bridge a different situation would be presented. But as the matter stands the fare collected between Center Square, Easton, and the interstate line is for service rendered by the Phillipsburg Company in New Jersey, and it is enabled to render that service by the franchise granted to it by this State.

The return which the Company is required to make is its "gross receipts." The return which it has made is
 10 not of its gross receipts but that portion of its gross receipts which it has agreed with the Easton Company fairly represent the share which it is entitled to receive under the traffic agreement. For the purpose of the Franchise Tax Act we believe such a return is incomplete. As already pointed out, that act requires a report of all gross receipts from business in New Jersey.

The only allocation of receipts permissible is that authorized by the act itself, namely, that the tax shall be
 20 imposed upon such proportion of the gross receipts as the length of the line in this State bears to the length of the whole line. The "whole line" in the case before us includes, in our view, that portion of the line extending from the center of the interstate bridge to Center Square in Easton. While that section of the road is not owned by the Phillipsburg Company, it is a part of the line or system extending beyond the State and must be so considered in assessing the franchise tax.

The ordinance by which Phillipsburg granted to the Phillipsburg Horse Car Railroad Company permission to
 30 construct, operate and maintain a street railway expressly stipulated that a single fare should be charged for a continuous ride between any two points within the limits of the Town of Phillipsburg and the City of Easton upon any route of the Phillipsburg Company and over the lines of any other company in Phillipsburg or Easton which might control or operate the Phillipsburg Company, or with which that company or its successors might have traffic arrangements.

This grant of the franchise under which the respondent
 40 company operates clearly contemplates that its line

shall extend to Center Square in Easton. This ordinance also required reciprocal transfer privileges in Easton and in Phillipsburg, but there is no dispute as to these, as it is conceded that they balance.

Our conclusion is that the return of gross receipts made by the Phillipsburg Transit Company for the year 1921 should be so amended as to include cash fares collected from interstate passengers riding from Center Square, Easton, into the State of New Jersey.

FRANK B. JESS. 10

MINUTES

STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, February 21, 1922.

The Board met at 10.30 a. m. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler, Col. Margerum and Dr. Barber.

* * * *

- 10 The secretary laid before the Board a complaint filed by Sylvester C. Smith, Attorney for the Town of Phillipsburg, asking that the Board investigate the return made by the Phillipsburg Transit Company for the year 1921, upon the theory that the Company returned only its partial gross receipts instead of the entire amount upon which the franchise tax should be assessed.

Upon motion the Board directed that this matter be set down for hearing at the State House on Tuesday, March seventh, at eleven o'clock.

* * * *

STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, March 7, 1922.

The Board met at 10.30 a. m. on the above date.

- 20 Present, President Baker, Mr. Mutchler, Col. Margerum and Dr. Barber.

* * * *

- 30 The matter of the complaint of the Town of Phillipsburg against the franchise tax return as filed by the Phillipsburg Transit Company for the year 1921 was called for hearing. Mr. Sylvester Smith appeared for the Town of Phillipsburg and Mr. W. H. Walters appeared for the Company. Mr. Walters stated that he had just secured from the Public Utility Commissioners figures that would be necessary in the preparation of this case, and that he desired an opportunity to take these details up with the officials of the Company. He therefore requested an adjournment, to which Mr. Smith agreed. The Board allowed the adjournment to Tuesday, March twenty-first at eleven o'clock at the State House, Trenton.

STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, March 21, 1922.

The Board met at 10.30 a. m. on the above date.

Present, President Baker, Mr. Mutchler, Col. Margerum and Dr. Barber.

* * * *

The complaint of the Town of Phillipsburg against the Phillipsburg Transit Company was called for hearing. Sylvester C. Smith was present on behalf of the Town of Phillipsburg and Mr. W. H. Walters appeared for the Company. After preliminary statements by counsel the hearing was continued to Tuesday, April fourth, at the State House, at 11 a. m. 10

* * * *

STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, April 4, 1922.

The State Board of Taxes and Assessment met at 10.30 a. m. on the above date.

Present, President Baker, Col. Margerum and Dr. Barber.

* * * *

The secretary laid before the Board a communication from W. H. Walters, counsel for the Phillipsburg Transit Company, requesting an adjournment of hearing in the appeal of Town of Phillipsburg vs. Phillipsburg Transit Company (franchise taxes) for this date to April eighteenth. The adjournment was consented to by Sylvester Smith, attorney for the Town of Phillipsburg. The Board approved the action of the Secretary in allowing the adjournment. 20

* * * *

STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, April 18, 1922.

The State Board of Taxes and Assessment met at 10.30 a. m. on the above date. 30

Present, President Baker, Mr. Jess, Mr. Mutchler, Col. Margerum and Dr. Barber.

* * * *

The following appeal was called for hearing:

Town of Phillipsburg vs. Phillipsburg Transit Co.

(franchise taxes). Case heard, Mr. Sylvester C. Smith, Jr., appearing on behalf of the Town of Phillipsburg and Mr. W. H. Walters representing the Company. The Board heard testimony of Horace H. Patterson and Raymond D. Ehly for the appellant.

* * * *

STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, February 27, 1923.

The State Board of Taxes and Assessment met at 10.30 a. m. on the above date.

- 10 Present, President Baker, Mr. Jess, Mr. Mutchler, Mr. Margerum and Dr. Barber.

* * * *

At the request of counsel for the City of Phillipsburg and the Phillipsburg Transit Company, Dr. Barber asked the Board to fix the continuation of the hearing in the appeal of the City of Phillipsburg against the Phillipsburg Transit Company for Tuesday, March sixth, at 11 a. m., at the State House, Trenton. Upon motion the Board ordered that the continuation of this hearing be fixed for this date.

* * * *

- 20 STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, March 6, 1923.

The Board met at 10.30 a. m. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler, Mr. Margerum and Dr. Barber.

* * * *

(Appeal under Chapter 290,)

(Laws of 1906, as amended.)

- 30 3. Inhabitants of the Town of Phillipsburg vs. Phillipsburg Transit Company. Hearing in this appeal was continued, Mr. Sylvester C. Smith, Jr., representing the Town of Phillipsburg and Mrs. W. H. Walters appearing for the Company. The Board heard argument of counsel and received briefs for both sides. Decision was reserved.

STATE HOUSE, TRENTON, NEW JERSEY

Tuesday, April 17, 1923.

The Board met at 10.30 a. m. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler, Mr. Margerum and Dr. Barber.

* * * *

The Board took up for consideration the matter of the Complaint of the Inhabitants of the Town of Phillipsburg against the return of gross receipts for the year 1921 made by the Phillipsburg Transit Company under the provisions of Chapter 290, Laws of 1906. The Board ordered that judgment be entered directing that the return of the Company for the year 1921 be so amended as to include cash fares collected from interstate passengers riding from Center Square, Easton, into the State of New Jersey. A memorandum was filed by Mr. Jess, setting forth the reasons for the Board's conclusions. 10

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT

I, FRANK D. SCROTH, Secretary of the State Board of Taxes and Assessment, DO HEREBY CERTIFY, 20 that the foregoing are true copies of the petition, memoranda and proceedings in the matter of the appeal of the Phillipsburg Transit Company, from the decision of the State Board of Taxes and Assessment, with reference to the proper form of return to be made to said Board, for the year ending December 31, 1921, as the same are taken from and compared with the originals filed in the office of the State Board of Taxes and Assessment, on the twenty-first day of February, A. D. 1922, and other dates, and now remaining on file and of record therein. 30

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-ninth day of May, A. D. 1923.

.....

Secretary.

NEW JERSEY SUPREME COURT.

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE INHABITANTS OF THE
TOWN OF PHILLIPSBURG, ..
DEFENDANTS.

CERTIORARI
REASONS.

10 The said prosecutor, by W. H. Walters, its attorney, comes and prays that the return of franchise tax made by the Phillipsburg Transit Company for the year 1921 to the State Board of Taxes and Assessments of New Jersey, be confirmed by this Court, for the following reasons:—

1. The Phillipsburg Transit Company, incorporated under Special Charter of New Jersey, operates its cars from its two termini in New Jersey to and from the center of the bridge connecting New Jersey with Penn-
20 sylvania, at which point, under an operating agreement with the Easton Transit Company, a corporation of Pennsylvania, the latter company undertakes to operate the cars of the Phillipsburg Transit Company to and from Center Square in Easton, Pa., and each company collects from every passenger boarding its cars in its territory the fare for the full trip and retains the amount so collected; the fares collected in Pennsylvania by the Easton Transit Company balanced those collected in New Jersey by Phillipsburg Transit Company, for
30 trip to Center Square in Easton, Pa.; the revenue for freight service is also retained by the respective companies in their respective jurisdictions. The agreement further provides that each company shall pay all of its fixed charges and all taxes and assessments, and that Phillipsburg Transit Company shall pay to Easton Transit Company monthly its proportional share, on a car mileage basis, of the salaries and certain expenses incurred by the Easton Transit Company. By this agreement, the

Easton Transit Company also supplies the power and pays all operating expenses, including the rentals for the use of the bridge.

2. The Phillipsburg Transit Company is not authorized by any law, statute or ordinance of the State of Pennsylvania, or any municipality therein, to operate its cars in the State of Pennsylvania.

3. That the return made to the State Board of Taxes and Assessments for the year 1921 by this Prosecutor was a proper, just and effective return of the gross receipts received by the Phillipsburg Transit Company for that year. 10

4. That the agreement dated December 23, 1919, made and entered into by the Phillipsburg Transit Company and the Easton Transit Company, for the purpose therein set forth, was a valid and effectual agreement and bars the State Board of Taxes and Assessments from insisting upon a revised return of gross receipts for the year 1921.

5. That the conclusions of the State Board of Taxes and Assessments "that the return of gross receipts made by the Phillipsburg Transit Company for the year 1921 should be so amended as to include cash fares collected from interstate passengers riding from Center Square in Easton unto the State of New Jersey" should be set aside, reversed and for nothing holden. 20

6. That the said additional assessment of franchise tax for the year 1921, suggested by the State Board of Taxes and Assessments, is in divers other respects illegal, unjust and oppressive, and should be set aside. 30

W. H. WALTERS,
Attorney for Prosecutor.

The following testimony was taken before State Board of Taxes and Assessments and is here introduced by agreement:

THE CHAIRMAN: The Board is prepared to hear the complaint filed by the Town of Phillipsburg against the Phillipsburg Transit Company.

MR. SMITH: Mr. Jess, and members of the Board: Mr. Walters and I outlined the contention of the Town and the answer of the Phillipsburg Transit Company
10 last week, or rather I think two weeks ago in this matter and I think it might be well just to set it out again briefly.

The Town contends that the Transit Company has not made a proper return under the franchise law on all of the gross receipts taken in on the whole line of the Phillipsburg Transit Company, and the contention is that what actually happens is that the same operation is taking place today as took place in 1911 when the matter was brought before the Supreme Court, taken from the
20 Board, and the only thing is now that all of the fares collected in Phillipsburg go to the Phillipsburg Company, but all of the fares collected at the interstate line and beyond that a distance of two squares in Easton, which is the first transfer point where the transfer is issued is credited to the Easton Transit Company and no return has been made to this Board of that amount, and under the law the Town contends that the law contemplates that the whole line means wherever the fare collected runs to, the end, that terminus.

30 I would like to call Mr. Patterson, General Manager of the Transit Company, to explain the situation.

HORACE H. PATTERSON, Sworn for the Petitioner.

DIRECT EXAMINATION BY MR. SMITH:

Q. Mr. Patterson, what is your official position with the Phillipsburg Transit Company?

A. General Manager.

Q. And what is your official position with the Easton Transit Company?

A. Vice President and General Manager.

Q. How long have you been connected with the Phillipsburg Transit Company and the Easton Transit Company?

A. I have been connected with those companies nearly 14 years in one capacity or another.

Q. Were you connected with the Phillipsburg Transit Company in 1911?

A. I was.

Q. In what capacity at that time?

A. Superintendent. 10

Q. And was the line in 1911 practically—of the Phillipsburg Transit Company in New Jersey, practically the same as it is today?

A. With the exception of the gauge.

Q. What was the gauge in 1911?

A. Five feet, two and a half.

Q. And what is the present gauge?

A. Four feet eight and a half.

Q. And when was that change made?

A. 1914. 20

Q. So that with that single exception the line is practically the same in its extent?

A. Yes.

Q. Now, who owns the stock of the Phillipsburg Transit Company?

A. The Easton Transit Company.

Q. And practically—the entire issue?

A. They do.

Q. Who owns the tracks running from the end of the bridge in the City of Easton to Center Square, Easton, 30 Pa.?

A. The Easton Transit Company.

Q. And how long have they owned those?

A. Always, as far as I know.

Q. Now, what is the distance from Center Square to the end of the bridge in Easton, Pa.?

A. A little less than a quarter of a mile.

MR. WALTERS: Is that from the center of the bridge or the end of the bridge?

MR. SMITH: The end of the bridge. 40

THE WITNESS: It is about a quarter of a mile from the center of the bridge, I believe.

Q. It is about a quarter of a mile from the center of the bridge. Now, then, in 1911, where were,—just tell us how the Phillipsburg Transit Company, or at that time the Phillipsburg Horse Car Railway Company, operated its cars.

A. Those cars were operated on the lines in Phillipsburg and across the bridge to Center Square.

10 Q. And where was the revenue collected from the end of the bridge in Easton to Center Square, to what company was that revenue given or credited?

A. The Phillipsburg Transit Company, I believe.

Q. Now, did that continue after the change was made in the gauge of the tracks in 1914?

A. I think it did.

Q. Until what time?

A. I think until 1918 or 1919.

Q. What took place at that time?

20 A. There was a new agreement, operating agreement, made between the two companies.

Q. Now, have you that agreement with you?

A. I have; a copy of it (producing paper). That is the copy of the agreement.

Q. This is a copy of the traffic agreement between the Easton Transit Company and the Phillipsburg Transit Company dated December 22, 1919?

A. Yes.

30 Q. And is that the contract between the two companies under which the two companies are keeping their books at the present time, today?

A. It is.

MR. SMITH: I would like to offer this contract in evidence.

MR. JESS: It may be marked.

(Paper above referred to received in evidence and marked Exhibit P-1).

Q. Referring to Exhibit P-1, I call your attention to the fact that this contract was dated December 22, 1919,
40 but that it takes effect January 1, 1919, or is made retro-

active the beginning of that year, that is the case is it not?

A. Yes, that is true.

Q. Now, what was the agreement prior to that time? Have you that?

A. Yes, I have a copy of that (handing paper to examining counsel); 1917.

Q. This is the contract dated January 11, 1917?

A. Yes, sir.

MR. SMITH: I will ask that that be marked as an exhibit. 10

(Paper above referred to received in evidence and marked Exhibit P-2.)

Q. Now, can you tell us the nature of the contract between the Phillipsburg Company and the Easton Company dated January 11, 1917?

A. Well, it was an operating agreement covering the methods of apportioning the expenses of joint operation and the operation over the tracks from the center of the bridge to Center Square. 20

Q. Under that contract to whom were credited all of the fares collected between the interstate line and Center Square?

A. Phillipsburg Transit Company.

Q. And that was so until this 1919 contract, Exhibit P-1?

A. Yes.

Q. Now, was the Phillipsburg Transit Company in 1917 and 1918 operating practically the same as they were in 1911? 30

A. Yes, I think so, with probably a few minor modifications.

MR. WALTERS: That is under the 1917 agreement, you mean?

Q. Under the 1917 agreement?

A. Yes.

Q. Now, what change was made by this retroactive contract of December 22, 1919?

A. You mean change in operation?

Q. Yes, in operation.

A. The 1919 agreement set up the operation of the cars from the State line, the center of the bridge to the westward of that point entirely in the Easton Transit Company. The basis of that was that the Phillipsburg Transit Company's operation ceased entirely at the State line. That is the fundamental difference.

10 Q. So that in 1919 by virtue of this retroactive contract, all of the fares collected on the Pennsylvania side of the bridge or the Pennsylvania side of the interstate line were credited to the Easton Company, is that so?

A. Yes, that is so, with this understanding, that that was a means of reimbursing the Easton Transit Company and the Phillipsburg Transit Company for their respective shares of the traffic. In other words, because of the fact that the traffic in both directions was essentially equal, it made a fifty-fifty division of the fares, each company thereby getting three and a half cents per passenger for the interstate traffic.

20 Q. Now, all of the fares collected in Phillipsburg or on the New Jersey side of the interstate line went to the Phillipsburg Company?

A. Yes.

Q. Well, now, just explain the situation as a person getting on, boarding a car, let's say, at Alpha, New Jersey, would pay how much fare?

A. Pay a seven cent fare.

Q. And on that how far could he ride?

A. He could ride—

30 Q. Without transfer?

A. Yes; as far as Center Square without a transfer, Center Square Easton.

Q. And that is the first transfer point?

A. Well, there is a transfer between the North Main and South Main line at Union Square, and of course he can get a transfer there.

Q. Yes; but the transfer point. Now, what have you to say regarding the transfers honored by the Easton Company on the lines from Center Square and those

honored by the Phillipsburg Company issued by the Easton Company taken at Center Square?

A. That results in approximately the same arrangement as the division of the interstate fares on a fifty-fifty basis, because the transfers are approximately equal. In other words, the number of people who take transfers and use them beyond Center Square in Easton is about equal to those who board the lines in Easton and get off at Center Square and take the cars toward Phillipsburg. So that the transfer is virtually on the same basis as the cash fare and results in a three and a half cent division of the fare. 10

Q. Now, the end of the Phillipsburg line in 1911 and 1917 was Center Square, Easton, was it not?

A. Well, those cars were operated as far as that point.

Q. Yes. That was the end of the line at that time. Now, is that practically the end of the Phillipsburg line today?

A. The through cars that run to Phillipsburg are 20 stopping at Center Square, yes.

Q. Yes. Now, they travel according to your statement one-quarter of a mile from Center Square to the center of the bridge, the interstate line, approximately?

A. Yes.

Q. Now, how far do they travel in Phillipsburg?

A. Well, a varying distance, of course. Of course the total length of the two lines in Phillipsburg—one is about two and three-quarters miles and the other is about three and three-quarters miles. 30

Q. So that they may run on the one line a distance of about four miles, or on the other line a distance of about three miles?

A. Yes.

Q. On the whole line?

A. Yes. But in Easton, of course, they have the further privilege of a transfer with three or four miles additional travel over six or seven other different lines.

Q. But they can only use that transfer on one different line? 40

A. On one at a time, yes, but—

Q. So that that would be the same as any of the six or seven different lines in Easton using a transfer on either one of these two lines?

A. Yes. But it makes the actual travel in Easton around from two to three and a half miles.

Q. Yes. But this line where this cash fare is paid runs from Center Square a distance of three miles from Phillipsburg on the one line, and a distance of three
10 miles to Alpha, New Jersey, on the other line?

A. Actually, so far as the change—the line without a change of cars is concerned, yes.

Q. Now, then, a passenger boards the car at Center Square and pays seven cents fare, and how far—and to whom does that seven cent fare collected in Easton, Pennsylvania, under your present arrangement go?

A. Three and a half cents goes to the Phillipsburg Transit Company, and three and a half cents goes to the Easton Transit Company.

20 Q. That is, isn't the arrangement under this that all fares collected on the Easton side of the bridge—that all of those fares go to the Easton Company?

A. Yes, and by the same token all of the fares collected on the Phillipburg side of the bridge go to the Phillipsburg Company.

Q. Yes.

A. So that the fundamental basis of that arrangement is that you are dividing the interstate fare into two equal portions.

30 Q. Then the Phillipsburg Company actually in its gross receipts shows nothing of the fares collected on the Pennsylvania side of the interstate line, do they?

A. Well, they show three and a half cents according to this basis.

Q. In the gross receipts of your company?

A. Yes.

Q. Is there any entry in the books of your company of the seven cents collected when a passenger boards a car at Center Square, Easton, the books of the Phillips-
40 burg Company?

A. No, but what I mean by that is—

Q. Well, I am only taking the gross receipts.

A. Yes. That effects a division of the gross receipts of the interstate traffic on a three and a half cent basis.

Q. No, we are not taking the allocation on that three and a half cent basis. We are interested in finding out whether the Phillipsburg Transit Company on its books receives any credit, or if there is anything there to show that this money is taken in?

A. What I meant by emphasizing that was rather 10
than go through the bookkeeping necessary for dividing the seven cents received in Phillipsburg into two portions and crediting half of that to the Easton Company and doing the same thing with the seven cent fare collected on the Easton side and crediting three and a half cents of that to the Phillipsburg Company, inasmuch as the traffic is practically equal in both directions we allow each company to retain the fares collected, which effects that division. That is what I mean.

Q. Now, you see this is what we are getting at. What 20
we want to know is whether the Phillipsburg Company's report submitted here reports or indicates or shows the seven cents collected from Center Square, Easton, to the interstate line?

A. Well, it does, so far as I say the three and a half cent fare; the number of passengers is made up, where we report the number of passengers made up, that is made up on the basis of three and a half cents per passenger.

Q. Now, that is just the point I want to bring out. 30
A conductor collects the seven cents and into what treasury does that seven cents taken in Easton go?

A. That goes to the Easton Transit Company.

Q. Yes, Now, then, do you ever report that seven cents in your franchise report?

A. No, not that particular seven cents.

Q. Now, then, do you report any of the seven cents, any of the actual fares collected between the interstate line, the middle of the bridge, and Center Square?

A. Only insofar as I have described.

Q. Well, do you report any of the actual fares?

A. We do report all of the seven cents collected on the other side instead of only three and a half cents.

Q. I see.

A. That is the only way it gets into the report. Other than that we don't.

BY THE CHAIRMAN:

Q. Well, you are assuming then that the number of passengers originating in New Jersey and the number
10 of passengers originating in Pennsylvania to go into New Jersey would be precisely the same?

A. Yes.

Q. There would be no difference in your net results?

A. No; that is the idea.

Q. But does it appear that the number is practically the same?

A. Yes. We established that by a traffic check, taken over a period of time, to see whether that traffic is practically equal in both directions, and it proved to be so.
20 There was every reason to think that it would be, and we took a traffic check, an actual record of the passengers over a period to determine whether that was so, and it actually is a fact that the number traveling eastward is substantially equal to the number traveling westward day by day.

Q. Well, then, if the Board should hold that a proper method would be to allocate one-half of the fares—

A. Yes.

Q. —as collected to the Phillipsburg Company, and
30 one-half of the fares collected by the Phillipsburg Company to the Easton Company, instead of crediting the Phillipsburg Company with seven cents in each case, that company would receive three and a half cents, is that the way I understand it?

A. Yes, that is the idea, exactly. And according to these traffic checks that we took, the result would be substantially the same as we get now. It could be done in the other method. It is simply a convenient method of handling it, with the result coming out practically the
40 same as it would by the other scheme.

BY MR. SMITH:

Q. Do the Phillipsburg Transit Company cars run to Center Square?

A. Yes, they do. You mean the cars owned by that company?

Q. Yes.

A. Yes.

Q. Well, the Phillipsburg line.

A. Yes.

Q. I wanted to speak of it and consider it as the 10 whole line.

A. Yes.

Q. Because there are no transfers issued on this line, that is, at the interstate line, are there?

A. No. That, of course, is what we are trying to avoid. The logical way of doing this would be to run each company's car to the State line and to make a transfer point there, and get all the passengers out of one car and over into the other.

Q. Does the same conductor and motorman take the 20 car to Center Square, Easton?

A. Yes, the crews are used indiscriminately over both lines of both companies.

Q. Where are the cars repaired? Where are the Phillipsburg Company's cars repaired?

A. Over in the Easton Company's shops, in Easton.

Q. And where are they stored?

A. In the Easton Company's carbarns.

Q. So that the arrangement today is practically the same, except for the method of bookkeeping, as it was in 30 1911?

A. Well, except this, too, the change of gauge, of course, has made it possible for the Phillipsburg Company to use a very much larger number of the Easton Transit Company's cars; for trippers and extra service, the Easton Transit Company provides the additional cars which are through routed from Easton over to Phillipsburg.

Q. Yes. And the Phillipsburg Company pays for those cars.

A. Just the same as the Easton Company pays for the Phillipsburg Company because of its service.

Q. So that practically—that is, aside from anything, practically the Phillipsburg Company operates those cars to Center Square, Easton?

A. Well, that is the reason all those lines are through routed to that point, yes.

Q. Yes. And that is the first terminus of the cash fare paid on the Phillipsburg line coming from New Jersey, is it not?

A. Well, I don't know exactly what you mean by first terminus. Of course Union Square—

Q. That is, if you issued a ticket—

A. That is the terminus.

Q. That is the terminus?

A. Yes.

Q. Now, the same way your fare taken in Easton, Pennsylvania, that fare carries free past the interstate line practically, doesn't it?

20 A. Oh, no, it doesn't, because the Easton Company is receiving three and a half cents a passenger. No passenger is carried free.

Q. How far—

MR. WALTERS: Just let him answer, Mr. Smith.

Q. How far does the passenger ride in New Jersey?

A. Well, they ride a varying distance. So they may in Easton. A passenger who pays a cash seven cent fare in New Jersey may ride a varying distance—

30 Q. No. I want to confine it solely to the line from Center Square, Easton. the cash fare, we are not speaking of the transfer.

A. Yes.

Q. Because you have admitted that they are equal, that the transfers honored by the Phillipsburg lines equal those honored by the Easton Company on its various lines.

A. But the Phillipsburg Company doesn't honor any transfer. The transfer is honored at Center Square, which is the Easton Transit Company.

40 Q. By the Easton Transit Company?

A. Yes.

Q. Then where is the Phillipsburg Company compensated for the passenger whose transfer is honored by the Easton Transit Company beyond the interstate line?

A. They get three and a half cents for every one of those passengers.

Q. For every one of the transfer passengers ?

A. Yes, they do.

Q. And do your books show that credit?

A. Yes, they do; by the same method. 10

Q. How?

A. That all of the passengers who pay seven cents in Phillipsburg get a—that are transferred at Center Square, the Phillipsburg Company retains that full seven cents, so that they get three and a half cents for the passenger who gets a transfer in Easton on the Easton line.

Q. But doesn't the Easton Transit Company get three and a half cents for traveling those passengers, the same passengers, on that quarter of a mile from Center Square to Easton? 20

A. They do for the passengers who only ride that far, yes.

Q. Well, don't they for the passengers who take the transfers and use them beyond just as well?

A. Oh, no. Those passengers get a ride over the Easton Transit Company system on one of four or five different routes that can be anywhere from two and a half to three and a half miles long.

Q. Well, this is really a bookkeeping system, isn't it? 30

A. Just for the convenience of dividing those two interstate fares equally between the two companies, that is all.

Q. When was this question first brought up as to this method?

A. When the present management of the property came in control of it.

Q. And when was that first called to your attention?

A. I think in 1919, if I recall.

Q. Have you any correspondence relating to this 40

contract from any of the officers of the Company?

A. No; there isn't any.

Q. Have you the minutes of the Board of Directors' meetings at which this agreement of the Company was considered?

A. I have.

Q. This new agreement?

A. Yes. I brought those. (Refers to papers). I think you asked for all of the minutes back to 1917, I think.

Q. Relating to the contract, that is what I am interested in.

A. Well, this is what you want, I guess. The previous meeting was December 19, 1919. That is where the matter was first brought to the attention of the Board (handing papers to examining counsel). That is where authority was given by the Board to execute the agreement.

Q. December, 1919, these minutes are merely a ratification of the contract, and authorization to enter into it.

A. Yes, that is correct.

Q. There was no discussion at that time outside of your statement of what the terms of the contract were?

A. That is correct.

Q. That was the only mention?

A. Yes. Then at a subsequent meeting of the Board that agreement was definitely approved by action of the officers.

Q. Why did the company change from the contract in 1917, under which they had operated for a number of years, to this contract and this system of bookkeeping in 1919?

A. It was brought to the attention of the management of the Company that the Phillipsburg Transit Company, through operating in Pennsylvania, technically had no legal right to do that, and it was thought advisable to make such change in operation as would do away with that illegality.

Q. Who called that to the attention of the operators of the Company?

A. Their counsel, I think Mr. Perkins, as far as I know.

Q. And was there any correspondence between Mr. Perkins and the Company at that time?

A. No, there wasn't.

Q. You had operated how long under that arrangement prior to 1919?

A. A great number of years. I can't say just how 10 many.

Q. Well, thirty?

A. I don't know really; ever since I have been with the Company.

Q. Well, that is fourteen years?

A. Yes.

Q. And do you know whether they have operated before that at least ten years?

A. I think they have, probably.

MR. WALTERS: Do you know what gauge they had 20 from the western end of the bridge to Center Square? Did they always have the present gauge?

THE WITNESS: No, the gauge up to about 1914 was wide gauge.

MR. WALTERS: Then the cars didn't proceed over to Center Square, Easton?

THE WITNESS: No, they did not.

MR. WALTERS: That is it.

Q. The cars for the last fourteen years have proceeded over to Center Square, have they not? 30

A. Yes, but prior to 1914 there wasn't any possibility of running the Easton Transit Company cars in the opposite direction.

Q. Now, isn't the Phillipsburg Company in a way operating in Easton when it stores its cars in Easton?

A. No, it isn't.

Q. When the Phillipsburg Transit Company's cars are placed in your barns at Easton, are they not operating in a way in Easton?

A. No, they are not. 40

Q. What do you call that?

A. Simply an arrangement through this traffic agreement to take care of their cars, and repairs are made. That isn't operation.

Q. Well, when repairs are made on the cars, how are they charged up?

A. To the Phillipsburg Company.

Q. And they are paid by the Phillipsburg Company?

A. Yes.

10 Q. A man repairing a Phillipsburg car is placed on the Phillipsburg Company payroll in Easton, Pennsylvania?

A. Well, that time is all charged against the Phillipsburg Company.

Q. Yes. And it is practically a Phillipsburg Company operation?

A. Well, the Easton Company is making that repair and charging it to the Phillipsburg Company.

Q. Well, who pays the man?

20 A. The Phillipsburg Company pays for that time.

Q. Yes. I call your attention to a report of the Phillipsburg Company in 1918, in which the gross receipts of the Phillipsburg Company are set forth as \$157,625 (handing paper to witness); and in 1919—I assume these are correct years—that is, the reports were filed in these years—\$157,675 (handing paper to witness), and in 1920, you filed a report in which the gross receipts were \$121,114 (handing paper to witness). How do you explain the decrease in the gross receipts from 1919

30 of \$157,000 to 1920, \$121,000?

A. There are probably several factors entering into the difference in gross receipts. There is a question of traffic.

Q. Well, were not more passengers carried between Center Square and the Phillipsburg lines in 1919, that is the year in which this report is made, than there were in 1919?

A. That might very possibly be so, because some of those passengers, a number of the passengers are called

three and a half cent passengers, so that the number of passengers may be very much greater.

Q. No, don't explain. You can explain to Mr. Walters in bringing that out, but I want to get this point in the record and before the Board: Were not more passengers carried between Center Square and the line in Phillipsburg, that is over the whole line, in the year 1919 than there were in 1918?

A. I can't say that offhand; I don't know.

Q. Well, can you look up the matter so we can take 10
up the question later?

A. Our report shows the number of passengers carried. Our report filed with the Public Utilities Board shows the number of passengers.

MR. WALTERS: Well, we can go in and get that.

MR. SMITH: I would like to have that report, if I can, for 1919-1920, if they have it.

MR. WALTERS: You haven't got a statement of it, have you?

THE WITNESS: No, I haven't, Mr. Walters. 20

MR. WALTERS: I don't think it is applicable to this complaint. I don't see how that has any application to this subject.

Q. Well, isn't it a fact that the reason why the gross receipts for 1919 were less than in 1918 was because of this contract which was retroactive entered into December 22, 1919?

A. That is one factor, undoubtedly. Three and a half cents per passenger reduces that.

MR. WALTERS: That wasn't the question Mr. 30
Smith asked. Mr. Smith asked whether you carried more passengers in 1919 than in 1920.

MR. SMITH: No, my last question was whether that isn't the fact.

THE WITNESS: Yes.

Q. The year before was not all of the fare collected on the whole line between Easton and the points in New Jersey reported to the Board as the gross receipts of the company?

A. It was. 40

Q. And was not the operation of the two companies, that is, the physical operation, exactly the same in 1919, as it was in 1918?

A. So far as the schedules, and so forth, they are practically the same, I think.

Q. Yes. And so far as the carrying of passengers.

A. Yes.

Q. And so far as the motormen operating cars from Phillipsburg to Center Square, Easton?

10 A. Yes.

Q. And so far as at that point the conductor and motorman changing platforms and returning back to Phillipsburg?

A. Yes.

Q. And was not that the identical operation taking place in 1911?

A. I think it was; very similar.

Q. Is that—

A. With the exception that I have noted about the
20 through cars from the Easton side when the change of gauge made that possible.

Q. Well, you could allocate for the Board the number of through cars that ran to the industries in Phillipsburg over the Phillipsburg line without transfer to the Easton Company?

A. Well, I think there is some six or eight trippers morning and evening; something like that.

Q. And they are cars that run from where to where?

A. Well, from the various lines in Easton, routed
30 over the various lines in Easton to the industrial plants in Phillipsburg.

Q. And is there a special provision for the operation of these cars?

A. The same scheme obtains.

Q. And then for those cars three and a half cents is the—

A. Same scheme.

Q. Is the—

A. Three and a half cents per passenger.

40 Q. Although those cars start where?

A. Over the various lines of the Easton Company.

Q. Where?

A. Local lines. Some of them go around in South Side, some come from the West Ward, some College Hill, some West Easton.

Q. And they go where?

A. To the Ingersoll.

Q. And that is the terminal point of the North Main line, in Phillipsburg?

A. Yes.

10

Q. Some go to Alpha?

A. Yes.

Q. That is the terminal point of the—

A. South Main line.

Q. Are there industrial centers that—

A. Yes, silk mills, and so forth.

Q. Can you prepare a statement of the number of transfers issued by the Phillipsburg or to the Easton Company from the Phillipsburg lines, for the year 1921, and the number of passengers, interstate passengers, 20 carried on the Phillipsburg lines?

(Papers handed to examining counsel received from office of Public Utility Commission).

BY THE CHAIRMAN:

Q. What is the length of the lines combined, Mr. Patterson?

A. In Phillipsburg?

Q. In Phillipsburg—and Easton.

A. A little less than seven miles.

Q. Seven and six hundredths it is here.

30

A. Yes.

Q. How much is there in Easton of the Easton Transit Company?

A. About 45 miles.

Q. About 45 miles?

A. Yes. About 45 miles now. We abandoned some trackage over there last year.

MR. SMITH: Not on this particular line though, Mr. Jess.

Q. Well, how much was there before you made this new arrangement?

A. The same amount, 45—

Q. No, how much were you operating under the ownership of the Phillipsburg Transit Company in Easton?

A. Well, those cars ran only as far as Center Square.

Q. How far is that?

A. That is about a quarter of a mile from the State line in the center of the bridge.

10 Q. Well, where was the ownership of the line at that time then? With the—

A. With the Easton Transit Company.

Q. With the Easton Transit Company?

A. Yes.

Q. Now, you report here for 1920 that the gross receipts amounted to \$141,184.32?

A. Yes.

Q. And that is made up, is it, of the fares that were collected in Phillipsburg?

20 A. Yes, that was made up first of seven cents, virtually for all the local fares in Phillipsburg; that is, the people who just road locally there.

Q. Yes.

A. Then it is made up of three and a half cents for all of the interstate passengers who rode across the—

Q. Yes; then that is purely an arbitrary—

A. Yes, based upon this traffic check. As I say, the traffic is substantially equal in both directions.

Q. Why shouldn't you—just for the moment—

30 A. Yes.

Q. I don't know that this is anywhere near right, but why shouldn't you for the purposes of your tax, franchise tax, disregard any arrangement with this other company and simply report as fares receipts from business, all the fares that you collect in New Jersey?

A. Well, that is what we are doing—actually.

Q. But you only give those three and a half cents, then you make that up, but I am eliminating that for the moment.

40 A. Yes.

Q. For instance, your statement is, and that I suppose is borne out by your experience, that by this method you get at the same result.

A. Yes, but what we are actually doing, you know, is the Easton Company is retaining the fares it collects on the Pennsylvania side of the bridge.

Q. Yes.

A. And the Phillipsburg Company is actually retaining all the fares both interstate and local that it collects on the New Jersey—

10

Q. And that is what you are reporting?

A. That is what we are reporting, sir.

MR. SMITH: In other words, they are not reporting the gross receipts but they are reporting just the gross receipts that they have taken in on the Phillipsburg side; this three and a half cents that they are supposed to credit on the other side, is really taken in on part of the whole line. That is the Town's contention. That is the whole line to Center Square. That is where this cash fare paid in Phillipsburg runs to.

20

MR. WALTERS: Mr. Smith, if I could make just one illusion here, it is simply this: It is an attempt of Mr. Smith to compel us to violate the laws of Pennsylvania and accumulate this money for the Town of Phillipsburg. We have got no right whatever to operate in Pennsylvania. This agreement had to be made to overcome the illegality of our being in Pennsylvania. Now, if we collect any money in Pennsylvania, we are responsible to the State of Pennsylvania for a franchise tax. That is the whole thing that Mr. Smith is trying to im-
press on this Board, to simply violate the laws of Penn-
sylvania in order to get this revenue for the Town of
Phillipsburg, that is the whole thing; that is everything
in this suit.

30

THE CHAIRMAN: Well, I don't think it is just as simple as that because you have the proposition that you are liable for a franchise tax upon gross receipts from business done in New Jersey. Now, the first question is whether the receipts from the passengers who are crossing from New Jersey into Pennsylvania—from Penn- 40

sylvania into New Jersey, and are riding in New Jersey, are constituting part of the business done in New Jersey. It seems to me that is the problem, regardless of where the fare may be collected.

MR. SMITH: That is my point exactly.

THE CHAIRMAN: Now, they meet that by saying that that is offset by the fact that looking at it from the other side that the fares collected in Phillipsburg across the bridge are for business that is really done
10 and the major portion of it in Pennsylvania.

MR. WALTERS: Well, over 70 per cent of our passengers go to Easton.

BY MR. SMITH:

Q. Well, I am going to ask Mr. Patterson if he will prepare so that we can submit it a list or a statement of the total number of passengers carried on the whole line, in each direction; that is, from Easton to Phillipsburg—that is, cash fare passengers—and from Phillipsburg to Easton, interstate.

20 A. No, we haven't that, Mr. Smith.

Q. You haven't it?

A. No, we haven't. As I say, we took a traffic check for a certain period. Now—

Q. Can't you tell me—

A. Because our day sheets don't show that.

Q. Why can't you determine it from the record of the cash fares collected between the interstate line and Center Square, Easton?

A. Because our day sheets only show that in one
30 direction. We don't have any record on our conductors' day sheet of the passengers who board the car in Phillipsburg coming toward Easton, whether they get off at some point in Phillipsburg or whether they get off in Easton, and the only way you could determine that is through a traffic check.

Q. So what you do then is simply take these fares collected in the interstate line in Pennsylvania and call them interstate passengers, am I right?

A. Yes.

40 Q. And then you say that the same number of pas-

sengers traveled from various points into Easton, Pennsylvania, am I right?

A. Yes.

Q. And the rest of them all traveled in Phillipsburg, am I right?

A. Correct.

Q. Now, can't we have a list then of the number of passengers who traveled between the interstate line in 1921 and Center Square, Easton, according to the cash fares that you have recorded in your register and reported— 10

A. We have the number who travel in one direction, and we say that the number that traveled in the opposite direction is practically equal.

Q. All right. Now, then, that will give us that.

A. We put that in our report to the Utility Board. You will find that in there, under number of passengers.

Q. That is just what we want. We want that. have this in the statement for this Board. Now, can you give us the number of transfers taken on the Phillipsburg line? 20

A. At Union Square?

Q. No, between Center Square, from the Easton line.

A. That is the Easton Transit Company line and Center Square.

Q. That is just what we want. We want that.

A. All right, I think we can give you that in one direction, yes.

Q. One?

A. Yes. 30

Q. Mr. Patterson, isn't it a fact that this last agreement was a method whereby the operating expenses on the Easton side of the bridge line were taken care of without reporting the gross receipts taken in on the whole line to Center Square?

A. Oh, no. Oh, no.

Q. Isn't that the actual result of it?

A. Each company is paying its share for common operating expenses, which are common to both companies, and the Easton Transit Company is paying the 40

operating expenses, all of the expenses connected with the operation in its territory. Cars are used jointly by both companies indiscriminately. Rental is set up one company to the other for the use of each company's cars.

Q. Are there any transfers issued at the interstate line from the Phillipsburg Company to the Easton Company?

10 A. No. I say that is the very thing that we tried to avoid by setting up this agreement, that instead of putting the passengers to the inconvenience of getting out at the state line and transferring from one set of cars to the other, we continued to route the cars through in order to make this convenience possible.

Q. There was nothing said about this three and a half cents before the Public Utilities Board. Wasn't your testimony there that each company kept the money that it collected on each side of the bridge?

A. I said the same thing there; yes.

20 Q. And the allocation of three and a half cents is simply a method of trying to show how the contract is fair to both sides.

A. That is the effect of it.

Q. But the operation of this car, a person getting on in Phillipsburg is that he goes to the end of the line, the first transfer point at Center Square, Easton, is it not?

A. Yes.

Q. Of what value would the quarter of a mile from the interstate line to Center Square, Easton, be without the Phillipsburg line to the Easton Company?

30 A. Well, by the same token the Phillipsburg earnings would be tremendously reduced if they didn't have the connection over at Easton.

Q. That isn't the question. I want the question. Of what value would the line from the interstate line to Center Square, Easton, be to the Easton Company without the Phillipsburg line?

A. I couldn't express the value in amount of money.

Q. Would it be of any use to them?

A. It might be, yes.

Q. It might be?

A. Yes.

Q. Well, are there any other lines that could use it?

A. No. The Easton Company's own lines would use it. They could route cars down to that point.

Q. And have that a terminus point?

A. Yes.

Q. Who owns the tracks on the bridge?

A. The bridge company.

Q. It happens to be the Interstate Bridge Commission 10
at the present time?

A. At the present time, yes.

Q. Have you a contract between the bridge company
and either one of these companies?

A. Yes.

Q. Have you got it with you?

A. I think I have somewhere. (Refers to papers).
I can give you the terms of it.

THE CHAIRMAN: You stated I think originally,
Mr. Patterson, that the tracks were owned by the Easton 20
Transit Company.

THE WITNESS: Yes.

THE CHAIRMAN: That was a mistake, wasn't it?

THE WITNESS: On the bridge?

THE CHAIRMAN: On the bridge.

THE WITNESS: Yes, they are not. They are own-
ed up to the end of the bridge.

THE CHAIRMAN: I think that was your testimony.

THE WITNESS: I beg your pardon if I said that.
I didn't mean to. 30

A. I don't seem to be able to find that at the moment,
Mr. Smith. I can give you the terms of it.

Q. All right. Who was the contract between?

A. It was between the Easton Delaware Bridge Com-
pany and the Easton Transit Company.

Q. Was the Phillipsburg Company a party to the con-
tract?

A. No.

Q. Then isn't the Easton Transit Company operating
in New Jersey then? 40

A. No.

Q. Over the half of the tracks on the New Jersey side of the line?

A. No, I don't—

Q. You wouldn't say that?

A. No.

Q. But the contract is solely with the Easton Transit Company and the Bridge Company?

A. Yes.

10 Q. Now, you were saying that the Phillipsburg Company would be worth very little without the Easton Company lines, is that right?

A. I think so. That is my judgment.

Q. Therefore, the value of the Phillipsburg line is greatly enhanced by the Easton line from Center Square to the bridge line?

A. Well, you mean the connection there for traffic?

Q. Yes.

20 A. That a large part of the Phillipsburg traffic is developed from that connection, certainly, because about 70 per cent of the—

Q. Well, it has a direct bearing then on the value to the Phillipsburg Company, on the Phillipsburg Company property?

A. On the amount of traffic that the Phillipsburg Company gets, yes.

30 Q. Yes. And since this—will you also furnish, Mr. Patterson, the number of passengers, the total number of passengers carried over all the lines for 1918 and 1919 and 1920; that is, the total number of cash passengers on the whole line? That is, in both directions, from Center Square to Phillipsburg and from Phillipsburg—

A. Well, that is in our report to the Commission, too, Mr. Smith.

Q. Well, I haven't—those reports are filed at Newark and are not available to this particular Board, and I think you have copies of them, if I am not mistaken.

MR. WALTERS: I suppose that testimony was given in the rate question, wasn't it?

40 MR. SMITH: Yes.

MR. WALTERS: We are willing to admit—you have got the testimony here; why not let them use that?

MR. SMITH: I don't happen to have the particular figures.

THE WITNESS: I will try to get them up for you, Mr. Smith.

MR. SMITH: I think that is all, Mr. Patterson.

THE WITNESS: Might I say this, Mr. Smith, that so far as the routing of cars is concerned it has been suggested to us on more than one occasion that the lines from Phillipsburg should make them through service out to West Ward, in Easton. Now, we have two lines that come from South Side, Easton, and College Hill, in Easton, which make a service westward from Center Square where these Phillipsburg lines terminate now, and the suggestion has been made to us very frequently that instead of hooking up those two lines together that the cars from Phillipsburg might serve the convenience of more people if they were through routed to the west section of Easton. Now, it seems to us that it would be just as reasonable to say that if that were done all of the fares for all of that traffic out of the West Ward should be included in the Phillipsburg receipts. 10 20

MR. SMITH: We are perfectly willing on the allocation basis. I am satisfied with that. If the Town of Phillipsburg has no—

THE WITNESS: I mean it would certainly be preposterous if those cars were routed clear through to the west section of the city.

THE CHAIRMAN: Have you any questions, Mr. Walters? 30

MR. WALTERS: I am going to ask him a few questions.

CROSS EXAMINATION BY MR. WALTERS:

Q. Mr. Patterson, you say that the money received at Center Square is taken by the Easton Transit Company. Has Pennsylvania got a franchise law?

A. Yes.

Q. Is that money received at Center Square in the City of Easton for passengers going over the Phillipsburg 40

line subject to the franchise tax of Pennsylvania?

A. It is.

Q. Do you pay on the money received by passengers boarding the cars at Center Square to the State of Pennsylvania?

A. We do.

Q. Or whatever authority it is?

A. We do. We do.

10 Q. Yes. Can you tell the Board, Mr. Patterson, the object of making this agreement between the Easton Transit Company and the Phillipsburg Transit Company?

A. The last agreement?

Q. Yes, the last agreement.

A. I think we explained that, that owing to the illegality of the operation of the Phillipsburg Transit Company on that side.

Q. Yes. Your attorneys advised you that you had no right to operate in the City of Easton?

20 A. That was correct.

Q. Why, then, did you not stop and transfer your passengers at the State line, of New Jersey?

A. Simply for the convenience of through routing, convenience to the passengers.

Q. Except for the convenience to the passengers, you would be doing that today?

A. That is true.

30 Q. Now, what is the arrangements—I would like to impress upon the Board—what is the arrangement between the Phillipsburg Company and the Pennsylvania, Easton Transit Company at that point, by which you take over the passengers, the Easton Transit Company takes over the passengers that are on the Phillipsburg Transit Company line?

A. The Easton Transit Company takes the car there and operates it, paying all of the operating expenses.

Q. The electricity?

A. Power, maintenance of cars, tracks, overhead.

Q. And the expense of crews?

40 A. Expense, time of the crews and every expense

connected with the operation, including the bridge toll.

Q. Yes. The tracks on the bridge belong to the State of New Jersey?

A. Under the present arrangement, yes.

Q. The bridge company.

A. Yes.

Q. The Easton Transit Company rents those tracks?

A. They pay a toll—

Q. From the Phillipsburg—from the bridge company.

THE CHAIRMAN: That is, the Easton Transit pays 10 one-half of the rental?

THE WITNESS: The Easton Transit Company pays the entire toll.

THE CHAIRMAN: But then that is adjusted, isn't it, through—

THE WITNESS: No, the Easton Company bears the entire toll charges.

Q. Now, I would like to have it put in the record, you have stated that a passenger getting on at Alpha, could go to the New Jersey line. How large a distance would 20 that be?

A. Approximately four miles.

Q. Approximately four miles?

A. Little less.

Q. Then they can transfer from the New Jersey line and go to South Side?

A. Yes.

Q. How many miles would that be?

A. About three miles.

Q. Three?

30

A. Yes.

Q. Then they could go, transfer at the New Jersey line and go to College Hill; how many miles is that?

A. About two.

Q. Yes. Then they can transfer at the New Jersey line and go to Bethlehem.

A. Go the first fare limit on the Bethlehem line.

Q. Yes, go the first fare limit, to Wharton, I suppose.

A. Yes, just beyond the Taylor Wharton plant.

Q. How far is that?

40

A. Between three and four miles.

Q. Between three and four miles. And they can transfer from that point from the New Jersey line and go on to the South Bethlehem line and go to what point?

A. Out to Yaegers, or beyond, Highland Park.

Q. Beyond Island Park?

A. Highland Park, yes.

Q. How many miles would that be?

A. Between three and four miles.

10 Q. Three or four. And they could transfer at the New Jersey line and go up along the Lehigh River; how many miles is that?

A. Go up to either Glenburn or West Easton.

THE CHAIRMAN: How many miles?

THE WITNESS: About two and three-quarters miles.

Q. Now, all of these lines in the City of Easton take over the Phillipsburg passengers, and carry them nearly as far as the line in Phillipsburg, is that right?

20 A. Yes, that is true.

BY THE CHAIRMAN:

Q. Do I understand then that a passenger can board the car at Alpha and go to Center Square and there transfer to one of these lines that have been mentioned for a seven cent fare?

A. Yes, that is correct; and vice versa, he can come—board one of those lines anywhere in Easton and go anywhere in Phillipsburg.

30 Q. Right at any of those points that you have mentioned and go anywhere in Phillipsburg?

A. In Phillipsburg, for a seven cent fare.

Q. Well, does the length of his ride have anything to do with the allocation of the receipts, the fares, to the two companies?

A. It is simply a factor in determining what we thought was the reasonable arrangement between the two companies.

Q. Yes, but I mean now you have decided that three and a half cents—that you equally divide.

40 A. Equally divide them; that a fifty-fifty division

was as nearly reasonably to both companies as we could make it under the circumstances. The expenses of operation on the Easton side are heavier than on the Phillipsburg side.

Q. Well, now, when a passenger goes to Center Square and wishes to transfer, do I understand that he actually boards another car or—

A. Yes, that is correct; except for these morning and evening trippers which we run through for the convenience of the industrial plants. 10

THE CHAIRMAN: Anything further?

BY MR. WALTERS:

Q. Is the fact that a passenger boarding the Phillipsburg Transit Company cars can go so great a distance on one fare the cause of an increase to the Phillipsburg line in revenue; the fact that they can go so large a distance, so great a distance, has that induced more passengers to take your Phillipsburg line?

A. No doubt of it. All of those questions, if I may say this, you needn't put it on the record if you don't want it, were very thoroughly gone into in our rate case hearing before the Utility Board. 20

Q. Mr. Patterson, the agreement made in 1919 was put on file with the Utility Commission of New Jersey?

A. Yes, sir, it was.

Q. The agreement of 1918 was also put on record?

A. 1917.

Q. The ordinary agreements that your Company make as a public utility are filed with the Utility Commission, are they not? 30

A. That is correct.

Q. Was there any hearing demanded upon any of these agreements that were filed with the Utility Board?

A. No, I think not.

Q. No. The agreement of 1919 was discussed in the application for an increase in rates made last year, is that right?

A. Yes, and commented upon in the Board's decision in regard to the rate.

Q. Now, what generally is the proportion of cars 40

furnished by the Easton Transit Company in Phillipsburg during the rush hours to the number that goes over to Easton from Phillipsburg on the Phillipsburg line?

A. Well, there are nine cars in regular service on the Phillipsburg lines, and there are some probably six or seven morning trippers, morning and evening trippers.

Q. Yes. Do you send cars down to Alpha in the morning to gather up the workmen?

A. Yes.

10 Q. And you send them over to the Ingersolls?

A. Yes.

Q. And to the different silk mills in Phillipsburg?

A. Yes.

Q. What arrangement is made with regard to those cars that are sent over by the Easton Company to the Town of Phillipsburg?

A. The same arrangement obtains with those cars. The Phillipsburg Company pays a rental for them just the same as the Easton Transit Company pays a rental for

20 the Phillipsburg cars it uses.

Q. In other words, the Phillipsburg Transit line during rush hours engages the cars and crews of the Easton Transit Company to carry the surplus passengers from these different industries?

A. That is correct.

Q. Who receives the fares of those six or seven cars in the morning and at night?

A. The Phillipsburg Company.

Q. The Phillipsburg Company?

30 A. On its side of the river.

Q. Are they operated by the crews of the Phillipsburg Transit or of the Easton Transit Company?

A. The employees are used indiscriminately by both companies.

Q. By both companies?

A. Yes.

Q. Now, I don't know whether you have made mention of it or not, but what would be the effects on the revenues of the Phillipsburg Transit Company if no

arrangements were made with the Easton Transit Company?

A. You mean they only operated to Union Square?

Q. Yes.

A. I think it would be very seriously reduced.

Q. Would you have the same number of cars in operation that you have now?

A. Practically so, yes.

Q. I mean that if you were not connected with the Easton Transit Company in any way, no transfer system? 10

A. Well, there is a franchise requirement in Phillipsburg, calling for a ten minute headway.

Q. Oh, I see.

A. And we would still have to operate the same number of cars under that franchise requirement, although the traffic would be tremendously reduced.

Q. What is the proportion of passengers that go to Easton and the proportion that are locally carried?

A. Around 70 per cent is interstate traffic. 20

MR. WALTERS: I think that that is about all the questions that I have got to ask.

RE-DIRECT EXAMINATION BY MR. SMITH:

Q. What percentage of interstate traffic transfers beyond Union Square or Center Square, Easton?

A. I don't recall exactly. It was brought out in the hearing before the Board, and I think less than 50 per cent.

Q. Less than 50 percent?

A. I think so; slightly. 30

Q. So that less than 50 percent, that is meaning only 35 percent of these—

A. No.

Q. —of the total passengers carried—

A. Oh, well of course the total passengers carried would include the passengers who are local in Phillipsburg.

Q. I say but 35 percent of the total passengers carried in interstate traffic travel only between Center Square and the New Jersey end of the line. Now, isn't it 40

a fact that about 54 percent of the passengers, total passengers, travel between Center Square and points in New Jersey and do not use transfers?

A. I think it was around something like that. The figure was brought out in the hearing.

Q. And then 30 percent of the passengers are entirely New Jersey passengers?

A. Yes, I think so; about that; local passengers in Phillipsburg.

10 Q. So that the number of passengers who take advantage of this transfer to points beyond Center Square is about 16 percent of all of the passengers carried?

A. That is probably true.

Q. Is there an ordinance of the Town of Phillipsburg, franchise ordinance, requiring transfer to all points on the Easton Transit Company?

A. There is.

MR. SMITH: That is all.

MR. SMITH: I think that is all at the present time.

20 THE CHAIRMAN: Do you think it sufficiently appears—it ought to, I imagine, it has been discussed two or three times—just what the receipts reported by the Phillipsburg Transit Company cover? Do you think that is clear on the record? I must say in my mind I am not entirely clear.

MR. PATTERSON: May I make a statement to clear it up?

THE CHAIRMAN: I would like to have a statement, not of any theory of bookkeeping, but what actual-
30 ly is done.

MR. PATTERSON: Yes, I see. The receipts reported by the Phillipsburg Company include all of the cash fares collected on the New Jersey side of the Delaware River.

THE CHAIRMAN: They do?

MR. PATTERSON: Yes.

THE CHAIRMAN: Well, that is perfectly clear and definite, if that is the situation.

MR. PATTERSON: That is the situation.

40 MR. SMITH: And nothing else?

MR. PATTERSON: That is all.

THE CHAIRMAN: Now, what do you want them to pay taxes on, Mr. Smith? I am trying to get at your theory.

MR. SMITH: On the whole line; that is, all of the fares collected from the first transfer point, Center Square and ending in Phillipsburg, New Jersey, and allocating the different length of the line according to the law, the line in Pennsylvania, just as was done in 1917 and 1918 and years before. 10

THE CHAIRMAN: Well, would you still insist that that were the proper method if as a matter of fact the Easton Transit Company and the Phillipsburg Transit Company were not only separate corporations as they appear to be but were owned and controlled by different interests entirely? Would you still feel—

MR. SMITH: I would, under their present method of arrangement. I think, Mr. Jess, that it is absolutely clear that they are engaged in interstate commerce. The very fact that they do it by mere bookkeeping system, I 20 think the courts have held that that doesn't eliminate the fact that they are engaged in interstate commerce, and that they are practically carrying on the same system.

MR. WALTERS: Why, Mr. Smith, why do you insist upon it when we say that we have got no right—Mr. Patterson has testified to the fact that this money that is collected at Center Square they pay a franchise tax on to the State of Pennsylvania. Now you are coming here and asking us also to pay a State franchise tax on it. 30 The consequence is that we will be taxed clear out of existence.

MR. SMITH: That isn't the purpose. My understanding of the franchise tax is to fix the value of the plant and the franchise in New Jersey for the purpose of taxation. It is an excise tax, and our contention is based upon that.

MR. WALTERS: There is one other thing I wanted to bring out.

THE CHAIRMAN: All right. 40

MR. WALTERS: Mr. Patterson, the Phillipsburg Transit Company, and the Easton Transit Company have separate organizations, separate boards of directors, separate presidents, and each are run as an independent corporation, is that right?

MR. PATTERSON: Entirely distinct in every respect; payrolls, operating expenses and everything kept entirely distinct; organization is entirely distinct.

THE CHAIRMAN: Well, apparently what this
10 Board has got to determine is what are the gross receipts from the business you are doing in New Jersey. I suppose it comes down to that.

MR. WALTERS: Yes, that is it.

THE CHAIRMAN: And we would like to have a memorandum from counsel, if you don't mind submitting it, to help us arrive at a decision.

MR. SMITH: These statements and reports of passengers carried we will submit later to the Board.

THE CHAIRMAN: Yes.

20 MR. WALTERS: I made a sort of a brief of some portion of what has been testified here (handing paper to Board). Possibly that might—

THE CHAIRMAN: Has Mr. Smith got a copy of this?

MR. WALTERS: Oh; did I give you a copy of that?

MR. SMITH: Yes, you gave me a copy of that.

(The hearing was thereupon adjourned).

EXHIBIT P-1

THIS AGREEMENT, made this 22nd day of December, A. D., 1919, between Easton Transit Company, a corporation of the State of Pennsylvania, hereinafter called "EASTON COMPANY", party of the first part, and Phillipsburg Transit Company, a corporation of the State of New Jersey, hereinafter called "PHILLIPSBURG COMPANY", party of the second part, WITNESSETH:

WHEREAS, Easton Company owns and operates about 10
forty-five (45) miles of electric railway in the State of Pennsylvania, a portion thereof extending to and connecting with tracks owned by and laid upon the bridge of the Easton & Delaware Bridge Company across the Delaware River between the City of Easton, Pennsylvania, and the Town of Phillipsburg, New Jersey; and

WHEREAS, Phillipsburg Company owns about seven (7) miles of electric railway in the State of New Jersey also connected with the tracks laid upon said bridge; 20
and

WHEREAS, the parties hereto are now furnishing to the public a joint through interstate service over their respective systems by means of the connection afforded by the tracks on said bridge and, since such service constitutes a substantial public convenience, desire to continue the same and to provide for a proper division of the revenues derived therefrom and the expenses incurred in connection therewith.

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the 30
parties hereto agree as follows:

FIRST: That Easton Company shall operate cars of Phillipsburg Company, delivered to it at the state line between the states of Pennsylvania and New Jersey on said Easton-Phillipsburg bridge, in both directions to and from Center Square, Easton, and such other points as may be mutually agreed upon, under such schedules as the parties may from time to time agree upon, and

Easton Company shall supply the necessary power and pay all of the cost and expense of such operation including the entire rentals which may be exacted for the use of said bridge.

10 SECOND: That Phillipsburg Company shall operate its cars used in the aforesaid joint through interstate service in its territory and deliver the same to Easton Company at the said state line for operation to and from Center Square, Easton, and such other points as
 20 may be mutually agreed upon, in accordance with such schedules as the parties may from time to time agree upon, and Phillipsburg Company shall supply the necessary power and pay all of the cost and expense of the operation of its cars on its own system, Phillipsburg Company shall operate, deliver to and receive from Easton Company as aforesaid, cars in such numbers as will reasonably accommodate the public requirements, subject to such reasonable regulations in regard to the dispatch of cars as may be from time to time imposed by Easton
 20 Company.

THIRD: That each Company shall use due diligence to maintain its facilities and operate its service in such manner as to render efficient service to the public in accordance with the schedules from time to time agreed upon, but neither Company undertakes to insure against delays or failures of service from any cause, and shall not be held liable to the other therefor.

30 FOURTH: That Easton Company will provide for the storing and repairing of the cars of Phillipsburg Company in the barns and shops of the former Company, the cost of labor and materials used in repairs to be charged to Phillipsburg Company in addition to the payments provided for in Article Sixth hereof.

FIFTH: That each Company shall collect from every passenger boarding its cars in its territory the joint through interstate fares for the full trip within the city fare zones of both Companies, and shall retain the amount so collected. It is understood, however, that the arrangement for the division of the joint fares herein provided in this paragraph is entered into in order to

simplify accounting and because the number of interstate passengers traveling in the one direction across said Easton-Phillipsburg Bridge, as determined by an actual traffic check duly taken, is substantially equal to the number of passengers traveling in the opposite direction across said bridge. Either party may, however, upon not less than ten (10) days' written notice to the other, require a new check to be taken whenever in its opinion changed conditions warrant it, and may require such readjustment of the present method of accounting between the parties as such check shall indicate to be necessary in order that each fare collected from such joint interstate passenger traffic shall be equally divided between the parties. 10

The revenue for interstate freight service within the city fare zones of both Companies shall be divided equally between the parties.

SIXTH: That each Company shall pay as rental for cars of the other Company used in its service the cost of maintenance determined on car mileage basis and for depreciation, insurance, taxes and interest, 12% per annum on the cost of such cars. 20

That the cost and expense of maintaining the joint through interstate service covered by this agreement shall be divided between and borne by the parties as follows:—

(1) Each party shall pay and bear all of its fixed charges and all taxes and assessments imposed on its property or business.

(2) Phillipsburg Company shall pay to Easton Company monthly the following charges apportioned on a car mileage basis, that is, the same proportion of the total expenditure by Easton Company for joint account for the following items which the car mileage on the Phillipsburg system bears to the total car mileage on the two systems, settlements to be made monthly: 30

Salaries of following employees:

General Manager,

Secretary-Treasurer,

Superintendent and Asst. Superintendent, 40

Engineer Maintenance of Way, Supervisor and Clerk,
Superintendent of Equipment, Master Mechanic and
Clerk,

Foreman of Overhead Line,
Purchasing Agent and Clerks,
Storekeeper and Clerks,
General Office Force,
Despatchers.

Expense incurred by Easton Company for joint ac-
10 count for

Secret Service,
Greasing Track,
General Advertising,
Maintenance of Automobiles and Trucks,
General Offices,

Despatchers' Office (including cost of light, heat,
water and miscellaneous expense).

Use of Automobiles and Trucks (interest at 6% per
annum and depreciation on same basis as charg-
20 ed by Easton Company.

Use of Car Barn, Shop Facilities and Offices at 16th and
Washington Streets. (For maintenance depre-
ciation, insurance, taxes and interest—total
14% per annum—on value of buildings and
equipment, real estate occupied by same, tracks
and special work, which is agreed upon as \$194,-
813.00, to which is to be added cost of light,
heat, water and miscellaneous expense).

SEVENTH: That neither party shall assign the
30 rights or privileges accruing to it under this agreement
without the previous consent in writing of the other
party, and any such attempted assignment by either
party shall at the option of the other party, have the
effect of immediately terminating this agreement.

EIGHTH: That either party hereto may terminate
this agreement upon giving three (3) months' written
notice to the other party of its intention so to do.

NINTH: That all rights and liabilities herein given
to or imposed upon either party hereto shall be consid-
40 ered as having become effective on January 1, 1919, and

the necessary adjustments to that end shall be made between the parties.

TENTH: That this agreement shall supersede the agreement between the same parties dated January 11, 1917, which is hereby terminated as of the effective date of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their proper officers thereunto duly authorized and their respective corporate seals to be hereunto affixed, the day 10 and year first above written.

EASTON TRANSIT COMPANY,

By:

(Signed) P. B. SAWYER,
Vice-President.

Attest:

(Signed) E. E. WAGNER,
Secretary.

PHILLIPSBURG TRANSIT COMPANY,

By:

(Signed) JOHN A. BACHMAN,
President.

20

Attest:

(Signed) E. E. WAGNER,
Secretary.

EXHIBIT P-2

AGREEMENT, made this 11th day of January A. D. 1917, between the EASTON TRANSIT COMPANY, a corporation of the State of Pennsylvania, hereinafter called the "Easton Company," of the first part, and the PHILLIPSBURG TRANSIT COMPANY, a corporation of the State of New Jersey, hereinafter called the "Phillipsburg Company", of the second part.

10 WHEREAS, the Easton Company is the owner of about forty-five (45) miles of street railway, in the State of Pennsylvania, a portion thereof extending from Centre Square, in the City of Easton, to the Delaware River, a distance of some ten hundred (1000) feet;

20 AND WHEREAS, The Phillipsburg Company owns or controls about seven (7) miles of street railway, in the State of New Jersey, the said lines of the Easton Company and of the Phillipsburg Company connecting and forming a continuous line of street railway by means of an intervening track laid upon the bridge of the Easton and Delaware Bridge Company; said bridge crossing the Delaware River, between the City of Easton, Pennsylvania, and the Town of Phillipsburg, New Jersey;

AND WHEREAS, it is desired by the Easton Company and the Phillipsburg Company, for their mutual convenience and advantage, to enter into a renewal traffic agreement, whereby the cars of the Phillipsburg Company may be operated on the tracks of the Easton Company;

30 AND WHEREAS, the broad gauge of the line of the Phillipsburg Company and the line on East Northampton Street have been changed to standard gauge;

NOW IN CONSIDERATION OF THE PREMISES and the mutual benefits and advantages the parties hereto agree as follows:

FIRST: The Easton Company, for itself, its successors and assigns, subject to the consent and regulation of the proper authorities of the City of Easton, agrees to permit the cars of the Phillipsburg Company,

its successors and assigns, to be carried and transported over and along the tracks of the Easton Company, from the Delaware River upon and along Northampton Street to Centre Square, and to permit the cars of the Phillipsburg Company to be stored in and repaired in the barns and shops of the Easton Company:

SECOND: The Easton Company agrees to provide and maintain its tracks, poles and necessary overhead construction so as to enable the employees of the Phillipsburg Company to operate the cars of the Phillipsburg Company from the division line between the States of New Jersey and Pennsylvania, crossing the said Delaware Bridge to Centre Square, in the City of Easton, and return, in an efficient manner. 10

THIRD: The Easton Company also agrees to accept transfers from passengers of the Phillipsburg Company, at Centre Square; such transfers to be good on any of the lines of the said Easton Company, within the five cent fare limit, in the City of Easton and Townships of Wilson and Palmer; 20

FOURTH: The Phillipsburg Company in operating its cars within the City of Easton, shall be subject to all limitations and provisions to which the Easton Company is subject, by the terms of its franchises, or any ordinances of the City of Easton, relative to the operation of its cars. The ordinary delays and temporary inconveniences incident to the street railway business, or which may occur through fires, floods, strikes, riots, mobs, insurrections, breakage of materials, or unavoidable casualties, shall not be construed as contracted against by the Easton Company, and it shall not be liable in any manner or form therefor. Nor shall the Easton Company be liable for the damages for injuries to person or property resulting from the operation of the cars of the Phillipsburg Company upon the tracks of the Easton Company. 30

FIFTH: The Easton Company shall receive all cars delivered to it by the Phillipsburg Company, and shall provide tracks and overhead work, except as otherwise herein provided for, to allow same to be propelled by 40

direct current, or other system used by the Easton Company, over routes specified, and return, with reasonable despatch, and in such reasonable numbers as will accommodate the incoming and outgoing traffic and patronage of said Phillipsburg Company; such cars to be operated by the employees of the Phillipsburg Company; it being understood and agreed, between the parties, that the despatch of cars shall, at all times, be subject to the reasonable regulations of the Easton Company.

- 10 SIXTH: The Easton Company shall have the right to operate its cars upon the tracks, upon said bridge, and within the State of Pennsylvania as herein provided, and upon the tracks of the Phillipsburg Company within the State of New Jersey upon such terms as may be agreed upon between the parties hereto.

SEVENTH: The Phillipsburg Company agrees to provide and operate sufficient cars upon its lines, in the State of New Jersey, and in accordance with the ordinances of the Town of Phillipsburg and over the tracks
20 of the Delaware Bridge Company, and upon and along said Northampton Street to Centre Square, in the City of Easton, Pennsylvania, sufficient to accommodate the public travel, and at all times keep and maintain its line or lines of railway in New Jersey, overhead construction and equipments in first class operating condition.

EIGHTH: The Phillipsburg Company agrees to pay the rental for operating its cars over the tracks of the Easton Delaware Bridge Company, and to pay all fixed charges and all taxes due the State of New Jersey, or
30 municipal authorities, all taxes on cars, franchises and other taxes and assessments in the States of New Jersey and Pennsylvania; and the Phillipsburg Company further agrees to pay to the Easton Company, monthly or semi-monthly as hereinafter indicated, the following percentages of the following expenses incurred by the Easton Company:

Twenty-two per centum (22%) of the Gen'l Mgr's salary monthly;

Twenty per cent. (20%) of the Secretary-Treasurer's
40 salary monthly;

Twenty-five per cent. (25%) of the Superintendent's salary monthly;

Eleven per cent. (11%) of the Eng. M. of W's salary monthly;

Twenty per cent. (20%) of the Office Force Expenses monthly;

Fifty per cent (50%) of Stable Expenses monthly;

Sixty-six per cent (66%) of Wages of one T. Greaser, monthly;

Eleven per cent (11%) of Linemen's wages when not specifically engaged monthly. 10

The salaries of the Master Mechanic and Despatchers shall be divided in the proportion that the number of cars operated by the Phillipsburg Company bears to the total number of cars operated by the Easton Company and the Phillipsburg Company.

The division of the salaries of Road Officers and Transfer Clerk shall be proportioned payable on same basis when engaged jointly on the two roads.

Store Room Clerk's salary in proportion to value of 20 supplies purchased or received from the Easton Company and used by the Phillipsburg Company.

Two Hundred Dollars (\$200) per year for light and office rent, monthly.

The cost of Secret Service Inspection shall be divided in the proportion that the number of cars operated by the Phillipsburg Company bears to the total number of cars operated by the Easton Company and the Phillipsburg Company and shall be payable upon demand.

And the Phillipsburg Company further agrees to pay 30 to the Easton Company monthly the following amounts:

2c per cash passenger crossing the Easton Delaware Bridge, it being understood and agreed that 70.07% of the total cash passengers of the Phillipsburg Company cross said bridge;

1-12 of 15% of the investment cost of track, paving and overhead line on East Northampton street, it being understood and agreed that such cost at the time of this agreement is \$9,463.96;

1-12 of 15% of the Easton Company's investment cost 40

of car barn and shop facilities, it being understood and agreed that such investment cost at the time of this agreement is \$101,928.53.

NINTH: The Phillipsburg Company also agrees to purchase or provide all power required in the operation of its line or lines of railways, at its own expense.

TENTH: All fares collected on the Phillipsburg Company's cars in New Jersey and Pennsylvania shall be the property of the Phillipsburg Company.

10 ELEVENTH: The Easton Company shall be entitled to retain all fares collected by it from passengers transferred from the Easton Company line to the Phillipsburg Company line; the Phillipsburg Company agreeing to accept and carry all passengers so transferred to any point on its lines within the five cent fare limit, without the charge of any additional fare; and all tickets, transfers and badges now in use, or that hereafter may be issued by the Easton Company, or the Phillipsburg Company, shall be accepted on either road.

20 TWELFTH: All rights and liabilities herein given to, or imposed upon, either of the parties hereto, shall be considered as having become fixed, effective and operative on February 16th, 1915; and all adjustments and settlements hereunder between the parties hereto, or their respective successors and assigns, shall be made as of February 16th, 1915.

THIRTEENTH: Either of the said parties to this agreement may terminate the same, upon giving three (3) months' notice of its intention so to do, to the other
30 party hereto, and until terminated shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the respective corporations, parties hereto, have hereunto affixed their respective corporate seals, the day and year aforesaid.

Signed, sealed and delivered in the presence of:

EASTON TRANSIT COMPANY,

By

(Signed) H. R. FEHR,

President.

Attest:

F. A. HAZZARD,
Secretary.

PHILLIPSBURG TRANSIT COMPANY,

By

JOHN A. BACHMAN,

President.

Attest:

F. A. HAZZARD,
Secretary.

10

STATE OF PENNSYLVANIA, }
COUNTY OF LEHIGH, } SS.

On this 11th day of January, A. D. 1917, before me, the subscriber, personally came F. A. Hazzard, who, being duly sworn according to law, did depose and say, that he is the Secretary of the Phillipsburg Transit Company, one of the parties to the above agreement; that the seal affixed to said Agreement is the common or corporate seal of said corporation, and was so affixed thereto by order of said corporation; and that the names of John 20
A. Bachman, President, and of this deponent as Secretary of the said corporation, subscribed to said Agreement, in attestation of the due execution and delivery thereof, are of their own proper and respective handwritings.

(Signed) F. A. HAZZARD.

Sworn and subscribed before me the
day and year aforesaid.

(Signed) SAMUEL WEIL.

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF LEHIGH, } SS.

30

On this 11th day of January, A. D. 1917, before me, the subscriber, personally came F. A. Hazzard, who being duly sworn according to law, did depose and say, that he is the Secretary of the Easton Transit Company, one of the parties of the above Agreement; that the seal affixed to said Agreement is the common or corporate seal of said corporation, and was so affixed thereto by order of said corporation; and that the name of H. R.

Fehr as President, and of this deponent as Secretary of said corporation, subscribed to said Agreement in attestation of the due execution and delivery thereof, are of their own proper and respective handwritings.

(Signed) F. A. HAZZARD.

Sworn and subscribed before me the
day and year aforesaid.

(Signed) SAMUEL WEIL.

EXHIBIT P-3**ORDINANCE NO. 288.**

An ordinance granting permission to the Phillipsburg Horse Car Railroad Company, its successors and assigns, to construct, operate and maintain a single track surface street railway in the town of Phillipsburg, on and over Heckman Street from the present terminus of the said railway in an Eastwardly direction along center line of said street to the farm of James Ingham and others, thence through the farm of James Ingham and others along the center line of Heckman Street extended to Center Street, thence through said Center Street in a Southwardly direction, following the center line of said Street, to a point in said Street where the tracks of the Morris and Essex division of the Delaware, Lackawanna and Western Railroad cross said Street, and prescribing the terms and conditions upon which said permission is granted and the regulations and restrictions under which the said railway shall be constructed, operated and maintained.

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BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF PHILLIPSBURG:

SEC. 1. The Phillipsburg Horse Car Railroad Company is hereby granted the right and privilege to construct, operate and maintain a single track railway of the gauge of five feet and two and one-half inches (which is the gauge of its other lines in the town of Phillipsburg) with any and all necessary pole and wire lines, curves, sidings, cross-overs and switches, within the limits of the town of Phillipsburg, for the transportation of passengers only, by the following route, viz: On and over Heckman Street from the present terminus of the said railway in an Eastwardly direction along the center line of said Street to the farm of James Ingham and others, thence through the farm of James Ingham and others along the center line of Heckman Street extended to Center Street, thence through said Center Street in a Southwardly direction, following the center line of said

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Street, to a point in said Street where the tracks of the Morris and Essex division of the Delaware, Lackawanna and Western Railroad cross said Street.

And consent is also hereby given to do all and every lawful act and thing necessary to construct and reconstruct, and equip and re-equip said railway and road-bed and maintain the same, together with all necessary pole and wire lines, curves, sidings, cross-overs and switches, to be placed and constructed under the supervision and
 10 to the satisfaction of the Common Council, and to operate its street railway by electrical power, according to the trolley system, with electrical motors, on the conditions, regulations and restrictions in this ordinance contained, provided, however, that there shall not be any turnouts, sidings or switches on Heckman Street or Heckman Street extended or said Center Street in said town of Phillipsburg, except where designated by the Common Council.

SEC. 2. Said single track railway hereby authorized
 20 to be laid shall be laid in the center of the Avenues, Streets, Highways and Alleys, whether public or private, except over land now owned by James Ingham and others and over such land it shall be on the center line of Heckman Street extended, and shall be placed and at all times kept at such grade as may be fixed by the Common Council for said Avenues, Streets, Highways and Alleys. The necessary turnouts and switches shall be sanctioned by the Common Council.

Whenever in the construction of said railway, it may
 30 be found necessary to construct culverts, the same shall be constructed in the manner designated by the Common Council. The railway tracks, turnouts and culverts shall be constructed in a manner satisfactory to the Common Council, and placed where directed by the Common Council.

SEC. 3. In the construction or reconstruction of the road-bed and railway tracks the said company shall use a flange rail, to be approved by the Common Council, and in all cases the upper surface of the rails must be
 40 laid or relaid and kept on a level with the present estab-

ished grades, or with such grades as may hereafter be established for said Heckman Street, Heckman Street extended or to be extended through lands of James Ingham and others, and said Center Street as now or hereafter ordained by the Common Council of the town of Phillipsburg. Said Heckman Street, including the extension of said street through the lands of James Ingham and others and said Center Street, as ordained or to be ordained by the Common Council, shall be graded by said Company thirty feet in width from curb to curb. 10

SEC. 4. If at any time hereafter said Heckman Street, said Heckman Street extended, or said Center Street shall be paved or repaved by the Town of Phillipsburg, with or without State aid, then the said railway company, its successors and assigns, shall at the same time, at its own expense, pave or repave the space between its rails and tracks and for eighteen inches on the outside thereof, with the same material and in the same manner, provided, it is instructed or ordered so to do by resolution of the said Common Council. 20

The railway company shall at all times keep the road-bed between its rails and tracks, and for eighteen inches on the outside of both sides thereof, in good repair, and on failure so to construct or reconstruct, pave or repave, or repair said portion of the road-bed or any part of said portion, after ten days notice, the Town shall be authorized to do such work and charge the same to the company, collecting the amount or amounts thereof from the company as debts of like amount are by law collectible.

SEC. 5. Whenever in the construction or reconstruction of its road-bed or tracks upon the route above described it may become necessary to change the contour or crosssections of the Avenues, Streets, Roadways or Alleys to accommodate said tracks to the then existing or established gradients and regulations of the Town, and whenever, in the opinion of the Common Council it is necessary to widen or alter any Avenue, Street, Roadway or Alley by reason of the construction of said railway, all expense thus entailed shall be borne by the com- 30

pany and the work shall be done under the supervision of the Common Council.

The company shall also pay abutting property owners such damages as they may be legally entitled to recover for any such change of grade and widening or altering said Heckman Street, Heckman Street extended or Center Street.

10 SEC. 6. The Town of Phillipsburg shall at all times have the right, when making repairs or improvements in the Streets, the laying of gas, water or other mains or the construction or reconstruction or repairs of sewers and for any other purpose to open, if necessary, that portion of the Street occupied by the tracks of the company, and said company shall make no obstruction while such repairs or improvements are in progress, and if the tracks are to be removed or raised during such improvements, the expense thereof as well as any damage done to the tracks, shall be borne by the company, provided, that nothing in this section shall be construed to
20 relieve any gas, steam-heat or water company or private corporation having the right of eminent domain upon the said Heckman Street, Heckman Street extended or Center Street, from the expense of any improvements made by it under the tracks of said railway.

SEC. 7. The poles used in the construction or reconstruction of said railway shall be of wood not more than ten inches in diameter and octagon in shape and shall be kept well covered with paint, marked and numbered. Said poles shall be placed on the inside of the curb, about
30 two inches from the inside top line or edge of the curb, and in such manner as to cause the least possible obstruction and injury to the curb and sidewalks, and so as not to unnecessarily obstruct such portions of the fronts of private property as may be needed or be lawfully in use for business purposes by the owner or tenant of such property. Where a dispute arises to the placing or locating of such poles, the Committee on Streets and Alleys or the Common Council shall decide where the same shall be located. No poles required by the said company
40 shall be placed on the outside of the curb line of any

Street, without the express permission of the Common Council of the Town of Phillipsburg, and all poles shall be erected, located and maintained under the supervision of the Common Council.

SEC. 8. Whenever and wherever poles are erected upon the route above described, by said company, it shall carefully replace the material excavated and relay and keep in good repair all brick, flagging and other paving, so that the sidewalk shall be in good condition and according to the regulations of the Town. Wherever poles 10 are planted in a sidewalk, under which there is a public or private sewer or vault, the work shall be done under the supervision and subject to the approval of the Town Surveyor, and such poles shall be fastened, if deemed necessary by him, with cement concrete, and any and all damages done to such sewer or vault shall be repaired and made good by the said company forthwith after the same may be done.

SEC. 9. The trolley wire to be stretched over the tracks of the said company and across the Streets upon 20 the route above described, shall be strung so as to leave a clear space between said wire and the surface of the Street of at least eighteen feet, and where crossed by any electric lighting, telephone, telegraph or fire alarm wires, the same shall be at all times protected by guard wires properly insulated.

The said company shall at all times use the most satisfactory and improved method of preventing the return current of said company's wires from injuring the water or gas mains in the Streets where the company's rails 30 shall be laid and the pipes in the houses of the citizens on said Streets.

SEC. 10. The said railway company shall at all times be liable for any and all damages due to individuals or to private or public property by reason of any faulty or defective construction or maintenance of its road-bed, railway tracks, poles, wires or other apparatus, and should any damages be recovered against The Inhabitants of the Town of Phillipsburg, its successor or successors, by reason of the construction, building or opera- 40

tion of said railway or by reason of any faulty or defective construction or maintenance as aforesaid, such sums shall be recoverable by The Inhabitants of the Town of Phillipsburg from the said company as debts of like amount are by law recoverable.

SEC. 11. In removing snow or ice from the tracks of said company, the same shall not be thrown, shoved or pushed in heaps along the sides of the track or tracks, but shall be carefully and evenly distributed so as not
 10 to obstruct travel, and whenever the quantity of snow thus thrown, shoved or pushed out by the railroad company from its tracks is so great as to obstruct travel, it shall be the duty of the company to remove the same within twenty-four hours after the same has fallen and in default of so doing, such work shall be done by the Common Council or the Committee on Streets and Alleys, and the expense thereof, together with twenty per cent added
 20 thereto, shall be charged to and collected from said railway company by The Inhabitants of the Town of Phillipsburg as debts of like amount are by law collectible.

SEC. 12. It shall not be lawful for said company, its agents or employees to use salt or any admixture thereof on the streets of the Town for the purpose of cleaning its tracks from snow or ice. For every violation of this provision, said company shall pay to the Town a penalty of fifty dollars for each offense to be recovered as debts of like amount are by law recoverable.

SEC. 13. The said street railway company shall not
 30 charge more than five cents for a single fare for a continuous ride between any two points within the present or any future limits of the Town of Phillipsburg, and the City of Easton, Pennsylvania, or between any two points within the present or any future limits of the Town of Phillipsburg, and the Village of Alpha, upon the route described in this ordinance, or upon any route now or hereafter owned, controlled, operated, used, run over or managed by said company, and over the lines of any other company within the Town of Phillipsburg and the City of Easton, Pennsylvania, and the Village of Alpha,
 40 which may now or hereafter own, operate, control, use,

run over or manage the lines of the said Phillipsburg Horse Car Railroad Company, or with which the Phillipsburg Horse Car Railroad Company or its successors may now or hereafter have traffic arrangements or agreements, and for this purpose transfers for a single fare within the Town of Phillipsburg and within the City of Easton and within the Village of Alpha, shall be given over the lines of the said Phillipsburg Horse Car Railroad company shall not, by running its cars or in any other companies which may now or hereafter be owned, operated, controlled, used run over or managed by the said Phillipsburg Horse Car Railroad Company, or which may now or hereafter own, operate, control, use, run over or manage the said Phillipsburg Horse Car Railroad Company. 10

SEC. 14. The company shall at all times during the construction, reconstruction and repairing of its lines, when the said Heckman Street, Heckman Street extended or Center Street shall be opened for the purpose of laying any track or tracks, cause the same to be properly guarded by proper danger signals at all times during the continuance of the work on said construction, reconstruction or repairing, so as to properly warn the public of such danger and shall be liable for all accidents occurring by reason of such construction, reconstruction or repairing. 20

In the event of fire, or the alarm of fire, the right of way must be yielded readily and at once to the fire engines, hose carriages, and other fire apparatus, and the company shall not, by running its cars or in any other way or manner, interfere with the necessary or proper use of the fire engines, hose carriages, or other fire apparatus. 30

SEC. 15. The cars of the said lines shall not be run at a higher rate of speed than ten miles an hour, or such other reasonable rate of speed as Common Council may, by ordinance, hereafter direct.

SEC. 16. The cars used on said lines or any of the lines and branches of the said railway, shall at all times be of the most improved and modern kind, shall be adapt- 40

ed to the seasons of the year in which they are used, and shall always be kept in perfect repair.

They shall be adequately and thoroughly lighted and heated by electricity.

They shall be provided with the best and most approved fenders to protect life and property; with proper head lights to be lighted at night, and with proper gongs, which shall be sounded at all crossings, side Streets, Avenues and Alleys so as to give sufficient warning of
10 the approach of the cars.

Cars shall be run on a ten minute schedule or less within the present or any future limits of the Town of Phillipsburg and cars shall pass a given point on the lines of said company running in each direction at least once every ten minutes, excepting in case of accidents to machinery, appliances or power of said company, or in case of strikes of or by the employees of said company.

SEC. 17 Whenever a motive power which shall do away with overhead wires shall be found practicable and
20 in successful operation for a period of two years in any municipality of Pennsylvania, New York or New Jersey, of not greater population than the Town of Phillipsburg or its successors, the Phillipsburg Horse Car Railroad Company or its successors, shall on one year's notice in writing, to be given by the Common Council of the Town of Phillipsburg or its successors, forthwith change its motive power upon its lines within the Town of Phillipsburg or its successors to such power as may be in use in such other municipality; and whenever such
30 change is made, said railway company shall proceed immediately to remove all poles and overhead wires from the Street or Streets, Avenue or Avenues, Alley or Alleys, road or roadways through and over which the tracks, poles and wires may have been placed.

SEC. 18. The tracks of the company upon the route above described shall always be kept in the best and most perfect physical condition, and shall be so laid as not to interfere with the flow of the surface water, and wherever they cross gutters they shall be laid over iron pipes
40 to be provided by the company, and catch or track basins,

shall when the railroad above described is constructed, be placed by said company between its tracks wherever directed by the Town Surveyor, and whenever the Common Council may hereafter direct by resolution, catch or track basins shall be placed and constructed by the said company between its tracks at its own expense, wherever directed by said resolution of the said Common Council, to allow the free flow of surface water and to carry off the same.

SEC. 19. That except as herein otherwise provided, 10
the said street railway company shall be subject to the regulations, conditions and restrictions heretofore imposed by ordinance and to such lawful alterations and addition to such conditions, regulations and restrictions as Common Council may hereafter make and from time to time impose by general ordinances; provided, that such ordinances do not take from said company any of its rights under this ordinance; and provided further, that the Town reserves the full exercise of its general police powers. 20

SEC. 20. The said street railway company shall begin the construction of its railway within the Town limits and carry the same forward to completion within the Town limits, and shall operate cars thereon regularly for the accommodation of the public, within six months from the date of the approval of this ordinance; provided, however, that if the work of construction be delayed by strikes, legal proceedings or other cause, beyond the control of said railway company, the delay thus occasioned shall not be computed as a part of either of 30
said periods.

SEC. 21. If the said railway company shall fail to operate its cars over any part of its railway upon the route above described within the limits of the Town of Phillipsburg for a period of thirty days for any reason within the control of said railway company, the said railway company shall thereupon forfeit its rights to so much of said railway as may not have been operated as aforesaid, and the same shall be removed and the Streets put

in good condition at the expense of the said railway company.

SEC. 22. That in case of any litigation of any name, nature or kind by any person or persons, firm or firms, corporation or corporations, be brought against "The Inhabitants of the Town of Phillipsburg," its successor or successors, by reason of the introduction or passage of this ordinance, then and in that case, and in every such case, the said Phillipsburg Horse Car Railroad
 10 Company shall save harmless and indemnify The Inhabitants of the Town of Phillipsburg against all costs, expenses and damages of every name, nature and kind; and in case "The Inhabitants of the Town of Phillipsburg" are hereafter compelled to pay any sum or sums for costs, expenses or damages, such sum or sums may be recoverable by "The Inhabitants of the Town of Phillipsburg" from the said company as debts of like amount are by law recoverable.

SEC. 23. The consent hereby given to the said the
 20 Phillipsburg Horse Car Railroad Company to construct, maintain and operate its railway as aforesaid within the town of Phillipsburg upon the Streets named by the route aforesaid is not intended to be an exclusive right and possession of the route named and shall not be so construed, but on the contrary this consent is granted upon the express condition that the Phillipsburg Horse Car Railroad Company in the manner hereinafter provided, shall permit on said route within the Town limits
 30 the use of its tracks, road-bed, overhead construction and power by any other street railway company or companies now chartered or that may hereafter be chartered to run from outlying Towns to the Town of Phillipsburg. The use of the tracks, road-bed, overhead construction and power of the said the Phillipsburg Horse Car Railroad Company over the route above described shall be subject to the provisions of this ordinance, but the right to use the same shall not vest in such other corporation until it shall have been duly granted permission by ordinance of the Town of Phillipsburg and shall have entered
 40 into an agreement with the Phillipsburg Horse Car

Railroad Company to compensate that company for the use and maintenance of its tracks, road-bed and overhead construction and the use of its power.

In case such street railway company and the Phillipsburg Horse Car Railroad Company fail to reach a mutual agreement for the use of the tracks, road-bed, overhead construction and power of said Phillipsburg Horse Car Railroad Company on said Heckman Street, Heckman Street extended and Center Street, within thirty days after the approval of the ordinance granting the permission mentioned in this section, the question of compensation and all other questions arising relative to the use and operation of said railways on said mentioned Streets, shall forthwith be arbitrated. Each corporation shall appoint one arbitrator within one month, and these two shall within one month thereafter appoint the third arbitrator. In case of the failure of any or all of said parties to appoint such arbitrator or arbitrators within said time, the presiding Judge of the Circuit Court of the County of Warren shall within one month appoint such arbitrator or arbitrators, and in case of his failure to appoint the same within one month, then the Common Council of the Town of Phillipsburg shall appoint such arbitrator or arbitrators, and the award of such three arbitrators or any two of them shall be final and conclusive and enforceable by the proper court or courts, at the instance of either street railway corporation or railroad company or the Common Council of the Town of Phillipsburg.

SEC. 24. That every duty and obligation placed in and by this ordinance upon the Phillipsburg Horse Car Railroad Company either by name or otherwise, shall be and become equally binding upon any company or companies, corporation or corporations which may or shall hereafter become the successor or successors, lessee or lessees, manager or managers, controller or controllers, owner or owners of the said Phillipsburg Horse Car Railroad Company.

SEC. 25. That if at any time any of the provisions of this ordinance are not complied with, or any terms or

provisions of the agreements herein specified, to be hereafter executed in manner and form provided, shall be violated, any rights or privileges hereby and herein, are revoked, and permission given forfeited, and the said company shall, upon notice by the Town, at once remove any and all poles and other appliances herein and hereby authorized, and upon failure to do so, the Mayor or other person or persons under his direction, authorized by the Common Council, is, and they are
 10 hereby empowered to remove the same, using whatever means and force necessary to accomplish that purpose, and the expense attending such action and of restoring the Streets and sidewalks to their wonted condition shall be paid by the said company, provided, that such violation and forfeiture shall be determined by judicial proceedings.

SEC. 26. For each and every violation of or failure to comply with any of the provisions of this ordinance, the Phillipsburg Horse Car Railroad Company shall also
 20 forfeit and pay to The Inhabitants of the Town of Phillipsburg a penalty of twenty-five dollars, to be recovered in an action upon contract, in any court of competent jurisdiction.

SEC. 27. The said railway company shall at all times provide and furnish free transportation over the lines of said company, its successors, lessees or assigns, within the limits of the Town of Phillipsburg for the following persons, namely, the members of the Common Council, the Mayor, the Town Clerk, the Town Solicitor, the
 30 Town Physician, the Town Surveyor, the Street Commissioner, the Health Inspector, the Chief of the Fire Department, the firemen when in actual service on alarms of fire, the Collector of Taxes, the Town Mail Carriers while in uniform, and the police officers of the Town when in uniform; provided, however, that the passes or tickets issued by said railway company for such free transportation shall not be transferable.

SEC. 28. The said company, before exercising any of the rights and privileges hereby and herein granted, and
 40 within twenty days after this ordinance shall become a

law and operative, shall agree, as a condition precedent, and file with the Town Clerk of the Town of Phillipsburg, a contract to be executed by the said Company, thereby covenanting and agreeing with The Inhabitants of the Town of Phillipsburg and its successors, to abide by and perform all the matters and things herein and therein contained on the part of the said Company, to be kept and performed, with their acceptance of, and to be content and satisfied with, this ordinance, and before entering on the work of construction, the company shall 10 give the Town a bond in the sum of five thousand dollars, with sureties approved by the Town Council, conditioned that the original construction of the said railway and appliances shall be completed and the roads or highways restored to proper conditions according to the terms and provisions of this ordinance.

SEC. 29. That the rights and privileges hereby and herein granted shall be of no effect until the Common Council of the Town of Phillipsburg shall, by corporate action, approve the declaration of assent and agreement 20 heretofore and the bond, and a certificate of that fact, signed by the Mayor, attested by the Town Clerk, under the corporate seal, be presented to the said company.

SEC. 30. The franchise for the extension and operation of the line of the said company on Heckman Street, Heckman Street extended through the farm of James Ingham and others, and Center Street and the specific regulations, stipulations, agreements and conditions relating to said line, shall terminate at the expiration of twenty years from the date of the adoption of this 30 ordinance, but all other regulations, stipulations, agreements and conditions contained in this ordinance shall be perpetual and binding upon the said, the Phillipsburg Horse Car Railroad Company, its successors and assigns in perpetuity.

SEC. 31. It is expressly understood where the words "The Town," "The Council," "The Common Council," or "The Town of Phillipsburg," are employed in this ordinance, that the same apply to and are intended to designate the municipal corporation known as "The In- 40

habitants of the Town of Phillipsburg," and wherever the word "Company" or "Railway Company," or other similar expression have been made use of, that the same apply to and are intended to designate the corporation by the name of the "Phillipsburg Horse Car Railroad Company," its successors and assigns.

ORDAINED JUNE 3, 1907.

APPROVED JUNE 5, 1907.

JOSEPH H. FIRTH, Mayor.

10 Attest: FRANK KNEEDLER, Town Clerk.

Opinion of Supreme Court

NEW JERSEY SUPREME COURT

NOVEMBER TERM, 1923

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE INHABITANTS OF THE
TOWN OF PHILLIPSBURG,

DEFENDANTS.

10

Argued November 7, 1923.

Decided March 25, 1924.

SYLLABUS

The Franchise Tax Act of 1906, as amended by Chapter 239 of Laws of 1918 (P. L. p. 903), requires that every street railroad corporation subject to taxation thereunder shall report the gross receipts from its business in this State, and that the tax shall be imposed upon such proportion of the gross receipts as the length of the line in this state bears to the length of the whole line. The "Whole line" in the case of the Phillipsburg Transit Company includes that portion of the line extending from the center of the interstate bridge to Center Square, Easton, Pa., over which its cars are operated pursuant to a traffic agreement with the Easton Transit Company, which owns the tracks in Easton; and, hence, the Phillipsburg Transit Company is required to include in its statement or return to the State Board of Taxes and Assessment the cash fares collected from interstate passengers riding from Center Square, Easton, into the State of New Jersey, even though, by such traffic agreement, all east bound fares (from Easton into New Jersey) were to be taken by the Easton Company in lieu of rent formerly paid.

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On Certiorari, etc.,

Before Justices Trenchard and Parker.

For the Prosecutor, W. H. Walters.

For the State Board of Taxes and Assessments,

Thomas F. McCran, Attorney General.

For the Town of Phillipsburg, Sylvester C. Smith, Jr.

The opinion of the court was delivered by

TRENCHARD, J.:

- 10 This writ brings up for review a judgment of the State Board of Taxes and Assessment of the State of New Jersey (hereinafter referred to as the Board) rendered in the following circumstances:

On February 17, 1922, the Town of Phillipsburg complained to the Board that the return of gross receipts made by the Phillipsburg Transit Company under the Franchise Tax Act of 1906 (Chapter 290, Laws of 1906 P. L. p. 644), was incomplete in that it failed to show all of the gross receipts of the Company within the meaning of the Act.

- 20 The dispute arose as follows:

- The company operates an electric street railway under a charter granted to the Phillipsburg Horse Car Railroad Company. This company changed its name in 1916 to Phillipsburg Transit Company. It operates in the Town of Phillipsburg, Pohatcong Township and the Borough of Alpha, in Warren County. The system consists of the North Main Street Line, running from a terminus on the outskirts of Phillipsburg to Union Square, a distance of about two and three-quarter miles, and the
- 30 South Main Street line which runs from the Borough of Alpha to Union Square, a distance of about three and three-quarter miles. The cars on both of these divisions run from Union Square, in Phillipsburg, across the Delaware River Bridge to Center Square, in Easton, Pa. The distance from the center of the bridge, or the interstate line, to Center Square, Easton, is about one-quarter of a mile. The tracks on the bridge are owned by the Interstate Bridge Commission. The tracks in Easton from the bridge to Center Square, a distance of two city blocks,
- 40 are owned by the Easton Transit Company. The Easton

Company owns all of the capital stock of the Phillipsburg Company and the latter company has no franchise in the State of Pennsylvania.

Prior to January 1, 1919, the Phillipsburg Company operated its cars from the Pennsylvania end of the bridge to Center Square in Easton on a rental basis. On December 23, 1919, the two companies entered into a new operating agreement, effective as of the preceeding January first. By this agreement it is provided that each company shall collect from every passenger boarding its cars in its territory the joint through interstate fares for the full trip within the city fare zones of both companies, and shall retain the amount so collected. This arrangement, it was therein stated, was entered into in order to simplify accounting and because the number of interstate passengers traveling from Pennsylvania into New Jersey had been determined to be substantially equal to the number passing from New Jersey into Pennsylvania. (Assuming that the number of interstate fares collected in either direction exactly balanced, the practical effect of the new arrangement was that each company received one-half of each interstate fare, or three and one-half cents.) The agreement further provides that each company shall pay all of its fixed charges and all taxes and assessments, and that the Phillipsburg Company shall pay to the Easton Company monthly its proportionate share, on a car mileage basis, of the salaries of certain employees of the Easton Company and certain expenses incurred by the Easton Company for joint account. By the agreement the Easton Company undertakes to operate cars of the Phillipsburg Company from the interstate line, to and from Center Square in Easton, the Easton Company supplying the power and paying all operating expenses, including the rentals for the use of the bridge. In actual operation, however, the motormen and conductors of the Phillipsburg Company run the cars from New Jersey to Easton and thence back across the bridge to the termini in New Jersey. So far as the passenger is concerned there is no break or interruption of his journey across the bridge and no visible evidence of

any change in the physical operation of the car from the time he begins until he ends his trip.

The ordinance by which the Town of Phillipsburg granted to the Phillipsburg Horse Car Railroad Company permission to construct, operate and maintain a street railway expressly stipulated that a single fare only should be charged for a continuous ride between any two points within the limits of the Town of Phillipsburg and the City of Easton upon a route of the Phillipsburg Company and over the lines of any other company in Phillipsburg or Easton which might control or operate the Phillipsburg Company, or with which that company or its successors might have traffic arrangements.

By reference to the traffic agreement of 1919, and otherwise, it therefore appears that the old plan of paying rental to the Easton Company for the use of the tracks in Easton was abandoned and the new plan was that all west bound fares were kept by the Phillipsburg Company and all east bound fares by the Easton Company; so that instead of returning as "Gross receipts" all the fares collected, the company since 1919 returned only the west bound fares, the east bound fares being taken by the Easton Company in lieu of the rent formerly paid.

The Town of Phillipsburg contended before the Board that the Phillipsburg Company should be required to make a return for the assessment of the franchise tax based on gross receipts from passengers carried in New Jersey, that is, it should report the fares collected anywhere between Center Square and points in New Jersey. It contended that the allocation of all such fares to the Easton Company under the agreement above mentioned, resulted in a reduction of the New Jersey franchise tax not warranted by the taxing statute. The Board considered that this contention was well founded and entered judgment accordingly and we think rightly.

Section 4 of the Act of 1906, as amended by Chapter 239 of Laws of 1918 (P. L. p. 903) provides: "Every street railroad corporation subject to taxation under the provisions of this act shall, on or before February first

in each year, return to the State Board of Taxes and Assessment a statement showing the gross receipts from its business in this State for the year ending December thirty-first, next preceding, and any such corporation having part of its road in this State and part thereof in another State x x x shall make their report showing the gross receipts on the whole line, together with a statement of the length of the whole line and the length of the line in this state x x x, and the franchise tax of such corporation for the business done in this State shall be levied by the State Board of Taxes and Assessment upon such proportion of its gross receipts as the length of the line in this State x x x bears to the length of the whole line." 10

Section 5 imposes an annual franchise tax of five per centum upon "the annual gross receipts of every street railroad corporation or upon such proportion of such gross receipts as the length of its line in this State x x x bears to the length of its whole line."

By that legislation "it was intended by the Legislature to consider, in providing for this tax, the value of the franchise of the company to occupy the streets, etc., with its tracks, and to impose a tax upon such franchise which should bear a relation to its value." *Phillipsburg R.R. Co. vs. Bd. of Assessors*, 82 N. J. L. 49. 20

The value of the franchise in this case manifestly is enhanced by the Phillipsburg Company's connection with the Easton Company, and receipts resulting from that connection are a necessary factor in determining that value for the purposes of our franchise tax. 30

The Phillipsburg Company claims that it had no legal right to run its cars in Pennsylvania and that the allocation of receipts was decided upon as an equitable arrangement between the companies. That may be so. But such an arrangement cannot be permitted to run counter to the plain provisions of the New Jersey statute. This statute requires that the corporation affected shall report the "gross receipts from its business in this State." The fares which are collected on the Phillipsburg cars after they leave Center Square in Easton are from pas- 40

- sengers whose destination is some point in New Jersey. It is for the business of carrying these passengers into and in New Jersey that the fares are paid. It is because the company has lines into and in this State that the fares are collected. It is immaterial whether the line from Center Square to the middle of the Delaware River bridge is owned by the Easton Company or the Phillipsburg Company so far as this aspect of the case is concerned. Under the old plan (before the agreement of 1919) all
- 10 fares collected were returned as gross receipts and properly so. Under the old plan rent was paid to the Easton Company. So it is now; but instead of a lump sum, or three and one-half cents out of every seven, it is the east bound fares that constitute the rent, but they are none the less part of the gross receipts. If the fare limit were the center of the interstate bridge a different situation would be presented. But as the matter stands the fare collected between Center Square, Easton, and the interstate line is for service rendered by the Phillipsburg
- 20 Company in New Jersey, and it is enabled to render that service by the franchise granted to it by this State.

The return which the Company is required to make is its "gross receipts." The return which it has made is not all of its gross receipts, but only that portion of its gross receipts which it has agreed with the Easton Company fairly represent the share which it is entitled to receive under the traffic agreement. For the purpose of the Franchise Tax Act such a return is incomplete. As already pointed out, that act requires a report of the *gross*

30 *receipts from business in New Jersey.*

The only allocation of receipts permissible is that authorized by the act itself, namely, that the tax shall be imposed upon such proportion of the gross receipts as the length of the line in this State bears to the length of the whole line. The question is, what are the gross receipts of the whole line? The "whole line" in the case before us includes that portion of the line extending from the center of the interstate bridge to Center Square in Easton. While that section of the road is not owned

40 by the Phillipsburg Company, it is a part of the line or

system extending beyond the State and must be so considered in assessing the franchise tax.

The prosecutor makes an argument based upon what it says was recognition of the agreement of 1919 by the Board of Public Utility Commissioners. With that we are not now concerned. We point out, however, that the Utility Board was concerned with *net return* as an element to be considered in fixing a rate of fare, while here we are concerned with a different matter, namely, gross receipts from business in this State.

10

The judgment brought up will be affirmed, with costs.

Order of Affirmance of Judgment

NEW JERSEY SUPREME COURT

PHILLIPSBURG TRANSIT COMPANY, PROSECUTOR, VS. STATE BOARD OF TAXES AND ASSESS- MENTS OF THE STATE OF NEW JER- SEY, AND THE INHABITANTS OF THE TOWN OF PHILLIPSBURG, DEFENDANTS.	}	ON CERTIORARI ORDER OF AFFIRMANCE OF JUDGMENT.
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20 This cause having been duly argued at the November Term of this court by W. H. Walters of counsel for the prosecutor and Thomas F. McCran, Attorney General, of counsel for the State Board of Taxes and Assessments and Sylvester C. Smith, Jr., of counsel with the defendant, The Inhabitants of the Town of Phillipsburg, and the court having considered the same and finding no error in the judgment and assessment of the State Board of Assessors:

It is, thereupon, ordered and adjudged that the judgment and assessment of the State Board of Assessors removed by writ of certiorari in this cause be affirmed with costs; and that the record be remitted to the State Board of Assessors to be proceeded with in accordance with this judgment and the practice in such case made and provided.

Entered May 12, 1924.

30 On motion of

SLYVESTER C. SMITH, JR.,
of counsel with Defendants.

Dated May 12, 1924.

New Jersey Court of Errors and Appeals

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE INHABITANTS OF THE
TOWN OF PHILLIPSBURG,
DEFENDANTS.

WRIT OF
CERTIORARI

BRIEF FOR PROSECUTOR

10

In substance, the writ in this case is brought for the purpose of reviewing the conclusions of the State Board of Taxes and Assessments of the State of New Jersey claiming that the return of gross receipts made by Phillipsburg Transit Company for the year 1921 should be so amended as to include cash fares collected by Easton Transit Company from passengers riding to and from Center Square and other points in Easton, Pa., to the interstate line between New Jersey and Pennsylvania.

The answer of the prosecutor to the complaint of the 20
Town of Phillipsburg (page 7) fully sets forth the contentions of the prosecutor and are not herein re-stated.

The prosecutor is a New Jersey corporation, owning and operating a street railway in this State and running its cars to the State line between the States of Pennsylvania and New Jersey, on the Easton-Delaware Bridge, where said cars are delivered to the Easton Transit Company, which operates said cars of the Phillipsburg Transit Company from that point to Center Square in Easton, Pa., and back again to the interstate line.

30

On December 22, 1919, the Easton Transit Company, a corporation of the State of Pennsylvania, and the Phillipsburg Transit Company, a corporation of the State of New Jersey, entered into an agreement (marked Ex-

hibit P-1, page 73), wherein among other things the following provisions were made:

“FIRST: That Easton Company shall operate cars of Phillipsburg Company, delivered to it at the state line between the States of Pennsylvania and New Jersey on said Easton-Phillipsburg bridge, in both directions to and from Center Square, Easton, and such other points as may be mutually agreed upon, under such schedules as the parties may from time to time agree upon, and Easton
10 Company shall supply the necessary power and pay all of the cost and expense of such operation including the entire rentals which may be exacted for the use of said bridge.”

SECOND: That Phillipsburg Company shall operate its cars used in the aforesaid joint through interstate service in its territory and deliver the same to Easton Company at the said state line for operation to and from Center Square, Easton, and such other points as may be mutually agreed upon, in accordance with such schedules
20 as the parties may from time to time agree upon, and Phillipsburg Company shall supply the necessary power and pay all the cost and expense of the operation of its cars on its own system. Phillipsburg Company shall operate, deliver to and receive from Easton Company as aforesaid, cars in such numbers as will reasonably accommodate the public requirements, subject to such reasonable regulations in regard to the dispatch of cars as may be from time to time imposed by Easton Company.”

“FIFTH: That each Company shall collect from every
30 passenger boarding its cars in its territory the joint through interstate fares for the full trip within the city fare zones of both Companies, and shall retain the amount so collected. It is understood, however, that the arrangement for the division of the joint fares herein provided in this paragraph is entered into in order to simplify accounting and because the number of interstate passengers traveling in the one direction across said Easton-Phillipsburg Bridge, as determined by an actual traffic check duly taken, is substantially equal to the number of pas-
40 sengers traveling in the opposite direction across said

bridge. Either party may, however, upon not less than ten (10) days' written notice to the other, require a new check to be taken whenever in its opinion changed conditions warrant it, and may require such readjustment of the present method of accounting between the parties as such check shall indicate to be necessary in order that each fare collected from such joint interstate passenger traffic shall be equally divided between the parties."

As a matter of fact, the Phillipsburg Transit Company gets $3\frac{1}{2}$ cents for each passenger carried to the interstate line and $3\frac{1}{2}$ cents for each passenger carried from the interstate line towards Phillipsburg, but by each retaining the 7 cent fare received in its own territory, book-keeping accounts are avoided (see Mr. Patterson's testimony, State of Case page 44, line 13, etc., and page 45, line 10, etc.). 10

The Easton Transit Company and the Phillipsburg Transit Company have separate organizations, separate Board of Directors, Separate presidents and each are run as an independent corporation (page 72, Mr. Patterson):—"Entirely distinct in every respect; payrolls, operating expenses and everything kept entirely distinct; organization is entirely distinct." 20

"Q. Is that money received at Center Square in the City of Easton for passengers going over the Phillipsburg line subject to the franchise tax of Pennsylvania?"

"A. It is."

"Q. Do you (Easton Transit Co.) pay on the money received by passengers boarding the cars at Center Square to the State of Pennsylvania?" 30

"A. We do." (Page 63, et seq.)

"Q. Yes. Can you tell the Board, Mr. Patterson, the object of making this agreement between the Easton Transit Company and the Phillipsburg Transit Company?"

"A. The last agreement?"

"Q. Yes, the last agreement."

"A. I think we explained that, that owing to the illegality of the operation of the Phillipsburg Transit Company on that side." 40

"Q Yes. Your attorneys advised you that you had no right to operate in the City of Easton?"

"A. That was correct."

"Q. Why, then, did you not stop and transfer your passengers at the State line, of New Jersey?"

"A. Simply for the convenience of through routing, convenience to the passengers."

"Q. Except for the convenience to the passengers, you would be doing that today?"

10 "A. That is true."

"Q. Now, what is the arrangements—I would like to impress upon the Board—what is the arrangement between the Phillipsburg Company and The Pennsylvania, Easton Transit Company at that point, by which you take over the passengers, the Easton Transit Company takes over the passengers that are on the Phillipsburg Transit Company line?"

"A. The Easton Transit Company takes the car there and operates it, paying all of the operating expenses."

20 "Q. The electricity?"

"A. Power, maintenance of cars, tracks, overhead."

"Q. And the expense of crews?"

"A. Expense, time of the crews and every expense connected with the operation, including the bridge toll."

"Q. Yes. The tracks on the bridge belong to the State of New Jersey?"

"A. Under the present arrangement, yes."

"Q. The Easton Transit Company rents those tracks?"

"A. They pay a toll."

30 The fact that the Easton Transit Company owns the stock of the Phillipsburg Transit Company is immaterial. If that company was directly operating the railway of the prosecutor the case would not be altered. Pullman vs Kansas, 216 U. S. 56.

In GEORGIA A. & F. RY. et al V. GEORGIA PUBLIC SERVICE COMMISSION, 289 Fed.

878 (Dist. Ct. Dist. Georgia, May 8, 1923):—

"Commission, under power to fix just and reasonable rates and joint rates, could not treat two railroads as
40 one because one owned majority of stock in the other—."

A passenger boarding the Phillipsburg Transit Company's cars, upon delivery to the Easton Transit Company at the state line, can by means of the transfer proceed over Easton Transit Company's lines to College Hill, a distance of at least two miles, to the first fare limit on the Bethlehem line, a distance of 3 or 4 miles, to the first fare limit on the South Bethlehem line, a distance of between 3 and 4 miles, to Glendon or West Easton, a distance of 2 3-4 miles. The Easton Company has fare zones nearly or quite as distant from the interstate line as the Phillipsburg lines are long; the Easton Company, at its own expense, carries Phillipsburg passengers to those distant points and Center Square, in Pennsylvania, although the Phillipsburg Transit Company has received and retained the fares originating in New Jersey (upon which the Phillipsburg Transit Company pays franchise tax), and vice versa, the Easton Transit Company carries passengers from these distant fare zones and from Center Square, all in Pennsylvania, to the interstate line, collects the fares and retains same for its compensation (and pays a franchise tax on such receipts to the State of Pennsylvania). (See State of Case page 63, line 35, etc.)

On page 66, line 20, etc.:-

"Q. Well, does the length of his ride have anything to do with the allocation of the receipts, the fares, to the two companies?"

"A. It is simply a factor in determining what we thought was the reasonable arrangement between the two companies."

"A. Equally divide them; that a fifty-fifty division was as nearly reasonably to both companies as we could make it under the circumstances. The expenses of operation on the Easton side are heavier than on the Phillipsburg side."

Besides the above, many of the inhabitants of Easton work at the industries in Phillipsburg, in Alpha, and surrounding communities in New Jersey, and in the same manner the workmen of the several communities in New Jersey work in Pennsylvania. The Easton Transit Company, by reason of being a greater company, has surplus

of cars which are used to carry such workmen to and from Phillipsburg. The fares originating in New Jersey are retained by the Phillipsburg Transit Company, and the fares originating in Pennsylvania are retained by the Easton Transit Company. The Easton Company's cars used in Phillipsburg are paid for in same manner as the Easton Transit Company pays for use of Phillipsburg cars from interstate line to Center Square in Easton, and the fare is on basis of $3\frac{1}{2}$ cents to interstate line and
 10 $3\frac{1}{2}$ cents from interstate line, making a 7 cent fare for a round trip for each company within its jurisdiction. (See Mr. Patterson, State of Case, page 42, line 8, etc.)

"Q. So that in 1919 by virtue of this retroactive contract, all of the fares collected on the Pennsylvania side of the bridge or the Pennsylvania side of the interstate line were credited to the Easton Company, is that so?"

"A. Yes, that is so, with this understanding, that there was a means of reimbursing the Easton Transit Company and the Phillipsburg Transit Company for their respective
 20 shares of the traffic. In other words, because of the fact that the traffic in both directions was essentially equal, it made a fifty-fifty division of the fares, each company thereby getting three and a half cents per passenger for the interstate traffic."

The Phillipsburg Transit Company was advised by its counsel that it had no license to operate its cars in Pennsylvania, for which reason it changed its mode of operation to the present system.

"Q. Why did the company change from the contract
 30 in 1917, under which they had operated for a number of years, to this contract and this system of bookkeeping in 1919?"

"A. It was brought to the attention of the management of the company that the Phillipsburg Transit Company, through operating in Pennsylvania, technically had no legal right to do that, and it was thought advisable to make such change in operation as would do away with that illegality." (See page 50, line 30, etc.)

The Town of Phillipsburg has been somewhat insistent
 40 that the case at bar and the case of the Phillipsburg

Horse Car Railroad Company vs. State Board of Assessors, 82, N. J. L. 49, were the same identical questions. As a matter of fact, the questions involved in that case in no manner is parallel with the present case. In the above reported case, the question involved simply the right of New Jersey to tax interstate receipts which were *actually* received by the company. This case involves the interpretation of the agreement and the imposition of franchise tax on fares *not* received by the Phillipsburg Transit Company. In this case the prosecutor pays the 10
franchise tax upon all money received by it. The more powerful company had a right to exact the terms upon which it took over and delivered to the prosecutor the passengers bound to and from the territory of the Easton Transit Company, which supplies a double track from the western end of the Delaware Bridge to Center Square in Easton and carries them on the various lines diverging from that point, and brought them from these divergent points to the inter-state line.

The State Board of Taxes and Assessments has apparently taken the position that the entire operation from Center Square in Easton, Pa., to points in Phillipsburg, N. J., is by the Phillipsburg Company, and under its franchises clearly this is not so. It is a joint operation, which neither company can perform alone, for neither has the power to operate outside of its own State. It would be just as sound for Pennsylvania to take the view that the whole operation was by the Easton Transit Company under its franchise, using the Phillipsburg system under a lease. In fact, there would be more ground for this 30
view since the Easton Transit Company franchise is much more valuable and is the one which makes the interstate earnings possible. The report of the Board refers to the operation as being entirely by the cars and by the employees of the Phillipsburg Transit Company. Of course, this is also incorrect for the cars of the two companies are operated interchangeably and the employees are joint employees. The admission of Mr. Jess to the effect that if the fare limit were the middle of the bridge the situation would be different, is significant, for, of course, it 40

would be possible to fix it there or, rather, at Union Square in Phillipsburg, and require passengers to change cars at that point. The reason this was not done, was to avoid the inconvenience to the public, and clearly that cannot be made a ground for collecting taxes in New Jersey on revenues earned in Pennsylvania by the Easton Transit Company and already taxed in the latter State.

10 There is no question but that the service between Easton and Phillipsburg is an interstate service, but it is not *entirely* performed by either the Easton Transit Company or the Phillipsburg Transit Company. These two companies join in furnishing the service, each performing the part which falls within its own territory. It is exactly similar to conditions which exist on many interstate railroad journeys where cars of one company continue over the lines of a connecting company. In such a case there is never a contention made that the company which happens to own the car is performing the service
20 outside and beyond its own line. The use of one company's cars by another company is taken care of by the payment of rentals, just as is done in this case. We are not questioning the Supreme Court decision in Phillipsburg Horse Car Railroad Co. vs. Board of Assessors, 82 N. J. L. page 49, but are making a return of Phillipsburg Transit Company revenue from the interstate business in which it joins and are paying taxes thereon.

The attorney for the Town seems to insist on confusing the situation by stating that the Phillipsburg Transit
30 Company carried some of the interstate passengers free. This is not the fact; the revenue is divided equally and the fact that the Phillipsburg Transit Company retains fares collected on the west bound trips and the Easton Transit Company retains those collected on the east bound trips is only because this affords a convenient accounting method, the traffic moving in each direction being equal.

It is agreed that 70% of the passengers riding in Phillipsburg Transit Company's cars are destined for Pennsylvania, and only 30% ride within the State of New
40 Jersey.

The prosecutor insists:-

1. That this company makes a return and pays a franchise tax on its gross receipts, and that the report for the year 1921 filed with the State Board of Taxes and Assessments of the State of New Jersey should be confirmed.

2. That prosecutor operates its cars only in the State of New Jersey, and the fares received within the State of New Jersey constitute its only receipts, and upon which it pays a franchise tax as set forth in its return for the 10 year 1921.

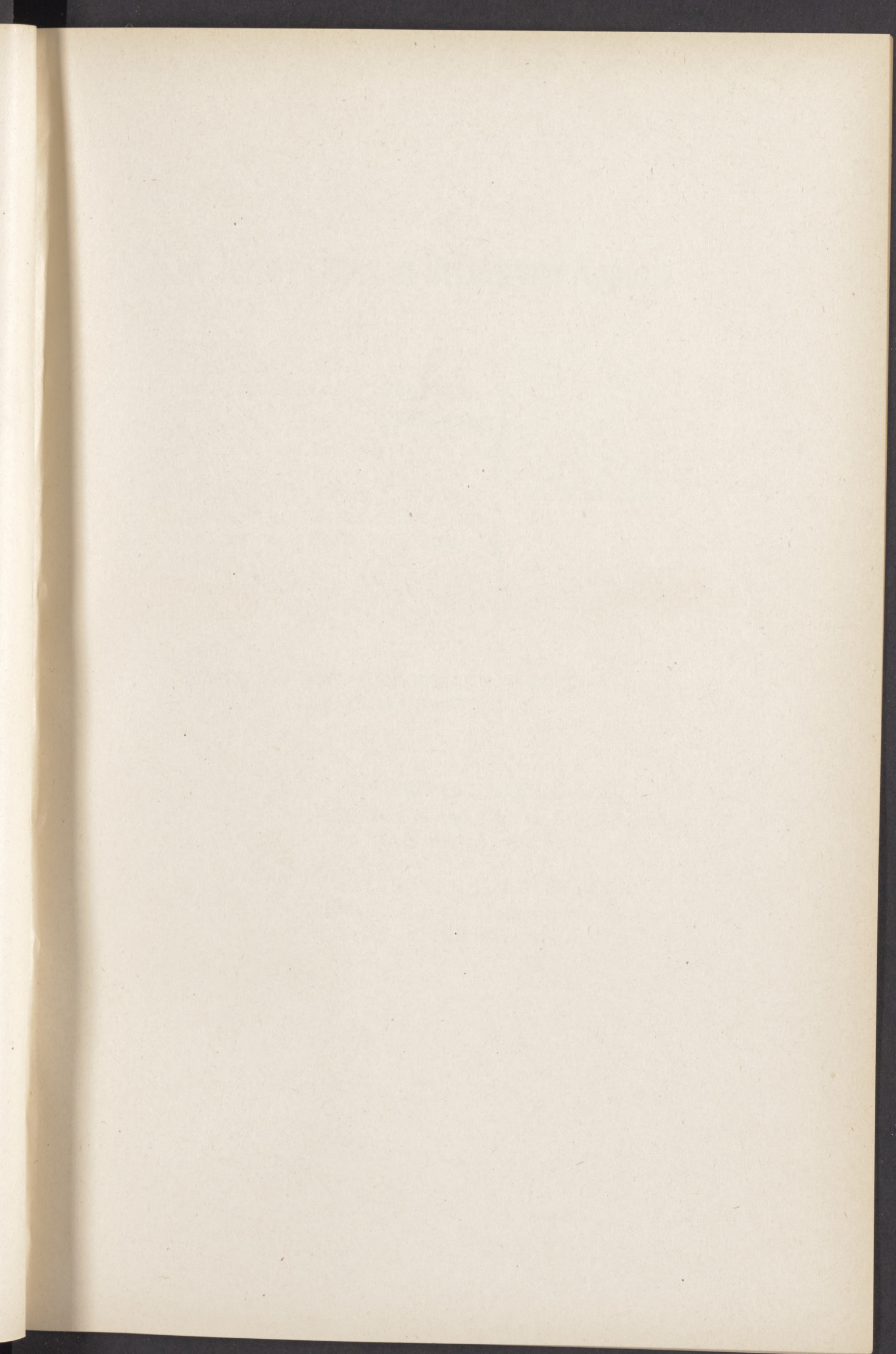
3. The conclusions of the State Board of Taxes and Assessments of the State of New Jersey should be reversed.

THE CONCLUSIONS OF THE STATE BOARD OF TAXES AND ASSESSMENTS SHOULD BE DISMISSED BECAUSE

In re application of Phillipsburg Transit Company for increase of rates, reported in REPORTS OF THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, Volume 14, March 31, 1921,—March 3, 1922, the attorney of the Town 20 of Phillipsburg was insistent that the fares received by Easton Transit Company under its agreement with prosecutor (Exhibit P-1, page 73) should be allocated to Phillipsburg Transit Company (the identical contention involved in this case). THE SAID BOARD REFUSED TO DO SO, but recognized the terms of the agreement above mentioned.

If the defendants in this cause were dissatisfied with that decision, it should have been certioraried to this Court and not compel prosecutor to defend before an- 30 other Board. (See State of Case, page 22.)

W. H. WALTERS,
Attorney for Prosecutor.



New Jersey Court of Errors and Appeals

PHILLIPSBURG TRANSIT COMPANY,
PROSECUTOR,

VS.

STATE BOARD OF TAXES AND ASSESS-
MENTS OF THE STATE OF NEW JER-
SEY, AND THE TOWN OF PHILLIPS-
BURG,

DEFENDANT.

IN CERTIORARI

BRIEF OF THE DEFENDANT, THE TOWN
OF PHILLIPSBURG

EDWARD L. KATZENBACH,
Attorney General for the State Board
of Taxes and Assessments.

SYLVESTER C. SMITH, JR.,
Attorney for the Inhabitants of the
Town of Phillipsburg.

***Brief of the Defendant, the Inhabitants of
the Town of Phillipsburg***

STATEMENT OF FACTS.

This is an appeal from the Judge^{next} of the Supreme Court affirming the judgment of the State Board of Taxes and Assessments.

On February 17, 1922, the Town of Phillipsburg made complaint to the State Board of Taxes and Assessments that the Phillipsburg Transit Company had made a
10 false and incorrect return to the State Board of Taxes and Assessments of gross receipts for the year 1921, pursuant to the requirements of Chapter 290, P. L. 1906, as amended. The State Board of Taxes and Assessments (hereinafter referred to as the Board) set a day for hearing the complaint and notice was given the Transit Company.

On April 18, 1922, the Board heard testimony, and after argument, April 17, 1923, the Board ordered that judgment be entered directing that the return of the company,
20 for the year 1921, be so amended as to include cash fares collected from interstate passengers riding from Center Square, Easton, into the State of New Jersey.

A memorandum was filled by Mr. Jess, a member of the State Board, setting forth the reasons for the Board's conclusions: (p. 26).

The ground of complaint of the Town of Phillipsburg was substantially as follows:

The Phillipsburg Transit Company operates an electric railway under a Special charter granted to Phillipsburg
30 Horse Car Railroad Company, which name was changed in 1916, to Phillipsburg Transit Company. It owns tracks and lines in Phillipsburg, Alpha, and Pohatcong Townships in Warren County. The system of tracks owned consists of the North Main Street line, from a Terminus near the Ingersoll-Rand plant at the outskirts of Phillipsburg to Union Square, a distance of about 2 3-4 miles; and the South Main Street line, from the Borough of Alpha to Union Square, a distance of 3 3-4 miles.

The cars on both of these divisions run from Union Square in Phillipsburg across the Delaware Bridge to Center Square, Easton. The distance from the center of the bridge or inter-state line to Center Square, Easton, is about $2\frac{1}{2}$ city blocks, of $\frac{1}{4}$ of a mile. The tracks in Easton are owned by the Easton Transit Company, which owns practically the entire stock of the Phillipsburg Transit Company, (p. 39, p. 24). The bridge tracks are owned by the Interstate Bridge Commission.

Prior to January 1, 1919, and in fact until December 10 23, 1919, the Phillipsburg Company operated its cars from the Pennsylvania edge of the Bridge to Center Square, Easton, Pa., on a rental basis.

On December 23, 1919, the two companies entered into a new contract which by its terms was effective as of and retroactive to January 1st, 1919. This agreement provided that each company shall collect and return "the joint through interstate fares for the full trip within the city fare zones."

This arrangement, the agreement or contract goes on 20 to state was entered into "in order to simplify accounting, etc.:" (p. 74, p. 35).

The practical effect was this: Prior to this time, the Phillipsburg Transit Company collected and retained and reported to the Board as gross receipts the cash fares of all interstate passengers bound for Phillipsburg and New Jersey, who boarded the car at Center Square, Easton, which was only two city blocks from the State line.

By this new agreement the Easton Company collected and retained this full fare of one half of the interstate 30 passengers carried in New Jersey; and the Phillipsburg Company carried these passengers in New Jersey without receiving any actual money credit for the service rendered. Interstate passengers paid seven cents fare,—but interstate passengers coming into the State of New Jersey were carried without any money or gross cash receipt for such service.

The other practical result was that in 1919, the gross receipts reported by the company decreased about \$26,- 500; and the tax decreased about \$2,500.

The Phillipsburg Company reported to the Board all of the intrastate fares, and cash fares of one half of the interstate passengers carried in New Jersey.

The Town of Phillipsburg complained that these were not the true *gross receipts* but the net interstate passenger receipts, and the return was therefore false.

POINT I

THE SUPREME COURT IN 1911 DECIDED THAT
A RETURN SUCH AS ORDERED BY THE STATE
10 BOARD SHOULD BE MADE AND THAT DECISION
STILL STANDS.

Phillipsburg Horse Car R. R. Company vs. State Board of Assessors, 82 N. J. L. 491, was on the identical question. A reading of that opinion will show the actual conditions are the same. Mr. Patterson testified that the actual operation is exactly the same with the exception of the gauge (pp. 39, 40, and 47, Lines 29-40, p. 54, Lines 1-21).

20 The only change, with the exception of the gauge was the method of bookkeeping; caused by the 1919 agreement, which resulted in a reduction of *gross receipts* notwithstanding more passengers were carried. (p. 52, Line 35, to p. 53.)

The prosecutor argues that the reason for this contract was that the Phillipsburg Company was advised it had no franchise in Pennsylvania, and that was first called to the Company's attention in 1919. But the Supreme Court in 1911, in its opinion pointed out that very fact: *Phillipsburg Horse Car Co., vs. Phillipsburg*,
30 82 N. J. L. 50.

Naturally where this fact is shown, and where the practical result of the 1919 contract shows a decrease from gross receipts in 1918, of \$157,675.80 to \$121,114.-63, reported in 1919, and more passengers were carried during that year, and a decrease from taxes in 1918 of \$7,320 to \$5,832 in 1919, and where a contract is made retroactive from December 23, 1919, its date of

execution, to January 1, 1919, the beginning of the tax year; and where the agreement sets out that its purpose is "to simplify accounting;" there are justified suspicions that the real purpose of the agreement was to evade and reduce the franchise tax in New Jersey by what the company thought would be a clever legal way. No one can dispute the fact that its effect was to reduce its franchise tax.

Nowhere does the company explain how it arranged its books in 1919 from January 1, 1919, of that year to 10 December 23, 1919; the date when the contract was executed, to take care of the costs and other matters set forth in the contract as chargeable to the two companies.

So we have in 1921, the Phillipsburg Company operating its cars in the identical manner as was done in 1911, and reporting less gross receipts by reason of a book-keeping agreement. Under these facts, the decision of this court is still valid and binding and the judgment of the board should be upheld.

POINT II

20

THE VALUE OF THE FRANCHISE TO OCCUPY THE PUBLIC STREETS RESTS LARGELY UPON THE EXTENT TO WHICH SUCH FRANCHISE IS USED; AND THE PHILLIPSBURG COMPANY SHOULD REPORT THE GROSS RECEIPTS OF INTERSTATE PASSENGERS FROM CENTER SQUARE SO THAT THE VALUE OF THE FRANCHISE MAY BE DETERMINED FOR TAX PURPOSES:

The effect on the value is directly testified to by Mr. Patterson. (pp. 60, 68, Lines 36-69, p. 18).

30

All the passengers carried in New Jersey who pay cash from Center Square, which is not included in the report, ride one-quarter ($\frac{1}{4}$) mile to the Interstate bridge line and then they may ride two and three-quarter ($2\frac{3}{4}$ or three and three-quarter ($3\frac{3}{4}$) miles in New Jersey over the tracks under the franchise on which the value is to be placed. All of these interstate passengers

- ride some time and some distance in New Jersey. By this 1919 agreement, under the pretext of which the company fails to report this revenue collected on its whole line, Mr. Paterson says that the Easton Company delivers the car to the interstate bridge line and there (it would seem as if by magic or "Aladdin's Lamp") the Easton Transit Company's motorman and conductor and car in operation suddenly become the Phillipsburg Transit Company's car, conductor and motorman and the
- 10 Phillipsburg Company operates the car. Now the passengers who happen to be on the car at that crucial moment suddenly become free *passengers of the Phillipsburg Company* for whom the Phillipsburg Company receives no revenue nor return upon its books. Likewise the Phillipsburg Company delivers the car, at a rate of speed of twelve (12) or fifteen (15) miles per hour, at the interstate line to the Easton Company and in a fraction of a second the Phillipsburg Company's conductor, motorman and car becomes the property of the Easton Company
- 20 and the passengers of the Phillipsburg Company become passengers of the Easton Company to ride free over its lines.

Such an arrangement is mere fiction. The cars are operated between Centre Square and the New Jersey termini as one continuous line. *None of the passengers board the car between Centre Square and the Interstate line to ride intrastate in Pennsylvania, and all of the passengers ride in New Jersey at some time.*

POINT III

- 30 THE WORDS "WHOLE LINE" USED IN THE STATUTE MEAN—THE WHOLE LINE TO THE FIRST POINT OF ACTUAL TRANSFER WITHOUT THE STATE, BOTH IN LAW AND PARTICULARLY UNDER THE EVIDENCE IN THIS CASE.

The evidence shows that the Phillipsburg Company's lines are used in connection with the line from the interstate line to Centre Square, Easton, as a unit. No trans-

fers are actually given at the interstate line. Mr. Patterson admits the quarter of a mile of tracks to Centre Square, Easton, is really a part of the Phillipsburg Company's line. (pp. 42, 54, 60). This is borne out by the important fact that almost twice as many passengers (783,682) board the cars at Centre Square, Easton, and travel the two blocks to the interstate line and thence in New Jersey than transfer to the Phillipsburg line at Centre Square from other lines (477,820). Would anyone of these passengers get on the car at Centre Square and ride a distance of two city blocks to the State line for seven cents, the cash fare which is collected by the Easton Company, unless these tracks were used in connection and as part of the whole line over which these particular cars run? The answer is obviously "no." Compare the number of intrastate passengers (932,990) with the interstate passengers and one readily sees that the big business of this company consists of carrying passengers on its tracks in New Jersey and to Centre Square, Easton, and no further.

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POINT IV

THE WORDS "GROSS RECEIPTS" MEAN CASH RECEIVED FROM PASSENGERS CARRIED ON LINE NO MATTER WHERE PAID.

Mr. Patterson says in his testimony that the actual result of the agreement is the receipt by the Phillipsburg Company of three and one-half cents for each interstate passenger carried. (Testimony p. 45). Isn't this the net amount of money received by the Phillipsburg Company?

30

The testimony of Mr. Patterson shows conclusively that the contract and agreement of 1919 was an attempt to arrive at the *net* receipts for each company from interstate traffic.

On p. 44, l. 13 he says:

Q. Now, then, a passenger boards the car at Center Square and pays seven cents fare, and how far, and to

whom does that seven cent fare collected in Easton, Pennsylvania, under your present arrangement go?

A. Three and a half cents goes to the Phillipsburg Transit Company, and three and a half cents goes to the Etston Transit Company.

Q. That is, isn't the arrangement under this that all fares collected on the Easton side of the bridge—that all of those fares go to the Easton Company?

A. Yes, and by the same token all the fares collected
10 on the Phillipsburg side of the bridge to the Phillipsburg Company.

Q. Yes.

A. So that the fundamental basis of that arrangement is that you are dividing the interstate fare into two equal portions.

Q. Then the Phillipsburg Company actually in its gross receipts shows nothing of the fares collected on the Pennsylvania side of the interstate line, do they?

A. Well, they show three and a half cents according
20 to this basis.

Q. In the gross receipts of your company?

On p 45, l. 10, Mr. Patterson says further:

A. What I meant by emphasizing that was rather than go through the bookkeeping necessary for dividing the seven cents received in Phillipsburg into two portions and crediting half of that to the Easton Company and doing the same thing with the seven cent fare collected on the Easton side and crediting three and a half cents to that of the Phillipsburg Company, inasmuch as
30 the traffic is practically equal in both directions we allow each company to retain the fares collected, which effects that division. That is what I mean.

Q. Now, you see this is what we are getting at. What we want to know is whether the Phillipsburg Company's report submitted here reports or indicates or shows the seven cents collected from Center Square, Easton, to the interstate line?

A. Well, it does so far as I say the three and a half cent fare; the number of passengers is made up, where
40 we report the number of passengers made up, that is

made up on the basis of three and a half cents per passenger.

Q. Now, that is just the point I want to bring out. A conductor collects the seven cents and into what treasury does that seven cents taken in Easton go?

A. That goes to the Easton Transit Company.

Q. Yes. Now, then, do you ever report that seven cents in your franchise report?

A. No, not that particular seven cents.

Q. Now, then, do you report any of the seven cents, 10 any of the actual fares collected between the interstate line, the middle of the bridge, and Center Square?

A. Only insofar as I have described.

On p. 46, l. 27, he says:

Q. Well, then, if the Board should hold that a proper method would be to allocate one-half of the fares—

A. Yes.

Q. —as collected to the Phillipsburg Company, and one-half of the fares collected by the Phillipsburg Company to the Easton Company instead of crediting the 20 Phillipsburg Company with seven cents in each case, that company would receive three and a half cents, is that the way I understand it?

A. Yes, that is the idea, exactly. And according to these traffic checks that we took, the result would be substantially the same as we get now. It could be done in the other method. It is simply a convenient method of handling it, with the result coming out practically the same as it would by the other scheme.

The gross receipt for carrying any one passenger between any two points in New Jersey is seven cents. Is 30 it logical that the Phillipsburg Company can take a gross receipt of three and one-half cents for carrying a passenger between the interstate line and any other point in New Jersey?

The term "gross receipts" has been held to mean "receipts without any deduction" *N. J. Steamboat Co. vs. Pleasanton*, 8 Blatch. 259, 260.

The Easton Company owns and controls the entire stock of the Phillipsburg Company. It is the easiest 40

thing in the world for it to make a contract which will make the bookkeeping advantageous to the Easton Company or Phillipsburg Company as may seem proper. We contend that the entire record shows the attempt to credit the Phillipsburg Company with three and one-half cents net for each interstate passenger carried on the lines in New Jersey, and that the division is the net receipts for the operation of the whole line, so far as interstate traffic is concerned and not the "gross receipts."

- 10 Further attention is called to the ordinance submitted, which is only one of a number of like tenor. This franchise contract shows that the Easton Company, by its agreement with the Phillipsburg Company, is legally bound to honor and handle these interstate passengers traveling to Centre Square, Easton. It is no voluntary service, but required by the franchise.

- 20 What is the effect of the interstate traffic on the value of the New Jersey franchise? The intrastate passengers numbered in 1921 932,990, while the interstate passengers, (omitting the transfer passengers, number 1,577,364, and certainly the latter materially affect the value of the franchise which it is proposed to tax. To hold that the gross receipts of these passengers can be divided arbitrarily in half would be unjust. They are to be considered as gross before division, and the apportionment made according to the length of the lines in the public streets in New Jersey bears to the whole line, as we heretofore defined it.

POINT V

- 30 THERE IS NO ATTEMPT TO TAX THE PENNSYLVANIA FRANCHISE.

Reference was made to payment in Pennsylvania of a franchise tax on these receipts. The law provides, (Sect. 4, Chapter 239, Laws of 1918) that the franchise tax shall be levied upon such proportion of its gross receipts as the length of the line *in this State* upon any street, etc., bears to the length of the whole line. This

clearly makes provision for the length of the line in Pennsylvania. The tax is upon the franchise in New Jersey, and its user is determined by this proportionate method.

Applying the rule which the Town of Phillipsburg insists is the true rule, that "gross receipts" mean cash received from passengers carried on the line no matter where paid, let us assume for example that the Phillipsburg lines were operated 4 miles in Pennsylvania in one continuous cash fare ride, that 4 miles of right of way 10 was in the public streets and 1 mile on private right of way in New Jersey and the gross receipts were \$225,000. under the law the Franchise Tax would be 5% of

Length of right of way on public highways in New Jersey is to	}	or 4-9 of \$225,000
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Length of whole right of way

There is no franchise tax collected in New Jersey on the portion of the line in Pennsylvania. Neither is there any assessment of franchise tax on private right of way 20 in New Jersey. The value of the franchise in New Jersey is fixed and determined solely by the law.

Assuming that instead of 4 miles of line, operated as a continuous cash fare ride; there was 1 mile in Pennsylvania. Then the tax would be 5% of 4-6 of \$225,000. But the 1 mile in Pennsylvania would not be taxed in New Jersey.

POINT VI

THE CARRYING OF INTERSTATE PASSENGERS
IN NEW JERSEY IS "BUSINESS IN THIS STATE" 30
AND THE LAW REQUIRES A RETURN OF THE
GROSS RECEIPTS, NO MATTER WHERE THE
FARE IS COLLECTED.

The Statue (cited above) requires the company shall report "gross receipts from the business in this State." It is for the business of carrying these passengers into

New Jersey, that these passengers pay seven cents cash fare when they board the cars at Centre Square. If the fare limit were the State line a different situation would be presented. We live in a practical world of cold facts where legal fictions are discounted and discredited.

- Furter the ordinance granting the franchise clearly recognizes that the line of the Phillipsburg Company shall extend to Centre Square Easton. (pp. 90, 91). With bridges and tunnels between the states increasing
- 10 interstate communication and travel, interstate usage materially affects the value of franchises, and the Courts should aid the State in imposing upon such franchises a reasonable and just tax based upon its value determined by usage. To permit evasion by legal fictions, and agreements whose practical effect is to permit only net return would be unjust and unfair to those of us who have to pay tax by direct assessment on true value.

POINT VII

- The argument of the prosecutor that the matter was
- 20 previously decided by the Utility Commission, and the State Board of Taxes and Assessments are without jurisdiction is without merit.

Both boards are creations of statute whence they obtain their powers and the Utility Commission has no authority to hear and determine tax matters.

The town of Phillipsburg for these reasons submits that the judgment of the Supreme Court should be affirmed.

SYLVESTER C. SMITH, JR.,

- 30 Attorney for the Inhabitants of the Town of Phillipsburg.

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