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BILL OF COMPLAINT.

Filed January 10, 1927.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey: 10

The complainants, George J. Grimm of Newark, New Jersey, Benjamin Rose of Irvington, N. J., Isidor M. Noll of Irvington, N. J. and Frank J. Noll of Irvington, N. J., respectfully show that:

(1) On the 25th day of March, 1924, and for a long time prior thereto, the complainants were each the owner of a jitney bus and each operated the same, carrying passengers for hire, under permits from the City of Newark and the Town of Irvington, over a specified route, which is generally known as "the Springfield avenue bus route." 20

(2) On the said date and prior thereto there were fifteen additional individual bus owners, each operating a bus over the same route, in the same character of business and under the same character of permits. 30

(3) At about the date aforesaid and prior thereto, the Public Service Transportation Company was endeavoring to acquire all of the bus business on the said route and to that end, purchased the buses and business of twenty-two individual bus owners and operators, others than those referred to above, and was negotiating with certain of the nineteen bus owners, then operating as aforesaid, for the purchase of the buses and business of such owners. 40

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10 (4) In the latter part of the year 1923, the individual bus owners and operators on the said route, for the purpose of mutual advantage in reducing the cost of operation, purchased a plot of ground and commenced to build thereon a building to be used for a garage and service station, by each of the said individual operators and, for the purpose of taking title to the said garage property and administering it, formed a corporation under the laws of the State of New Jersey called the Springfield Avenue Bus Co., Inc., and each of the said individual bus owners subscribed for and became the owner of an equal number of the shares of stock of the said corporation.

20 (5) Before the completion of the said garage building and while it was in an unfinished state, and consequently unsalable, the Public Service Transportation Company purchased the buses from twenty-two individual bus owners, each of such bus owners being also an equal owner in the stock of the said Springfield Avenue Bus Co., Inc., and it became necessary, for the protection of the nineteen bus owners who still owned and operated buses over the said route, to purchase
30 the stock of the twenty-two bus owners who had sold to the Public Service Transportation Company and secure the completion of the building, in order that it might be used by them as intended, and such purchase so forced on the said bus operators was at a price in excess of the true value of the stock conveyed, and entailed an additional burden on the remaining nineteen bus owners, both in the capital charge and in the cost of maintenance of the said garage and its accessories.
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(6) The said nineteen bus operators, among whom were the complainants, desired to prevent the gradual diminution of their number, by individual sales to the Public Service Transportation Company, and to retain the full number of them for the support of their mutual interests, as mentioned above, and thereupon, on or about said date, directed their chosen representative, one Samuel D. Lines, who was at that time the duly elected president of the said Springfield Avenue Bus Co., Inc., to call upon the defendant Pearce R. Franklin, an attorney and counsellor-at-law and solicitor in chancery of the State of New Jersey, for counsel and advice as to means to be employed to prevent further sales by the individual bus owners then operating until a sale could be made to the advantage of all

(7) The said Pearce R. Franklin advised the said Samuel D. Lines, who was then the spokesman and representative of the complainants and the others of the nineteen bus owners, that he could prepare a binding contract, which, when executed by each of the individual nineteen bus owners, would prevent a sale by any of the said bus owners without the approval of all, and advised the said individual bus owners to enter into the said contract, but required of them that they should agree to pay him for his services in preparing such contract, attending to its execution and defending breaches of it, a commission of five per cent. on whatever amount in excess of Eleven Thousand Dollars (\$11,000), should be received by any bus owner on the sale of his bus to any party other than the Springfield Avenue Bus Co., Inc., and the said Pearce R. Franklin advised complainants and the others of the nine-

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teen individual bus operators that it would be to their advantage and in their interest to enter into an agreement of compensation with him under the terms above mentioned.

10 (8) The complainants and each of the other operators so advised by the said Pearce R. Franklin, each of whom afterwards signed the compensation agreement hereinafter referred to, were men of limited education and experience in business and especially lacking in experience in relation to legal rights, and relied implicitly on the said Pearce R. Franklin, who was then and there the attorney for and the adviser of each of the said parties.

20 (9) Being so advised, and relying on such advice, complainants and each of the other individual operators then doing business over said route, signed the contract prepared by the said Pearce R. Franklin between themselves and the said Springfield Avenue Bus Co., Inc., a copy of which contract is hereto annexed and made a part hereof and marked Exhibit "A," and also, at approximately the same time, signed a compensation contract between said Pearce R. Franklin and the complainants and the other individual operators, a copy of which is annexed hereto and made a part hereof and marked Exhibit "B."

30 (10) Pursuant to the advice of the said Pearce R. Franklin, the stockholders of the said Springfield Avenue Bus Co., Inc., who were also the subscribers to the contracts (Exhibit "A" and Exhibit "B"), at a stockholders' meeting of the company held on May 15, 1924, passed a resolution directing the officers of the company, in order to carry out the provisions of the con-

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tract, of which Exhibit "A" is a copy, to issue thirty shares of the common capital stock of the company to each of the owners who signed the contract and further, acting upon the advice of the said Pearce R. Franklin, in order to make the proportionate holdings of each stockholder equal to the amount of money which he had paid for stock, either to the corporation or to those of the twenty-two stockholders whose stock had been purchased as set forth above, directed the issuance of fifteen shares of the common capital stock of the said company as a bonus for each share of stock purchased from those who had previously sold their buses on the Springfield Avenue route. 10

(11) An amendment to the certificate of incorporation of the Springfield Avenue Bus Co., Inc., to increase the capital stock became necessary to carry out the terms of the foregoing resolutions of the stockholders, and acting under the advice of the said Pearce R. Franklin, the certificate of the corporation was amended, the legal work in connection with such amendment being performed by the said Pearce R. Franklin. For the services so performed in connection with the amendment to the certificate of incorporation and for the services performed by him in connection with the transfer of the shares of stock from the twenty-two bus owners to the subscribers to the contract (Exhibit "A"), the said Pearce R. Franklin made a charge of \$500 to the Springfield Avenue Bus Co., Inc., which charge was paid by the said company. The request for the payment of this fee was set forth in a letter to the said Samuel D. Lines, as president of the Springfield Avenue Bus Co., Inc., dated May 19, 20 30 40

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1924, and signed by the said Pearce R. Franklin, a copy of which is attached hereto and made a part hereof and marked Exhibit "C." For each and every service performed by the said Pearce R. Franklin for the Springfield Avenue Bus Co., Inc., and for each of the nineteen subscribers to the contract, of which Exhibit "A" is a copy, the said Pearce R. Franklin rendered a bill and was paid in full, except as hereinafter set forth.

(12) Notwithstanding the terms of the contract, of which Exhibit "A" is a copy, on or about September 8, 1924, Louis Lehrhoff and Marty Lehrhoff, two of the subscribers to the contract, each sold the bus of which he was the owner and the good will of the business, in which he was engaged with such bus, to the Public Service Transportation Company, and prior to the 14th day of November, 1924, one Max Green, another of the parties to the said contract, also sold his bus and the good will of his business on the Springfield Avenue route to the Public Service Transportation Company, and thereupon the complainants and the remaining individual subscribers to the said contract demanded of the said Pearce R. Franklin that he should take proceedings against the said Lehrhoffs and Max Green and the Public Service Transportation Company to secure the enforcement of the said contract and thereafter the said Pearce R. Franklin instituted three separate actions for specific performance of said contract in this court on behalf of the said Springfield Avenue Bus Co., Inc., —one against Louis and Marty Lehrhoff and the Public Service Transportation Company, one against Max Green and the Public Service Transportation Company and one against all of the

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other subscribers to the said contract (Exhibit "A"), but the said Pearce R. Franklin did not advise nor consult with the complainants as to the form of said actions or the purpose thereof.

(13) That thereafter and before the said actions were heard by this court, the complainants and each of the other subscribers to the said contract, except the said Louis Lehrhoff, Marty Lehrhoff and Max Green, became dissatisfied with the manner in which the said actions were prosecuted by the said Pearce R. Franklin and he no longer had their confidence, and thereupon they requested him to give to them a substitution of solicitor so that they might employ another solicitor in whom they had confidence and on whom they were willing to rely to prosecute said actions. 10

(14) That the said Pearce R. Franklin refused to accept his discharge from his employment and to give a substitution as requested, unless the complainants and the other subscribers to said contract (except the Lehrhoffs and Green) would execute and deliver to him an agreement that such substitution was without prejudice to a contract between the bus owners and himself, thereby referring to the contract Exhibit "B," and thereupon, being in great anxiety over the outcome of the said actions, and fearing that they were not being properly prosecuted by the said Pearce R. Franklin, and knowing that the said Pearce R. Franklin claimed a commission from the sales by the said Lehrhoffs and the said Green to the said Public Service Transportation Company, which sales the said actions were intended to void, the complainants and the other subscribers were induced to sign 20

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and did sign, as drawn by the said Pearce R. Franklin, with the Springfield Avenue Bus Co., Inc., a paper writing, a copy of which is hereto attached and made a part hereof and marked Exhibit "D": Thereafter, during the month of June, 1925, and before final hearing in said causes, the said Pearce R. Franklin delivered to the Springfield Avenue Bus Co., Inc., a substitution in each of said actions, and the said Springfield Avenue Bus Co., Inc., employed other counsel to represent it in the said action.

(15) Since the date of such substitution neither the Springfield Avenue Bus Co., Inc., nor the complainants have employed the said Pearce R. Franklin for any purpose whatsoever, nor has he rendered for them or any one of them any service whatsoever.

(16) After final hearing in the said causes against Louis Lehrhoff and Marty Lehrhoff and the Public Service Transportation Company and against Max Green and the Public Service Transportation Company, this court dismissed the bills of complaint.

(17) That in the month of October, 1926, the complainants each sold his bus, which he had been operating on the Springfield avenue route, together with the good will of that business, to the Public Service Transportation Company for the sum of \$30,000, but the said Pearce R. Franklin was not in any manner the procuring cause of said sale, nor had he any part therein as agent, attorney or otherwise, nor was the price obtained the result of any service or effort by the said Pearce R. Franklin on behalf of the complainants.

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(18) On or about the 12th day of November, 1926, the said Pearce R. Franklin instituted an action against the said Frank J. Noll and also an action against the said George J. Grimm, also an action against Benjamin J. Rose and also an action against Isidor M. Noll—each of such actions being brought in the Essex County Court of Common Pleas of New Jersey—by the issuance of summons and complaints which were duly served, each of said actions being for the recovery of \$950 from the defendant therein—such amount being claimed to be due upon the contract (Exhibit “B”) hereinbefore referred to. 10

(19) That the time for answering or for taking other action by the defendants in each of said actions has been extended to the 12th day of January, 1927. 20

(20) Complainants charge that at the time of the execution by them of the contract, of which Exhibit “B” is a copy, a trust relationship existed between each of them and the said Pearce R. Franklin, he, at that time, being their legal adviser; that the relationship of attorney and client existed between the said Pearce R. Franklin and each of the complainants at the time of the execution of the said contract; that no one of the complainants at the time of the execution of the said contract had independent counsel as to the terms thereof; that the said Pearce R. Franklin, in breach of his duties to complainants to advise them according to their best interest, advised them to sign said contract, by the terms of which he would be able to receive compensation not based on or proportionate to the value of his services to complainants; that he improperly and unwisely advised the complainants then and 30 40

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thereafter in respect to the subject matter of the contract (Exhibit "A") by reason of which advice the complainants were put to great inconvenience, loss and expense and received no benefit whatsoever; that the contract (Exhibit "A") was not a binding and enforceable contract and
10 was not intended so to be by the said Pearce R. Franklin, but was a subterfuge and a sham by means of which he expected to prevent independent sales by the subscribers to the said Public Service Transportation Company, and, so, obtain whatsoever price for the said buses he desired, upon a sale arranged through him; that the said contract (Exhibit "A") was ineffective and useless and accomplished no beneficial result whatsoever; that the sales by complainants to the
20 Public Service Transportation Company were consummated by their own efforts and not in any particular by the efforts, service, scheme or device performed or concocted by the said Pearce R. Franklin.

(21) That complainants are without adequate remedy in the courts at law, and therefore pray:

1. That the said Pearce R. Franklin, who is defendant in this suit, may answer this bill of complaint and each statement therein.
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2. That an injunction issue against the said Pearce R. Franklin restraining the further prosecution of each of the actions at law brought against the complainants, as in this bill referred to, until final hearing of this suit.

3. That the said Pearce R. Franklin make a full and true discovery and disclosure of and concerning each and all of the services which he has performed for each of the complainants for which he seeks to recover payment by the said actions
40 at law.

Bill of Complaint—Affidavits.

4. That the value of services rendered by the defendant Pearce R. Franklin to each of the complainants be determined by this court and that he be enjoined from entering judgment in the said actions at law for any other amount than that fixed by this court in this cause and that he be enjoined from instituting any other action against the complainants or any of them based on said contracts Exhibit "A" and "B." 10

5. That a writ of subpoena may issue, commanding the said defendant to answer this bill of complaint and to abide by such decree as this court may make in the premises.

OSBORNE, CORNISH & SCHECK,
Solicitors for Complainants.

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

GEORGE J. GRIMM, BENJAMIN ROSE, ISIDOR M. NOLL and FRANK J. NOLL, of full age, being each severally sworn on their respective oaths, depose and say:

1. We are the complainants in the foregoing bill of complaint mentioned. We have read the same and are familiar with the contents thereof and the matters and things therein set forth are true. 30

2. On the 25th day of March, 1924, and for a long time prior thereto, we were each the owner of a jitney bus and each operated the same, carrying passengers for hire, under permits from the City of Newark and the Town of Irvington, over a specified route, which is generally known as "the Springfield Avenue bus route." 40

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3. On the said date and prior thereto there were fifteen additional individual bus owners, each operating a bus over the same route, in the same character of business and under the same character of permits.

10 4. At about the date aforesaid and prior thereto, the Public Service Transportation Company was endeavoring to acquire all of the bus business on the said route and to that end purchased the buses and business of twenty-two individual bus owners and operators, other than those referred to above, and was negotiating with certain of the nineteen bus owners, then operating as aforesaid, for the purchase of the buses and business of such owners.

20 5. In the latter part of the year 1923, the individual bus owners and operators on the said route, for the purpose of mutual advantage in reducing the cost of operation, purchased a plot of ground and commenced to build thereon a building to be used for a garage and service station, by each of the said individual operators and, for the purpose of taking title to the said garage property and administering it, formed a corporation under the laws of the State of New
30 Jersey called the Springfield Avenue Bus Co., Inc., and each of the said individual bus owners subscribed for and became the owner of an equal number of the shares of stock of the said corporation.

6. Before the completion of the said garage building and while it was in an unfinished state, and consequently unsalable, the Public Service Transportation Company purchased the buses from twenty-two individual bus owners, each of
40 such bus owners being also an equal owner in

Bill of Complaint—Affidavits.

the stock of the said Springfield Avenue Bus Co., Inc., and it became necessary, for the protection of the nineteen bus owners who still owned and operated buses over the said route, to purchase the stock of the twenty-two bus owners who had sold to the Public Service Transportation Company and secure the completion of the building, in order that it might be used by them as intended, and such purchase so forced on the said bus operators was at a price in excess of the true value of the stock conveyed, and entailed an additional burden on the remaining nineteen bus owners, both in the capital charge and in the cost of maintenance of the said garage and its accessories. 10

7. The said nineteen bus operators (of whom we were four) desired to prevent the gradual diminution of our number by individual sales to the Public Service Transportation Company, and to retain the full number for the support of our mutual interests, as mentioned above, and thereupon, on or about said date, directed our chosen representative, one Samuel D. Lines, who was at that time the duly elected president of the said Springfield Avenue Bus Co., Inc., to call upon the defendant Pearce R. Franklin, an attorney and counsellor-at-law and solicitor in Chancery of the State of New Jersey, for counsel and advice as to means to be employed to prevent further sales by the individual bus owners then operating until a sale could be made to the advantage of all. 20 30

8. The said Pearce R. Franklin advised the said Samuel D. Lines, who was then the spokesman and representative of ourselves and the others of the nineteen bus owners, that he could 40

Bill of Complaint—Affidavits.

prepare a binding contract, which, when executed by each of the individual nineteen bus owners, would prevent a sale by any of the said bus owners without the approval of all, and advised the said individual bus owners to enter into the said contract, but required of us that we should agree
10 to pay him for his services in preparing such contract, attending to its execution and defending breaches of it, a commission of five per cent. on whatever amount in excess of Eleven Thousand Dollars (\$11,000) should be received by any bus owner on the sale of his bus to any party other than the Springfield Avenue Bus Co., Inc., and the said Pearce R. Franklin advised us and the others of the nineteen individual bus operators that it would be to our advantage and to
20 our interest to enter into an agreement of compensation with him upon the terms above mentioned.

9. We and each of the other operators so advised by the said Pearce R. Franklin, each of whom afterwards signed the compensation agreement hereinafter referred to, were men of limited education and experience in business and especially lacking in experience in relation to legal rights, and relied implicitly on the said Pearce
30 R. Franklin, who was then and there the attorney for and the adviser of each of us.

10. Being so advised, and relying on such advice, we and each of the other individual operators then doing business over said route, signed the contract prepared by the said Pearce R. Franklin between us and each of the other individual operators and the said Springfield Avenue Bus Co., Inc., a copy of which contract is annexed to the bill of complaint and marked Exhibit
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Bill of Complaint—Affidavits.

“A,” and also, at approximately the same time, signed a compensation contract between said Pearce R. Franklin and ourselves and the other individual operators, a copy of which is annexed to the bill of complaint and marked Exhibit “B.”

11. Pursuant to the advice of the said Pearce R. Franklin, the stockholders of the said Springfield Avenue Bus Co., Inc., who were also the subscribers to the contracts (Exhibits “A” and “B”), at a stockholders’ meeting of the company held on May 15, 1924, passed a resolution directing the officers of the company, in order to carry out the provisions of the contract, of which Exhibit “A” is a copy, to issue thirty shares of the common capital stock of the company to each of the owners who signed the contract and further, acting upon the advice of the said Pearce R. Franklin, in order to make the proportionate holdings of each stockholder equal to the amount of money which he had paid for stock, either to the corporation or to those of the twenty-two stockholders whose stock had been purchased as set forth above, directed the issuance of fifteen shares of the common capital stock of the said company as a bonus for each share of stock purchased from those who had previously sold their buses on the Springfield avenue route.

12. An amendment to the certificate of incorporation of the Springfield Avenue Bus Co., Inc., to increase the capital stock, became necessary to carry out the terms of the foregoing resolutions of the stockholders, and acting under the advice of the said Pearce R. Franklin, the certificate of the corporation was amended, the legal work in connection with such amendment being performed by the said Pearce R. Franklin.

Bill of Complaint—Affidavits.

For the services so performed in connection with the amendment to the certificate of incorporation and for the services performed by him in connection with the transfer of the shares of stock from the twenty-two bus owners to the subscribers to the contract (Exhibit "A") the said Pearce R. Franklin made a charge of \$500 to the Springfield Avenue Bus Co., Inc., which charge was paid by the said company. The request for the payment of this fee was set forth in a letter to the said Samuel D. Lines, as president of the Springfield Avenue Bus Co., Inc., dated May 19, 1924, and signed by the said Pearce R. Franklin, a copy of which is attached to the bill of complaint and marked Exhibit "C." For each and every service performed by the said Pearce R. Franklin for the Springfield Avenue Bus Co., Inc., and for each of the nineteen subscribers to the contract, of which Exhibit "A" is a copy, the said Pearce R. Franklin rendered a bill and was paid in full, except as hereinafter set forth.

13. Notwithstanding the terms of the contract, of which Exhibit "A" is a copy, on or about September 8, 1924, Louis Lehrhoff and Marty Lehrhoff, two of the subscribers to the contract, each sold the bus of which he was the owner and the good will of the business, in which he was engaged with such bus, to the Public Service Transportation Company, and prior to the 14th day of November, 1924, one Max Green, another of the parties to the said contract, also sold his bus and the good will of his business on the Springfield avenue route to the Public Service Transportation Company, and thereupon, we and the remaining individual subscribers to the said contract demanded of the said Pearce R. Franklin

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that he should take proceedings against the said Lehrhoffs and Max Green and the Public Service Transportation Company to secure the enforcement of the said contract—and thereafter the said Pearce R. Franklin instituted three separate actions for specific performance of said contract in this court on behalf of the said Springfield Avenue Bus Co., Inc.—one against Louis and Marty Lehrhoff and the Public Service Transportation Company, one against Max Green and the Public Service Transportation Company and one against all of the other subscribers to the said contract (Exhibit “A”); but the said Pearce R. Franklin did not advise nor consult with the complainants as to the form of said actions or the purpose thereof. 10

14. That thereafter and before the said actions were heard by this court, we and each of the other subscribers to the said contract, except the said Louis Lehrhoff, Marty Lehrhoff and Max Green, became dissatisfied with the manner in which the said actions were prosecuted by the said Pearce R. Franklin and he no longer had our confidence, and thereupon we requested him to give us a substitution of solicitor so that we might employ another solicitor in whom we had confidence and on whom we were willing to rely to prosecute said actions. 20 30

15. That the said Pearce R. Franklin refused to accept his discharge from his employment and to give a substitution as requested, unless we and the other subscribers to said contract (except the Lehrhoffs and Green) would execute and deliver to him an agreement that such substitution was without prejudice to a contract between the bus owners and himself, thereby refer- 40

Bill of Complaint—Affidavits.

ring to the contract Exhibit "B," and thereupon, being in great anxiety over the outcome of the said actions, and fearing that they were not being properly prosecuted by the said Pearce R. Franklin, and knowing that the said Pearce R. Franklin claimed a commission from the sales by the said Lehrhoffs and the said Green to the said Public Service Transportation Company, which sales the said actions were intended to void, we and the other subscribers were induced to sign and did sign, with the Springfield Avenue Bus Co., Inc., a paper writing drawn by the said Pearce R. Franklin, a copy of which is hereto attached and made a part hereof and marked Exhibit "D." Thereafter, during the month of June, 1925, and before final hearing in said causes, the said Pearce R. Franklin delivered to the Springfield Avenue Bus Co., Inc., a substitution in each of said actions, and the said Springfield Avenue Bus Co., Inc., employed other counsel to represent it in the said actions.

16. Since the date of such substitution neither the Springfield Avenue Bus Co., Inc., nor we have employed the said Pearce R. Franklin for any purpose whatsoever, nor has he rendered for us or any one of us any service whatsoever.

17. After final hearing in the said causes against Louis Lehrhoff and Marty Lehrhoff and the Public Service Transportation Company, and against Max Green and the Public Service Transportation Company, this court dismissed the bills of complaint.

18. That in the month of October, 1926, we each sold our bus, which we had been operating on the Springfield avenue route, together with the good will of that business, to the Public

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Service Transportation Company for the sum of \$30,000, but the said Pearce R. Franklin was not in any manner the procuring cause of said sale, nor had he any part therein as agent, attorney or otherwise, nor was the price obtained the result of any service, or effort by the said Pearce R. Franklin on our behalf.

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19. On or about the 12th day of November, 1926, the said Pearce R. Franklin instituted an action against the said deponent, Frank J. Noll, and also an action against deponent George J. Grimm, also an action against deponent Benjamin J. Rose and also an action against deponent Isidor M. Noll—each of such actions being brought in the Essex County Court of Common Pleas of New Jersey—by the issuance of summons and complaints which were duly served, each of said actions being for the recovery of \$950 from the defendant therein—such amount being claimed to be due upon the contract (Exhibit “B”) hereinbefore referred to.

20

20. That the time for answering or for taking other action by the defendants in each of said actions has been extended to the 12th day of January, 1927.

21. We charge that at the time of the execution by us of the contract, of which Exhibit “B” is a copy, a trust relationship existed between each of us and the said Pearce R. Franklin, he, at that time, being our legal adviser; that the relationship of attorney and client existed between the said Pearce R. Franklin and each of us at the time of the execution of the said contract; that no one of us at the time of the execution of the said contract had independent counsel as to the terms thereof; that the said Pearce R. Frank-

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Bill of Complaint—Affidavits.

lin, in breach of his duties to us to advise us according to our best interests, advised us to sign said contract, by the terms of which he would be able to receive compensation not based on or proportionate to the value of his services to us; that he improperly and unwisely advised us then and thereafter in respect to the subject matter of the contract (Exhibit "A"), by reason of which advice we were put to great inconvenience, loss and expense and received no benefit whatsoever; that the contract (Exhibit "A") was not a binding and enforceable contract and was not intended so to be by the said Pearce R. Franklin, but was a subterfuge and a sham by means of which he expected to prevent independent sales by the subscribers to the said Public Service Transportation Company, and, so, obtain whatsoever price for the said buses he desired, upon a sale arranged through him; that the said contract (Exhibit "A") was ineffective and useless and accomplished no beneficial result whatsoever; that the sales by us to the Public Service Transportation Company were consummated by our own efforts and not in any particular by the efforts, service, scheme or device performed or concocted by the said Pearce R. Franklin.

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FRANK J. NOLL,
BENJAMIN ROSE,
GEORGE J. GRIMM,
ISIDOR M. NOLL.

40

Bill of Complaint—Exhibit A.

Sworn and subscribed to before me,
this 29th day of December, 1926.

By Frank J. Noll,
Benjamin Rose,
George J. Grimm.

M. E. HEDGES,
A Notary Public of New Jersey.

10

Sworn and subscribed to before me
this 30th day of December, 1926.

By Isidor M. Noll.

M. ETHEL HEDGES,
A Notary Public of New Jersey.

EXHIBIT "A."

20

THIS AGREEMENT made and entered into
on this twenty-fifth day of March, 1924, by and
between the undersigned, as parties of the first
part, and SPRINGFIELD AVENUE BUS CO.,
INC., as party of the second part, for and in con-
sideration of the sum of One Dollar and other
good and valuable considerations, and of the re-
ceipt of thirty shares of the common capital
stock of the said SPRINGFIELD AVENUE
BUS CO., INC., the receipt whereof by each of
us is hereby acknowledged, and in further con-
sideration of the mutual promises and agree-
ments herein made do hereby promise and agree
to and with each other as follows:

30

The said parties of the first part, being each
of the undersigned, do hereby each severally
agree to sell, assign, transfer and set over to
the SPRINGFIELD AVENUE BUS CO., INC.,
party of the second part, our busses and each of

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Bill of Complaint—Exhibit A.

10 them, as severally owned by us, or any replacements of the same, now being operated on the Springfield Avenue Route in the City of Newark and the Town of Irvington, N. J., together with the good will of the business which the said parties of the first part have severally built up in connection with the operation of said busses, which sale and transfer shall be made at the time of and upon the payment of the balance of purchase price thereof, which balance of the purchase price shall be paid to us as hereinafter provided on or before April 25th, 1925, the party of the second part having the option and right to make payment of said balance of said purchase price at any time before April 25, 1925, and to receive said busses at such time.

20 And we and each of us do hereby agree that at the time the full consideration, by payment of said balance, for our said busses, is paid to us, the parties of the first part, we will, at that time, cancel at the Traffic Supervisor's Office in the City of Newark and Town of Irvington, N. J. the municipal consents heretofore granted to us, the parties of the first part, for the operation of our said busses when new permits are granted to the SPRINGFIELD AVENUE BUS CO. INC.

30 And we do further agree that at that time we will each cancel our insurance policies covering our said busses which we carry upon said busses under the Kates Act.

40 The party of the second part hereby promises and agrees to pay to each of the said parties of the first part, respectively, as the balance of the purchase price, the physical value of each of the said busses owned by the parties of the first

Bill of Complaint—Exhibit A.

part individually on or before April 25, 1925, which payment to each of the parties of the first part shall consist of shares of the common capital stock of SPRINGFIELD AVENUE BUS CO. INC., and the promissory notes of the party of the second part, the amount of which shall be determined as to each bus of each of the parties of the first part in the following manner: the physical value of each of said busses is to be determined on or before April 25, 1925, by a majority of three appraisers, two of which appraisers are to be elected by the majority of the stockholders of the SPRINGFIELD AVENUE BUS CO. INC., and the third appraiser is to be selected by the two appraisers elected by the stockholders of the SPRINGFIELD AVENUE BUS CO. INC., and the party of the second part agrees to have such physical value so determined on or before April 25, 1925 and the parties of the first part agree to the determination of the physical value of said busses in such manner, and each of the parties of the first part hereby agree to accept and the party of the second part does hereby agree to pay on or before April 25, 1925 the physical value of each of said auto busses, respectively as determined by the majority of the appraisers so selected as aforesaid less any indebtedness existing against said busses respectively as follows: One Thousand Dollars in shares of the common capital stock of said party of the second part and the remainder, if any, in twelve equal promissory notes of said party of the second part (without interest) the first note to fall due thirty days from and after the date of closing of title and the remaining eleven notes to fall due thirty days apart.

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Bill of Complaint—Exhibit A.

10 It is expressly understood and agreed by and between the parties hereto that this contract shall be construed to bind each of the parties of the first part severally to sell any and all busses now owned by each of them and the party of the second part to buy the same as herein provided, this contract applying to each of said busses.

20 It is expressly understood and agreed by and between the parties hereto that in the event that the City of Newark or Town of Irvington, N. J. shall fail or refuse to grant a municipal consent to the SPRINGFIELD AVENUE BUS CO. INC., or in the event that the Public Utility Commission fails or refuses to grant an approval of the consent to the SPRINGFIELD AVENUE BUS CO. INC. to operate any of the busses herein mentioned, then this contract shall, at the option of the SPRINGFIELD AVENUE BUS CO. INC. be cancelled in respect of such bus or busses as such consent or approval is refused for, and then and in that event the party of the second part shall re-transfer each of said busses referred to in this paragraph to such party of the first part who previously owned the same and such party shall thereupon surrender and return to the party of the second part the promissory notes and the shares of stock of the party of the second part previously issued to such party of the first part under this contract.

30 IN WITNESS WHEREOF, we, the said parties of the first part, have hereunto set our hands and seals, and the said party of the second part has caused these presents to be signed by its

Bill of Complaint—Exhibit A.

president and attested to by its secretary and its corporate seal hereto affixed the day and year first above mentioned.

A. A. Marsh	402	
Louis Lehrhoff	23	
Gus Hagmann	445	10
Eugene E. Brown	463	
Charles Waechter	259	
Edwin M. De Hart	153	
Edw. M. Reichell	75	
Geo. J. Grimm	68	
Isidor M. Noll	451	
Charles Lehrhoff	140	
Max Greene	351	
Benj. Rose	333	
Samuel D. Lines	484	
Frank J. Noll	357	20
Antonio Grieco	278	
Harry Jubin	525	

Signed Sealed and Delivered
in the presence of:
Pearce R. Franklin

Wm. Leo Elliott	20
Jos. Ehrhardt	345
Marty Lehrhoff	464

Springfield Ave. Bus Co., Inc.
by Samuel D. Lines
President

(SEAL)

Attest
Frank J. Noll
Secretary

30

40

Bill of Complaint—Exhibit B.

EXHIBIT "B."

10 THIS AGREEMENT, made this 15th day of April, 1924, by and between the undersigned and each of them as parties of the first part, and PEARCE R. FRANKLIN, as party of the second part; for and in consideration of the mutual premises and agreements herein made and in further consideration of the services to be performed hereunder, do hereby agree to and with each other as follows:

20 The party of the second part agrees for and during the period of the ownership by each of said parties of first part of the jitney busses now owned respectively by each of said parties and operating on the route known as the Springfield Avenue Jitney Route, to perform any and all necessary and proper legal services with respect to the protection of the mutual interests of the parties of the first part in co-ordinating the busses of all of said parties and the control thereof in line with the policy heretofore determined by the parties of the first part and to organize any corporations, prepare and have executed any agreements or other documents and to
30 institute, attend to and defend any litigation for or against said parties to the end that the policy heretofore determined and expressed by the parties of the first part shall be prompted and fostered.

40 And the parties of the first part do each severally agree to pay to the party of the second part as compensation in full for such services five (5) percent on any amount received by the party of the first part over and above eleven thousand dollars from and out of the sale price of each bus severally owned by them respectively,

Bill of Complaint—Exhibit B.

at such time as said bus shall be sold to any person or corporation except a corporation formed by the parties of the first part to accomplish the purposes above referred to.

If the said parties of the first part or any of them shall at any time transfer said busses to such corporation formed by them for the above purpose then the aforesaid sum shall not be due and payable to party of the second part until the sale of such bus or busses, respectively, to a third party, in which event upon such sale to a third party the said parties of the first part each agree to pay five (5) percent on any amount received by the party of the first part over and above eleven thousand dollars from and out of the sale price of each of said busses to the party of the second part.

IN WITNESS WHEREOF, the parties hereto have hereunto interchangeably set their hands and seals the day and year first above written.

(Sgd) Pearce R. Franklin		
(Sgd) Benjamin Rose	333	
(Sgd) Chas. Waechter	259	
(Sgd) Louis Lehrhoff Bus 23		
(Sgd) Gus Hagmann	445	
(Sgd) Max Greene	351	<u>30</u>
(Sgd) Isidore M. Noll	451	
(Sgd) Charles Lehrhoff	140	
(Sgd) A. A. Marsh	402	
(Sgd) Edwin M. DeHart	153	
(Sgd) Eugene E. Brown	463	

Signed, sealed and delivered
in the presence of:

(Sgd) George J. Grimm	68	
(Sgd) Samuel D. Lines	484	<u>40</u>

Bill of Complaint—Exhibit C.

	(Sgd) Edward M. Reishelt	75
	(Sgd) Frank J. Noll	357
	(Sgd) Antonio Grieco	278
	(Sgd) Harry Jubin	525
	(Sgd) William Leo Elliott	20
	(Sgd) Joseph Ehrhardt	345
10	(Sgd) Marty Lehrhoft	464

EXHIBIT "C."

Law Offices

PEARCE R. FRANKLIN

National State Bank Building

810 Broad Street

Newark, N. J.

May 19, 1924.

20

Mr. Samuel D. Lines,
 President Springfield Ave. Bus Co.
 43rd Street & Springfield Ave.,
 Irvington, N. J.

Dear Sir:

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I have conferred with Mr. McGeehan regarding the fee for our work in connection with arranging, attending and conducting the various meetings of your company preliminary to the transfer of the control of the company to yourself and colleagues, and arranging the price and details for the transfer of the stock of the twenty-three owners who sold, handling the mortgage transaction, etc.

We feel that a retainer of \$500.00 should be paid for representation of your company in these matters. This retainer will cover the services above referred to and those in the future re-

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Bill of Complaint—Exhibit D.

specting your corporation except the fee for services to be received from the men individually when they sell as per the contract signed by them.

Yours very truly,
(Signed) Pearce R. Franklin

PRF.FEH

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EXHIBIT "D."

Mr. Pearce R. Franklin,
810 Broad Street,
Newark, N. J.

Dear Sir:—

We understand that suit has been instituted in the Court of Chancery by you in our behalf against the Public Service Transportation Co. and Marty Lehrhoff and Louis Lehrhoff in one action and against Max Greene and Public Service Transportation Co. in another action. Both of these suits are for specific performance of a contract entered into between the Springfield Avenue Bus Co. and the owners of buses on the Springfield Avenue Jitney Bus Route who have signed a contract to sell their buses and the good will of their business to the Springfield Avenue Bus Co.

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We understand that answers have been filed by Merritt Lane for the defendants and that the cases have been referred to Vice Chancellor Backes for a final hearing on Wednesday, June 3, 1925.

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We also understand that preliminary hearing on rule to show cause why temporary injunction should not issue have been heard before Vice Chancellor Backes.

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Bill of Complaint—Exhibit D.

10 We are desirous at this time of substituting other counsel to try the cases above mentioned at the final hearing on June 3rd and, without prejudice to a contract which exists between the owners of buses and yourself, we request that you permit us to substitute an attorney in your place and stead to proceed to the final hearing of these causes.

Yours very truly,

SPRINGFIELD AVENUE BUS CO. INC.

Signed: Samuel D. Lines,
President.

Attest: Frank J. Noll,
Secretary.

20 Approved
Bus
140 Charles Lehrhoff
333 Benjamin Rose
68 George J. Grimm
451 Isidor M. Noll
75 E. Reichelt
445 Gus Hagmann
463 Eugene E. Brown
525 Harry Jubin
30 357 Frank J. Noll
484 Samuel D. Lines
20 Leo Elliott.

ANSWER.

Filed April 4, 1927.

IN CHANCERY OF NEW JERSEY.

GEORGE J. GRIMM, <i>et als.</i> , <i>Complainants,</i> <i>vs.</i> PEARCE R. FRANKLIN, <i>Defendant.</i>	}	<i>On Bill etc.</i> <i>Answer.</i>	<u>10</u>
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The defendant Pearce R. Franklin, answering the complaint of the complainants in the above-entitled cause, respectfully says that:

1. The defendant admits paragraph one and the statements and allegations contained therein. 20

2. The defendant admits paragraph two and the statements and allegations therein contained.

3. The defendant admits paragraph three and the statements and allegations contained therein.

4. Answering paragraph four of the complaint, the defendant says that it is true that in the latter part of the year 1923, the individual bus owners and operators on the said route formed a corporation and did undertake the construction of the building referred to in said paragraph and that each of the said individual bus owners subscribed for and became the owners of an equal number of shares of stocks in the said corporation and defendant says that said corporation possessed in addition to the powers enumerated in said paragraph additional powers 30

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Answer.

and was used for additional purposes other than those mentioned in said paragraph as hereinafter stated.

10 5. Answering paragraph five, defendant says that he admits the truth of the allegations contained therein except wherein it is alleged that the purchase of the said shares of stock was at a price in excess of the true value of the stock conveyed, or that the purchase of said stock entailed an additional burden on the remaining nineteen bus owners, as to which this defendant says on information and belief that the said stock was purchased at the book value thereof and at a reasonable price, as determined by the assets of the corporation.

20 6. This defendant admits the allegations contained in paragraph six as supplemented by the allegations hereinafter contained.

30 7. This defendant denies paragraph seven of the bill of complaint and says that upon being consulted by the said Samuel D. Lines, who was either the spokesman or representative of the complainants and others of the nineteen bus owners, he was requested by the said Samuel D. Lines to undertake the representation of said bus owners to endeavor to assist them by his legal services in accomplishing the general objects mentioned in paragraph six of the complaint. The defendant was informed by the said Samuel D. Lines that he represented the nineteen independent owners of buses remaining on the Springfield avenue bus route and that in view of the numerous sales that had taken place for inadequate amounts of other buses and in view of the propaganda being issued by the Public Service Corporation and other subsidiary com-
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Answer.

panies and individuals acting in its behalf in an endeavor to induce the remaining individual owners or some of them to sell their buses, the said individual owners were in constant fear of being left isolated with a few buses on a line chiefly controlled by the Public Service Corporation which would be detrimental to their interest in operating said buses and lead to the individual sacrificial sale of the same by various owners in anticipation and fear of such a condition. The said spokesman and other representatives of said remaining owners including the complainants informed the defendant that they believed their buses worth a great deal more to them than the price at which buses had previously been purchased by the Public Service Corporation and that they desired to operate the said buses and to obtain profit from the operation thereof until such times as they should all be able to sell advantageously together or at least until the majority of remaining owners felt that the proper time had come to dispose of their buses profitably in a group. The defendant was further informed that none of the men could be trusted to remain without selling his individual bus unless some arrangements were made that would have the affect of preventing individual sales which would deplete the number of remaining individual owners and cause further depletion by the example and fear instilled by such sales. Various plans were discussed and advised by the defendant, many of which were not feasible for the company and other owners of individual buses because of their unwillingness to surrender the title and operation of their buses to a corporation composed of themselves or to trustees or in any manner that would require the surrendering of title and control of

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Answer.

their individual buses. The said Samuel D. Lines in behalf of the complainants and other individual owners desired to retain the defendant in addition to forming a plan to accomplish the aforesaid objects, to agree to render such services as would be required under such plan to carry into effect and maintain the position of the individual owners in accordance with their desires, individually, into the future. The defendant finally advised the execution of a contract by the individual owners agreeing to the future sale of their respective buses to their corporation, to wit, the Springfield Avenue Bus Co., Inc., which contract was subsequently executed and is included in the bill of complaint as Exhibit "A" and under which contract this defendant advised the complainants and other individual owners that it was his opinion that such contract would be binding upon the individual bus owners and that the Court of Chancery could be applied to for an injunction restraining the sales of said buses to persons or corporations other than the Springfield Avenue Bus Co., Inc., if such other sales should be attempted or threatened and that the said contract would be the most feasible method to accomplish the expressed desires and purposes of the said individual owners. The defendant prepared said contract and the same was subsequently executed. The defendant at or about this time discussed with the complainants' representative the matter of defendant's compensation for his services in advising and preparing said contract as well as for his future services to be rendered thereunder to effectuate the same. The defendant was informed by the said Samuel D. Lines that the individual bus owners whom Lines represented did not wish to pay in cash

Answer.

by way of retainer for the same but preferred an agreement for fees to be paid when the individual buses should finally be sold. It was the suggestion of the said Samuel D. Lines that a percentage of the ultimate sale price should be agreed upon, but that such percentage should not apply to such proportion of such ultimate sale price as would be equal to the highest amount that had been paid up to that time for any bus in the City of Newark, namely, \$9,100.00. In subsequent negotiations, after conferences with the persons whom he represented, the said Lines informed the defendant that he had heard that offers had been made up to \$11,000.00 for certain buses in Newark and that therefore the percentage to be paid to the defendant should be based upon any excess over this amount, which was subsequently agreed to by the defendant and complainants. The amount of such percentage was also discussed for a period of several days and in view of the contingency features of the compensation, the uncertainty as to whether a bus would be sold in excess of the sum of \$11,000.00 and the uncertainty as to how long and to what extent the services of the defendant would be required, the defendant suggested that he would require as a fee an agreement calling for 7½% of the sale price of the said buses in excess of \$11,000.00. After considerable negotiations with both the said Samuel D. Lines and other members of the individual bus owners representing the nineteen other bus owners they offered to pay 5% of any sale price in excess of \$11,000.00, which was finally agreed upon and incorporated in the agreement for fees or commissions which is included in the complaint as Exhibit "B." This defendant says that said

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Answer.

10 agreement was fair, equitable and reasonable and that subsequently services were rendered pursuant to it, which from the standpoint of the labor and professional services of the defendant, as well as the advantage to the corporation, merely adequately and fairly compensated the defendant. This defendant did not advise the said individual bus owners that it would be to their advantage and in their interest to enter into an agreement with him under the terms above mentioned but merely stated what agreement he would be willing to accept to secure his compensation for services to be rendered, and accepted the same and undertook to perform the services rendered in consideration therefor.

20 8. Paragraph eight is denied and defendant says that the said individual bus owners and particularly their spokesman and representative, Samuel D. Lines, are and were men of experience, ability and intelligence, fully capable of understanding the terms of the compensation agreement entered into by them and capable of negotiating the same and that they did not execute the same upon any advice of the defendant, but as a result of negotiations conducted by and between the parties who were to secure the services of
30 the defendant.

9. Paragraph nine is admitted except that portion thereof which alleges that the signers of said contract did so upon "being so advised."

40 10. Paragraph ten is admitted except that portion thereof which states that the defendant advised or directed the issuance of fifteen shares of the common capital stock of the company as a bonus for each share of stock purchased

Answer.

from those who had previously sold their buses on the Springfield avenue route, which is denied.

11. Paragraph eleven is admitted except that portion thereof which alleges, "For each and every service performed by the said Pearce R. Franklin for the Springfield Avenue Bus Co., Inc., and for each of the nineteen subscribers to the contract, of which Exhibit 'A' is a copy, the said Pearce R. Franklin rendered a bill and was paid in full, except as hereinafter set forth," which is denied. 10

12. Paragraph twelve is denied except that portion thereof which alleges, "but the said Pearce R. Franklin did not advise nor consult with the complainants as to the form of said actions or the purpose thereof," which is denied. 20

13. Answering paragraph thirteen, this defendant says he admits that the complainants and the other individual subscribers to the said contract requested him to give them a substitution of solicitor to other counsel in said proceedings instituted by him, but this defendant further says that said substitution was requested after the date had been set for hearing in said proceedings and said substitution was requested a few weeks before said hearing and this defendant does not believe that the reason for said request was any lack of confidence in his ability or integrity as solicitor for said complainants. 30

14. Defendant admits that he gave the substitution as requested and received a letter marked Exhibit "D" in the complaint stating that such substitution was without prejudice to the rights of this defendant under his contract 40

Answer.

for compensation for the services rendered and agreed to be rendered by him, but defendant denies that said agreement was induced by anything except the agreement of the complainants; that defendant was entitled to the compensation as agreed by them.

10 15. Paragraph fifteen is denied and defendant says that subsequently to said substitution numerous services were rendered by him and by his associate, John W. McGeehan, Jr., who with the consent of the complainants assisted him in his services in behalf of the complainants; defendant further says that both before and after said substitution valuable and extensive services were rendered by him, the effect of which was to accomplish the objects of the complainants,
20 which continued up to the time of the sales by complainants of the said buses and assisted in the obtaining of the large prices subsequently obtained therefor.

30 16. Paragraph sixteen is admitted, but the defendant says that at the inception of said Chancery proceedings begun by him and at the opposition of the complainants herein he did obtain a temporary injunction restraining the sale of said buses until final hearing and also restraining the sale of all buses of individual owners on said line, which prevented the disintegration and sales by said line for a considerable period and was in pursuance of the objects and purposes of the complainants in obtaining the services of the said defendant.

40 17. Paragraph seventeen is admitted wherein the same sets forth the sale of said buses to the Public Service Transportation Co., for price of \$30,000.00 each, but this defendant denies the

Answer.

remainder of said paragraph and particularly that portion thereof which alleges that the price obtained was not the result of any service, or effort by the said Pearce R. Franklin on behalf of the complainants, which this defendant denies.

18. Paragraph eighteen is admitted by defendant and the statements and allegations contained therein. 10

19. Paragraph nineteen is admitted by defendant and the statements and allegations contained therein.

20. Paragraph twenty is denied except that portion wherein is stated "that the relationship of attorney and client existed between the said Pearce R. Franklin and each of us at the time of the execution of said contract," which this defendant admits and by reason of which this defendant consents to and desires the determination of the Court of Chancery as to the fairness and reasonableness of the said compensation agreement and his right to the compensation thereunder. This defendant further says that at the time he was retained by the complainants they were about to and without his assistance would have been ready to sell their individual buses for sums approximating \$10,000.00 each. That by virtue and as a result of his advice and services rendered over a long period of time and consisting of legal steps in the complainants' behalf performed by the defendant too numerous to include herein in detail he faithfully and effectively served their interest and purposes over and during the long period of time and at all times complied with and was ready to comply with all of his obligations under 20
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Answer.

10 said contract and as attorney for the complainants, and as a result of his said services said complainants were enabled to retain their buses until a more adequate and fair price was obtainable and obtained by them for said buses, to wit, the sum of \$30,000.00 for each bus, so sold, by each of the complainants; that this defendant incurred large expenses in the handling of the details of his services for the complainants and except for services not included in said contract received no compensation whatever except the fee contract pursuant to which he is entitled to the full amount provided for therein from each of the complainants herein.

20 Defendant therefore prays that this Honorable Court decree that each complainant pay to him the amount provided for in said compensation agreement.

JOHN W. MCGEEHAN, JR.,

Solicitor for and of Counsel for said defendant, Pearce R. Franklin.

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REPLICATION.

Filed April 6, 1927.

IN CHANCERY OF NEW JERSEY.

<i>Between</i> GEORGE J. GRIMM, <i>et als.</i> , <i>Complainants,</i> <i>and</i> PEARCE R. FRANKLIN, <i>Defendant.</i>	}	<i>On Bill, &c.</i> <i>Replication.</i>	10
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The complainants join issue on the answer of
the defendant. 20

OSBORNE, CORNISH & SCHECK,
Solicitors for Complainants.

TESTIMONY.

IN CHANCERY IN NEW JERSEY.

<i>Between</i> GEORGE J. GRIMM, <i>et als.</i> , <i>Complainants,</i> <i>and</i> PEARCE R. FRANKLIN, <i>Defendant.</i>	}	30
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Transcript of testimony taken in the above-
entitled cause before Hon. Maja Leon Berry,
Vice-Chancellor, at the Chancery Chambers, New- 40

Samuel D. Lines, direct.

ark, New Jersey, on Monday, October 31, 1927,
at 10 A. M.

Appearances:

Harry V. Osborne, Esq., of Osborne, Cornish
& Scheck, for complainants.

10

John W. McGeehan, Jr., for defendant.

SAMUEL D. LINES, sworn for complainants.

Direct examination by Mr. Osborne.

Q Where do you live? A 447 Stuyvesant
avenue, Irvington.

Q What business are you in? A Bus busi-
ness.

20

Q Are you or were you president of the
Springfield Avenue Bus Owners' Association, a
corporation? A Yes, sir.

Q Independent bus operators operating on
Springfield avenue, Newark, in 1924? A Yes,
sir.

Q Are you still? A No, sir; the company
has been dissolved.

30

The Court: What is that paper you have
before you?

The Witness: A few dates.

The Court: Put it in your pocket.

Mr. Osborne: There are certain allega-
tions admitted in the bill.

The Court: Can you stipulate them on the
record?

Mr. Osborne: It is admitted that on
March 25, 1924, that the complainants were
each the owner of a jitney operating on

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Samuel D. Lines, direct.

Springfield avenue in the City of Newark and the Town of Irvington; that there were fifteen individual bus owners, each operating a bus on the same route; that about that time the Public Service Transportation Company was endeavoring to acquire all of the buses operating on the route, and negotiating with a certain number of the nineteen owners then left on the line— (I may interpolate there by saying that there were originally forty-four independent bus operators on this line, the Public Service then not having gone into the bus business; three sold out, leaving forty-one, and then later twenty-two sold out to the Public Service, and that left nineteen, and those nineteen, in order to protect their interests, formed the Springfield Avenue Bus Owners' Association.)

Mr. McGeehan: That is not admitted.

Mr. Osborne: It was the agreement mentioned here and not the original that I had in mind when I say that nineteen participated. Three of those had sold out to the Public Service.

Mr. McGeehan: Six sold.

Mr. Osborne: I don't think the precise number will affect the issue. There were nineteen of them and three of them had sold out, when an attorney then engaged, Mr. Franklin, was substituted by Osborne & Astley for Mr. Franklin, and that was the time Mr. Franklin was discharged.

In the latter part of 1923 the individual owners and operators formed this corporation, and that is admitted.

Samuel D. Lines, direct.

10 They built a garage, which is admitted, for the use of the members of the corporation. The nineteen operators, desiring to prevent the diminution of their number by sales to the Public Service and to retain all of them on the line for their mutual interest, directed Mr. Samuel D. Lines, who was the president of the association, to call upon the defendant, Pearce R. Franklin, the attorney, for counsel and advice. That is admitted.

It is denied that Mr. Pearce R. Franklin advised Lines, who was then spokesman representing the complainants, that he could prepare a binding contract. The eighth paragraph is denied.

20 The ninth paragraph, referring to the copies of the two contracts attached, is admitted.

The amendment and the certificate of incorporation in order to carry out the plan, is admitted.

Mr. McGeehan: That is not admitted.

Mr. Osborne: The other paragraphs are not admitted.

30 The seventeenth paragraph, we find that the complainants each sold his bus which he had been operating on the Springfield avenue route for the sum of \$30,000; the balance of the paragraph is denied.

40 On the 12th of November, 1926, the said Pearce R. Franklin instituted an action against Frank J. Noll, George J. Grimm, Benjamin J. Rose and Isidor M. Noll, in the Court of Common Pleas, for the recovery from each of them of \$950. That contract, Exhibit B, is admitted.

Samuel D. Lines, direct.

A bill was filed and restraint asked for and consented to.

Q Mr. Lines, do you recall the circumstances leading up to the employment of Mr. Franklin in connection with this matter? A Yes, sir; I do.

10

Q When was it that the employment of Mr. Franklin was first taken up by your association? A In April of 1925.

Q 1925? A 1924.

Mr. Osborne: I have the minute book here, which is the best evidence of what took place, and Mr. Noll is the secretary. I could, perhaps, at this time, withdraw the witness on the stand, and call Mr. Noll, and prove the minutes and offer them in evidence, and then go on with Mr. Lines' testimony, in order to get a picture, unless he is permitted to testify to matters which arose out of the same transaction as is covered by the minutes.

20

Mr. McGeehan: The evidence wouldn't be admissible. This is a contract and suit against individuals, a bill filed by individuals, this man being stated in the bill to be their spokesman to represent them. We have no objection to his parol evidence of what took place there. I don't think the minutes would be admissible.

30

The Court: They haven't been offered, so we will meet that issue when it arises.

Q Were you authorized by the complainants here to see Mr. Franklin? A Yes.

Q How did that come about? Tell the story in your own way. A At the time in question the Public Service had been buying buses on

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Samuel D. Lines, direct.

10 Springfield avenue and were buying buses. The men who had not sold at that time, and who did not intend to sell, were left with a garage property on their hands, which had cost them a great deal of money, which was entirely too large for nineteen men to carry along, and if some of those
20 nineteen were to sell, it would be a very great burden on those who were left. The men had heard that Mr. Franklin had gotten some form of agreement which would, it was said, prevent the sale of individual buses to the Public Service by their owners, and bind the men together in a contract that would probably last at least a year. Mr. Franklin had this agreement on several of the other lines in Newark-Bloomfield, I believe; there was some talk of one on South Orange,
30 North Newark and Kearny. Anyway, they were in discussion among the bus men. Mr. Franklin had, I believe, been at a meeting prior to this time and had explained at that time to the men gathered there, just about what his form of agreement was, and about how it would work out for them. The men were in a tight position and they wanted to do the best they could with what they had left; therefore, they told me to go down and see Mr. Franklin and learn what the agreement was and what it would cost and how it would work, and in accordance with these instructions, I did that, and reported back to the men at their next meeting.

Q Was an agreement signed drawn up by Mr. Franklin between the association and the men to cover this situation?

Mr. McGeehan: I object to that as leading.

Samuel D. Lines, direct.

Mr. Osborne: I am not talking about the compensation agreement, but the agreement between Springfield Avenue Bus Co. and the individuals.

A What I testified to was to cover both agreements. 10

The Court: Just answer the question that is put to you.

Mr. Osborne: Exhibits A and B, annexed to the bill, are admitted.

The Court: Why prove them, then?

Mr. Osborne: If it is copied in the bill and admitted, I suppose it is before the Court without further proof, but I want to direct the witness' attention to the fact of the agreement, under date of the 25th day of March, 1924, between the individual members and the Springfield Avenue Bus Company, that being the agreement that I referred to as having been before Vice-Chancellor Backes. 20

Q That was the agreement that you referred to in your testimony as having been prepared by Mr. Franklin for the purpose of holding the men together? A Yes. 30

Q And subsequently an action was brought by the Springfield Avenue Bus Company, Inc., against certain of its members to enforce that agreement in the Court of Chancery? A Yes.

Q By Mr. Franklin? A No, sir.

Q Did Mr. Franklin file the bill? A He filed the bill, but he didn't try the case.

Q The action was brought by him? A Yes.

Samuel D. Lines, direct.

Q That and some of his services are in controversy here? A Yes.

Q Did you understand that this agreement between the Springfield Avenue Bus Company and its members—they were all the stockholders, weren't they? A They were.

10 Q Did you understand that that was the plan which Mr. Franklin was supposed to have had for the purpose of holding the men together? Did that embody the plan? A Yes, sir; I think it did.

Q Did you have a talk with Mr. Franklin about this matter when you went down to see him? A I did.

20 Q What took place? A Mr. Franklin explained about what he was trying to do, what his agreements were on the other lines, and that it would be a good thing for the Springfield avenue line.

Q Did Mr. Franklin subsequently come up to any of the meetings and address the meetings? A Yes, sir; he did.

Q Did he explain the contract and what it was supposed to do? A Yes, sir; very thoroughly.

30 Q Now, then, was there another agreement executed between Mr. Franklin and the men for compensation? A Yes; there was.

Mr. Osborne: That contract is also attached to the bill and admitted—Exhibit B.

Q Were you a party to that contract? A Yes, individually.

Q You haven't sold your bus, have you? A No, sir.

Q That was a contract signed, you say, individually by you? A Yes.

Samuel D. Lines, direct.

Q Was Mr. Franklin subsequently discharged from his employment as attorney? A Yes, sir.

Q Was this employment five per cent. compensation contract between Mr. Franklin and the men made while he was the attorney for the association and the men? A Yes, sir.

Q Will you state the circumstances of the discharge of Mr. Franklin? What happened? Did you write or go to see him, or what? A Yes, I consulted with him right along on it. The papers were filed against the three men who had sold out, but the thing dragged very badly; apparently, the men thought it would never come to trial, and they said "Mr. Franklin hasn't any interest in this and doesn't want to do it; we will substitute and get someone else to try it, and even if we have to pay for that, we are interested in it sufficiently to get some counsel that will push this thing to a Chancery hearing, and we can get a decision on the matter." It was dragging along, and the men wanted to know which way the decision would be. 10 20

Q Did you go to see Mr. Franklin? A I did.

Q To carry out that plan? A I did.

Q What happened? A Mr. Franklin was willing to have other counsel substituted if his compensation agreement was not affected. 30

Q How many times did you see him about this? A You mean this last point?

Q About this suit. A The substitution or about the whole—

Q About the suit. A I cannot say.

Q Who authorized him to begin this suit against these men who had sold out? A I did, as president of the Springfield Avenue Company.

Samuel D. Lines, direct.

Q And the suit was on behalf of the company? A Yes, sir.

Q And when you became dissatisfied with his conduct of the matter, did you ask him for a substitution? A No, sir; I told him the men wished to substitute—

10 Q What did he say? A He said he had no objection.

Q Did he make any condition?

The Court: He has just said that the condition was that the compensation agreement should not be interfered with.

Mr. Osborne: I thought he said it in the form of a conclusion, rather than as a statement of a reiteration of the contract.

20 Q Did he prepare any paper along that line, or to indicate the condition which he imposed? A Yes, sir.

Mr. McGeehan: That is also an exhibit in the bill.

Mr. Osborne: And admitted.

Mr. McGeehan: We admit it is a copy of the document signed.

30 Q Who prepared the paper, Exhibit D, which was the condition upon which he gave you a substitution? A I think Mr. Franklin.

Q And then the case was carried on by other counsel? A Yes, by Osborne & Astley.

Q Was Mr. Franklin paid for such services as he rendered the company? A Yes; he was paid.

40 Q Did he undertake on May 19 to write and ask for \$500 for representing the company in certain matters stated in the communication? A Yes, sir.

Samuel D. Lines, direct.

Q And that was paid, was it? A That was paid.

Mr. Osborne: That communication is Exhibit C attached to the bill, and admitted.

Q Did Mr. Franklin render any services to these men individually who signed this contract? 10

A No, sir.

Q Was he paid for any other services which he rendered the company? A Yes, sir; he was paid for all services he rendered the company.

Q At that time, so far as you know, there was nothing due him for services, except as— A Nothing at all.

Q —except as provided in this contract? A Nothing at all; that is right. 20

Q At the time of the signing of this contract, what were the buses selling for, if you remember? A When I first consulted Mr. Franklin, offers had been made as high as \$11,000. I had been offered—

Mr. McGeehan: I object to that.

The Court: The question is what they sold for; not what the offers were.

Q Do you know what buses had sold for about the time the contract was signed? A I know they were selling for around \$10,000. 30

Q When this suit was brought in the Court of Chancery by the company against its own stockholders, the signers of the contract, what were they selling for? A About \$13,000.

Q And at the time Mr. Franklin was discharged from his employment, what were they selling for? 40

Samuel D. Lines, direct.

Mr. McGeehan: I object; I think the question should be limited to the line in question upon which the buses herein are involved. In other words, this is the Springfield avenue line.

10 Q Do you know what buses were selling for, or if any were sold, at the time of the substitution of other counsel for Mr. Franklin when his services as counsel for the association was terminated, on this line? A Yes.

Q What? A \$13,500.

Q Were you authorized to pay anything to Mr. Franklin to get this substitution? A Yes.

Q Had he refused to give it to you prior to that?

20 Mr. McGeehan: I object as leading.

The Court: It is leading, but it may speed the cause.

Q Had he refused to give you a substitution? A Yes, unless his compensation agreement would stand. He would substitute, but his compensation agreement would stand.

30 Q Did you go down and offer him any money? A I told him that the men would be willing to pay \$500 to get their compensation agreement returned.

Q Were you authorized to do that and make that proposition to him? A Yes, we had had a meeting and that was agreed upon.

40

Samuel D. Lines, cross.

Cross examination by Mr. McGeehan.

Q How long had you been in the bus business at the time you entered into this contract, Mr. Lines? A I should say, roughly, about five years.

Q And how long had you been president of the line there, whether in corporate form or as an association of members? A I should judge about two weeks. 10

Q Were you president of the corporation from the time it was organized? A No, sir.

Q You are now the owner of other lines, or buses on other lines? A No, sir.

Q You have the Somerset Bus Company that runs buses in Somerset County? A No, sir.

Q You are not interested in that? A Not interested. 20

Q You did organize it, did you not? A I helped to.

Q And were president of that? A Yes.

Q You were, at the time you dealt with Mr. Franklin, familiar with all of the circumstances surrounding the bus business, weren't you? A Yes.

Q And you kept in pretty close touch, didn't you, up to that time with the development in the City of Newark and in the State concerning buses? A Yes, sir. 30

Q And on your line a large number of buses had gone in proportion to the total number, hadn't they? A Yes.

Q How low did some of them sell? A I cannot say.

Q Sir? A I don't know exactly.

Q Approximately. A I will have to explain that a little bit. They sold at that time— 40

Samuel D. Lines, cross.

Q Did any of them sell within six months of the time you entered into this agreement, for \$3,500 apiece? A No, sir.

Q Forty-five? A No, sir.

Q Did some of them sell before you entered into this contract for this price? A Not on
10 Springfield avenue.

Q What was the lowest price they sold for within a year before this contract? A I cannot say exactly, Mr. McGeehan.

Q You were an owner of a bus on the line at the time for more than a year prior to entering into this contract? A Yes.

Q And didn't you keep in close touch with what prices were brought by buses on your line? A I was interested, certainly.

Q Can't you tell us what the low price was
20 in the six months preceding the signing of this contract, or approximately how much it was? A I could make a guess, that is all.

Q Can't you from your memory testify approximately what it was, without merely guessing? A I should judge somewhere around \$5,000 was the lowest.

Q The physical value of the buses approached that sum, didn't it? A In some cases.

Q How much money, on an average, were the
30 buses on the Springfield avenue line taking in monthly, in 1924, prior to the execution of this contract, gross? A That is a hard question, Mr. McGeehan, because they varied as to size. You mean an average?

Q You had a pool on that line? A Yes.

Q And the proceeds of the operation of the buses consisting of the gross fares were put into a pool and divided among the men, isn't that
40 right? A Yes, but not equally.

Samuel D. Lines, cross.

Q It varied according to the capacity of the cars? A Yes.

Q How much, approximately, on an average, was taken in per month by each car during the early part of 1924? A That I cannot say off-hand.

Q Was it approximately fourteen to fifteen hundred dollars a month for each bus? A I don't think so. 10

Q Don't you know, Mr. Lines? Were you the recipient of these deposits? A Yes, sir.

Q You were treasurer of it? A No, sir.

Q You handled the money? A No.

Q Did you help handle it? A No.

Q Were you familiar with the amount of deposits in the pool? A No, sir.

Q Had no knowledge of it? A No, sir. 20

Q How much did your bus take in there at that time? A I cannot say offhand without refreshing my memory. I cannot remember back five years.

Q This was a crucial period in the operation of buses, wasn't it? A It seems so now; at that time, we didn't realize what it was all about.

Q You didn't know what it was all about then? A No. 30

Q Do you remember being present at the meeting or meetings that Mr. Franklin appeared at up at the Labor Lyceum, on several nights? A I was there some of the meetings, not all of them.

Q There were several of them, though, weren't there? A Yes.

Q And on these occasions, how long would each meeting last? A It is rather hard to say; a couple of hours, maybe.

Samuel D. Lines, cross.

Q They averaged a couple of hours, didn't they? A I suppose so.

Q And all the members of the line were there, weren't they? A Not necessarily; I cannot say.

Q Most of them? A The majority, probably.

10 Q And you were there? A Some of them.

Q And Mr. Franklin answered questions put to him by the various persons, including yourself? A I don't remember I ever asked him any question at all.

Q What was he doing during the two hours he was in meeting with you on each occasion? A Explaining his agreement that he was putting on the other lines.

20 Q Were you and the others asking any questions of him in regard to that agreement? A I presume they were; I don't remember I asked any question.

Q You went into the Chancery Court and heard the final argument on the Sadeli case, on the Bloomfield line? A I did not.

Q Were you not at the Court of Chancery at that hearing? A No.

30 Q Were you there on the preliminary hearing? A No.

Q At the time in March—you said your first meetings with Mr. Franklin were in April; you don't mean that? A I do.

Q Wasn't your contract signed March 25, 1924? A No, it should have been April, 1924.

Q It should have been April 25th? A I think so.

Q It is dated the twenty-fifth of March? A I know it.

40

Samuel D. Lines, cross.

Q You think it was actually executed sometime in April; is that right? A That is correct.

Q Then you did sign the compensation agreement on the fifteenth of April, 1924, didn't you?

A I cannot remember exactly; if the agreement is dated that and I signed it, that is the date. 10

Q Did you sign the compensation agreement to Mr. Franklin before you signed the contract between yourself individually and the other men, on the one hand, and the corporation on the other? A I think they were all signed practically the same time.

Q Isn't it a fact that Mr. Franklin had his compensation contract signed after he had drawn the agreement between you and the company?

A I said I think they were signed about the same time; possibly at the same meeting. 20

Q At the time when buses were bringing the highest price paid in the City of Newark at that time, \$8,500, when you signed this contract, was it? A I don't think so; I think they were selling higher than that.

Q You are not sure of that, are you? A No.

Q The buses—your bus, certainly, was taking in over \$15,000 a year on that line as gross receipts? A I wouldn't say so. 30

Q Was it taking in over \$12,000? A I hardly think it did.

Q Can't you tell us what, approximately, it was taking in at that time, in monthly or annual receipts? A No, sir, I cannot do that.

Q You didn't think \$8,000 or \$10,000 or even \$15,000 was a proper price for your bus, did you?

A No, sir.

Q And the nineteen men who remained on the line, speaking through you as their representa- 40

Samuel D. Lines, cross.

tive, didn't think that those prices approximated or approached the value of the buses? A I cannot say what they thought.

Q You were their spokesman and representative, were you not? A To a certain extent, yes; but they had their own individual ideas of what
10 their own property was worth.

Q But you went to Mr. Franklin, as their agent and spokesman and representative, didn't you? A As their spokesman, not as their agent.

Q You were president of the corporation, weren't you? A Yes, but the corporation didn't own the permits.

Q The individuals who owned the permits were the stockholders of that corporation, weren't they? A Yes.
20

Q And you as president of their corporate organization, were familiar with their ideas and thoughts about their buses, as expressed by them, weren't you? A Fairly familiar.

Q You know as a fact, Lines, that they didn't want to sell for any price like that, and you didn't? A You are speaking of prices of above \$15,000. How should I know what they wanted to sell for? They were not interested in the prices offered when we went to Mr. Franklin.
30

Q The sales by other members resulted in chaos in your ranks, among the remaining men? A Certainly, yes; that left us in a bad position.

Q You were afraid that the Public Service would succeed in buying out, one by one, and the remaining ones which would be left last would sell in panic? A That was the thought.

Q And that was the condition? A Yes.

Q And that is why you came to Mr. Franklin? A Yes, that is why we went there.
40

Samuel D. Lines, cross.

Q How many buses had been sold before you went to Mr. Franklin, in the period of a month?

A I cannot say.

Q Didn't twenty-two of them go in less than two months? A That is about right.

Q The other nineteen who signed Exhibit A contract and Exhibit B contract were on the verge of going the same way? A I wouldn't say that. 10

Q You each wanted to prevent, or create some situation that would hold them together, didn't you? A Yes.

Q In the various meetings with Mr. Franklin, didn't he advise you that the only completely effective way to accomplish a permanent ownership of the buses without individual sales, was by the organization of a corporation, the transfer of the title of the buses to that corporation, the issue of shares of stock to the grantors or vendors of the buses, and the operation of the buses by a line corporation through ownership and permits in the name of the corporation? A He did. 20

Q And wasn't it your statement and the statement of each of the men whom you represented, that they would not—they didn't trust each other, they wouldn't trust anybody, and that they therefore would not enter into anything that would divest themselves of title, or take out of their hands the running of their own machines. That was the thought of the meeting, wasn't it? A That was the thought, yes. 30

Q Now, then, was another plan suggested by Mr. Franklin consisting of this: the formation of a corporation with a voting trust connected with it for a definite period of time? A I have no recollection of that. 40

Samuel D. Lines, cross.

Q At any rate, the men didn't trust each other? A No.

Q They wouldn't trust any committee of their number? A No.

10 Q And the proposition that you put up to Mr. Franklin was getting up something, if they wouldn't form a corporation—getting up some contract or other arrangement whereby the men would not dispose of their buses individually at sacrificial prices, and so panic the others into selling; isn't that right? A That is right.

Q This contract, Exhibit C, was drawn by Mr. Franklin? A Yes.

Q And it was signed by the nineteen owners of buses, including the four complainants in this case? A Yes, sir.

20 Q When was the agreement entered into as to the rate of compensation that Mr. Franklin was to receive? A I discussed that with Mr. Franklin before he came to the meeting with the agreement.

Q And you discussed it after he was to the meeting? A Yes.

30 Q And Mr. Franklin proposed to take it on the basis of seven and one-half per cent. over \$9,100 up to \$12,000, and five per cent. over \$12,000, and nothing below \$9,100? A No, sir.

Q Wasn't that his original proposition to you? A He may have proposed that to me individually, but he did not propose that at the meeting, because a rate had been fixed and had been written in the agreement.

40 Q I show you the original agreement that you signed, and ask you if that doesn't refresh your recollection, that that was proposed to the men, and that it was embodied in the original draft of the contract presented by Mr. Franklin? A It is in this agreement, yes, sir.

Samuel D. Lines, cross.

Q Does that refresh your recollection upon the situation? A When Mr. Franklin proposed those figures to me in his office individually and alone, I told him I thought the men would not agree to those figures. The figures were mentioned between Mr. Franklin and myself.

Q The original proposal of Mr. Franklin, when you were seeking to engage his services, was the sliding scale I have mentioned? A That was his original proposition. 10

Q There were consultations by you with him, conferences by him with every jitney man on the line before any compensation agreement was signed, weren't there? A Yes.

Q And you and the men you represented refused to pay that amount, didn't you, that he had proposed? A Yes, sir. 20

Q And after such negotiations, you finally agreed and entered into the agreement, Exhibit B, to pay him five per cent. on the sale price of the buses in the future above \$11,000; isn't that right? A That is correct.

Q No bus had sold for that amount up to that time, had it? A No bus had sold, but that amount had been offered.

Q You told Mr. Franklin that? A I told him I had been offered eleven for mine. 30

Q And that was the argument you used to induce Mr. Franklin to make eleven thousand the minimum amount upon which he should receive compensation—on amounts above that, is that right? A That is right.

Q You were capable of understanding what was going on; you knew what the contract was to be? A I knew the difference between eleven and twelve thousand and five or six per cent., and something of that sort. 40

Samuel D. Lines, cross.

Q You had a full comprehension of the business you were transacting, didn't you? A As to the amount of commission to be paid, certainly.

10 Q So, then, that is how you entered into that eleven thousand and above agreement? A That is what fixed the eleven thousand price.

Q Mr. Franklin you knew in that agreement agreed to perform any services that were necessary to carry out the provisions of that contract and to effect the purpose which you described before, to keep the men from selling their buses individually and to hold them in allegiance to each other? A I didn't understand the first part of your question. That was Mr. Franklin's object?

20 Q Yes. A Yes.

Q After this contract was signed, you know that Mr. Franklin prepared notices setting forth the fact that it was signed—Exhibit A—I mean the contract between the men and Mr. Franklin; do you know that he prepared and served notices on John T. Geran? A Yes.

Q Public Service Transportation Company? A Yes, I know that.

30 Q And the General Transportation Company? A Yes.

Q They were the companies which had been buying buses and subsidiaries and dummies? A Yes.

Q John T. Geran had bought some and then transferred them to the Public Service? A It was served on every one they knew was buying buses.

40 Q You knew the purpose of that service, didn't you? A Yes.

Samuel D. Lines, cross.

Q What was the purpose of that service? A To give the Public Service notice that this agreement existed.

Q And what was the object of giving the Public Service notice that this agreement existed? A As far as I know, it was to practically tell them, "Keep your hands off." 10

Q And what had Mr. Franklin told you at the time the agreement was entered into, as to what proceedings would be taken upon it, if there were an effort to buy in contradiction of the terms of the contract by someone outside? A Mr. Franklin told us that if the Public Service was to attempt to buy, he would seek to block the sale in court.

Q Did he tell you how? I mean, by what manner of proceeding? A I presume by injunction; I don't know what the legal procedure would be, but the proper legal procedure. 20

Q Subsequently to the signing of the contract and the service of the notices, you called at Mr. Franklin's office on numerous occasions, didn't you? A Yes.

Q You were there almost every day? A I wouldn't say that.

Q You were there several times a week, weren't you? A Maybe a couple of times; something of that sort. 30

The Court: You said a moment ago that the purpose of this agreement was to prevent the sale to the Public Service, didn't you?

The Witness: Yes.

The Court: If for no other purpose beside that, what was the reason for the provision limiting the commission which Mr.

Samuel D. Lines, cross.

Franklin was to receive, to sums of above \$11,000?

10 The Witness: Because that amount was practically on the table for a man to take, and the men felt why should they go pay somebody when they could take them right down today and sell them first-hand to the Public Service.

The Court: Well, was it your idea that this arrangement might result in getting higher prices for your buses?

The Witness: Two things we had in mind—

The Court: Well, was that one of them?

The Witness: That was one.

20 The Court: That is what I wanted to know.

The Witness: We hoped to prevent sales.

The Court: That is what I wanted to find out. You said first it was to prevent sales. Now, there was an additional reason, and that was to boost the prices in the event a sale was made?

The Witness: Yes, sir; to a certain extent.

30 The Court: In other words, it was to help you get all out of the Public Service Corporation you could if you had to sell, is that right?

The Witness: Yes, but we hoped we wouldn't have to sell.

The Court: But if you did have to sell you wanted to get the top-notch price, is that correct?

40 The Witness: Yes.

Samuel D. Lines, cross.

The Court: And you thought this agreement would effectuate that object?

The Witness: Well, I didn't think exactly the way you have it, because the men felt themselves that if it was a question of selling they didn't need help to sell them; they could take them and sell them for about the same price Mr. Franklin could get— 10

The Court: You could sell them at \$11,000?

The Witness: Yes, sir.

The Court: And you wanted more money, is that right?

The Witness: Well, some wanted perhaps more, others didn't want to sell at any price.

The Court: I understand. You thought if this agreement was entered into and you were forced to sell, you would get a higher price? 20

The Witness: Yes.

The Court: You did, didn't you?

The Witness: Those who sold got higher prices, yes, sir; but there is one point there, I don't know whether you want me to explain it or not—

The Court: You have answered my question. 30

Q Now, as a means of getting those higher prices, you wanted something that would enable you to keep the buses until you could sell at a figure that you were agreeable to sell at, is that right? A Well, Mr. McGeehan, there is a point there whether I am speaking for myself or whether I am speaking for the men. Some of the men presumably had in mind that they wanted 40

Samuel D. Lines, cross.

higher prices. Some of the men presumably had in mind that they didn't want to sell at practically any price.

10 Q The buses were bringing in almost as much in a year as they were being bought for, franchise and all, by the Public Service, weren't they? A In gross receipts.

Q And the men wanted to hold these buses—you didn't want to sell under pressure, did you? A No, sir.

Q You didn't want to sell for the prices that were being paid, did you? A No, sir.

20 Q You wanted to hold your buses and to be sure that the other fellow would hold his for a sufficient period of time so you could bargain unaffected by fear of what the other fellow was going to do? A That is right.

Q When the complainants in this case finally sold their buses they received \$30,000 each, did they not? A Yes, sir.

Q Now, when you came to Mr. Franklin's office a couple of times a week, that continued on through the spring and summer of 1924, didn't it? A Correct.

30 Q And did you sometimes bring other representatives of the company with you? A Occasionally.

Q And on those occasions how long would you spend at Mr. Franklin's office, on an average, talking over the business situation on your line? A I can't say exactly. I would guess half an hour, three-quarters of an hour; or something.

40 Q Now, in all of those conferences numerous matters affecting the smooth running of your line were brought up, weren't they, in those conferences? You would bring up questions of the schedules? A No, sir.

Samuel D. Lines, cross.

Q Never talked about schedules? A No, sir; not as far as I know.

Q Ever take up questions of prospective legislation that you heard about at Trenton that you thought might affect your position? A That was another matter and separate compensation.

Q That is as far as direct action on legislation was concerned? A As far as Mr. Franklin was concerned. 10

Q Well, the compensation was paid to someone outside of Newark, wasn't it, in that case?

A Some to Mr. Franklin and some outside, because I got statewide—

Q Did you ever make a check to Mr. Franklin in connection with any legislation? A I did not.

Q Your company was not a member of it? A Our statewide association, yes sir. I was vice-president of that association. 20

Q Did it, of your knowledge, pay any money to Mr. Franklin? A It did.

Q Did you deliver those checks in Jersey City in connection with those questions? A Checks came from Jersey City, but they told me they paid Mr. Franklin.

Mr. McGeehan: I ask that be stricken out, your Honor, as hearsay. 30

The Court: Strike it out.

Q Now, there was no sale after the contract was entered into until the 8th of September, 1924, was there? A That is correct.

Q Then Marty Lehrhoff and Louis Lehrhoff and Max Greene sold, is that correct? A That is correct.

Q And upon that being done did you advise Mr. Franklin? A I did. 40

Samuel D. Lines, cross.

Q And did you instruct him, for the purpose of carrying out the desires of the remaining individuals, to institute proceedings in the Court of Chancery against those persons and the Public Service Company? A I did.

10 Q You know that Mr. Franklin drew affidavits and a bill in Chancery, do you not, seeking an injunction against the remaining individuals on the line, to prevent their selling? A Yes, sir.

Q You signed the affidavits, or some of them, in connection with that bill and the application for the order to show cause, didn't you? A I think so.

20 Q Did Mr. Franklin also institute, to your knowledge, at the same time, a proceeding in Chancery to compel the specific performance of the contract between Marty and Louis Lehrhoff, and making also the Public Service Company a defendant? A I think he instituted them.

Q That was a separate proceeding, was it not? A That is correct.

Q Did he also subsequently institute proceedings against Max Greene for specific performance and temporary injunction for further proceeding on the contract of sale? A I think so.

30 Q Now, you know, do you not, that there were several appearances in the Court of Chancery by Mr. Franklin in connection with those matters? A Well, Mr. McGeehan, I presume so. I wasn't there, of course. Mr. Franklin told me.

40 Q Didn't you go there when the arguments took place? Weren't you there when argument took place, for instance, on the 21st of October, 1924, in the Marty and Louis Lehrhoff case on the argument as a result of which the temporary injunction was granted until final hearing? A That I don't remember, Mr. McGeehan.

Samuel D. Lines, cross.

Q Don't remember that you were personally there? A No, sir.

Q You are not sure that you weren't? A No, sir.

Q You went to court with Mr. Franklin on numerous occasions? A Whenever it was necessary, yes. 10

Q And it was frequently necessary, wasn't it? A I can't remember. I was in court.

The Court: You have just said that you were in court.

The Witness: I said I don't remember going on these three—

The Court: You said a moment ago—

The Witness: Unless he means the trial of the whole case. Is that what you mean, Mr. McGeehan? 20

The Court: Well, were you or were you not frequently in court with Mr. Franklin in any litigation concerning these matters?

The Witness: No, sir.

Q Were you sometimes in court with him? A I have no recollection of being in court with him.

Q Now, you know that Greene went to Washington and was difficult to serve? A So I was told. 30

Q Now, I understood you to say, Mr. Lines, that the reason that you discharged Mr. Franklin from your employment as solicitor in that case, was that the thing dragged very badly; the men thought it would never come to trial; and they said if Mr. Franklin doesn't want to try it to get somebody else, is that right? A That is correct. 40

Samuel D. Lines, cross.

Q Now, isn't it a fact that before you discussed or suggested, with or to Mr. Franklin the substitution of an attorney, that you knew that the Court had months before fixed the 3rd of June, 1925, as the date for final hearing in the matter, and that that date had been fixed and you
10 were merely awaiting that time to have the final hearing in the case? A Mr. McGeehan, the men felt that Mr. Franklin was losing interest—

The Court: Just strike that out. Answer the question.

The Witness: Did I know that that date was fixed?

Q Yes, did you know that that date was fixed?

20 A I presume I did.

Q Then why did you say, when Judge Osborne asked you the general question of why you discharged Mr. Franklin, the reason you gave was the thing dragged very badly and the men thought it would never come to trial, and they said if Mr. Franklin didn't want to try it to get somebody else that would? A Well, we had one postponement after another, and the men felt, as I said, that the thing was simply going to flop if it stood as it was.

30 Q What do you mean, there was one postponement after another of the final hearing in this matter? A I don't say the final hearing, but somewhere along the line the thing was put over and put over, as I remember it.

Q Don't you know that toward the end of March that the date was set as the 3rd of June and Mr. Franklin advised you at that time that the final hearing would be held on the bill in the Lehrhoff and Greene matters? A He might
40 have advised me; I don't know.

Samuel D. Lines, cross.

Q Then you didn't get rid of Mr. Franklin because the case was being delayed, did you? A We certainly did, because the men felt that the way he was handling it was causing delays and lack of interest, and the thing was just going to seed and would peter out and not amount to anything at all. That is the way the men felt.

10

Q Didn't your new attorneys advise you that you would have to wait until the 3rd of June at the time the Court designated for hearing, before the thing could be heard? A Probably they advised us that. At the same time, the men felt if the attorney had some interest in winning the case he might win it.

Q You didn't have any reason to believe from what Mr. Franklin had done in connection with the case that he had nothing in interest in the case? A Yes, sir.

20

Q What was that? A If the men won the case Mr. Franklin wouldn't collect his commission, that is the way the men felt.

Q When did the men feel that way? A From the time these three buses were sold until the time of the trial.

Q Isn't the first time the men felt that way when your bill in this proceeding was drawn? A No, sir.

30

Q In answer to Judge Osborne's question you didn't mention that, did you? A Perhaps not.

Q Now, how much was the amount of the commission that Mr. Franklin was to receive, for instance on the Lehrhoff bus, \$50, wasn't it? A No, I don't think so; \$2,000.

Q He sold it for \$12,000, didn't he? A \$12,000.

Q \$50 was the amount of his commission, is that correct? A Right.

40

Samuel D. Lines, cross.

Q And he had contracts with some sixteen remaining owners of buses, didn't he? A Yes, sir.

Q And Mr. Franklin never advised selling to the Public Service, did he? A I don't think so.

10 Q No. And you mean to say that you really thought at the time after Mr. Franklin had instituted this litigation pursuant to the directions of the remaining men, that because he would be entitled under his contract with Lehrhoff to \$50, that he was false to your interests or neglecting the business concerning these sixteen other buses and the company? A Mr. McGeehan, if Mr. Franklin had been successful in court and the agreement between the company and the bus owners had been upheld, the buses would have been transferred to the Springfield Avenue Bus Company and there would have been no commission to pay.

20 Q Now, one minute. Under your contract don't you know that if then the Springfield Avenue Bus Company subsequently sold to the Public Service that then the commission would have to be paid? A No, sir, I do not, because it says it should be paid unless sold to the Springfield Avenue Bus Company.

30 Q Now, you knew this agreement pretty well, didn't you, then? A Well, I read it several times.

Q You are very familiar with the contents of legal documents and how to read them and study them, aren't you? A I wouldn't say that; I am not a lawyer.

Q You have organized corporations? A In connection with others; not alone.

Q What was your business before you went in the jitney business, Mr. Lines? A I was a private secretary.

40

Samuel D. Lines, cross.

Q To what kind of a concern? A Railroad; Wall Street.

Q Yes, and were you secretary to a United States Senator? A Yes, sir.

Q Now, did you tell your counsel in drawing the bill in this case, that you were an ignorant, ill-educated man who didn't understand what you were doing when this contract was drawn? A I don't think I discussed my intelligence one way or another. 10

Q You understood everything you were doing when you entered into these contracts? A Well, I understood in a way as to what the contract said; how it would work out in the future no one knew. I didn't know. I wasn't too enthusiastic about it.

Q So that when you say no one knew how it would work in the future and when you said on your direct examination the men wanted to know which way the decision would be, you mean to convey by those thoughts, don't you, that you weren't sure whether the contract would be finally upheld or not? A Yes, we wanted to know. 20

Q Mr. Franklin had never guaranteed or assured you what the Court's final decision would be, did he? A Nobody could do that, no. 30

Q Now, you knew, of course, that Mr. Franklin had had a lot of experience in jitney matters? A I knew he had the same contract on other lines.

Q You knew also that he helped draw the Elliott Bill, didn't you? A I heard that, yes, sir.

Q You knew he had been familiar from a legislative standpoint and legal standpoint with the development of jitney regulation in Newark and 40

Samuel D. Lines, cross.

in this State? A I knew he had handled jitney work; yes, sir.

Q Now, you said that Mr. Franklin was paid for all the services he rendered the company. He was never paid for all work that you have referred to in your previous testimony done under
10 this contract or the injunction proceedings, was he? A Not as regards this contract, no.

Q Nor any other way, was he? A Yes, as regards other work; yes.

Q Now, I am speaking of the work in connection with the policy of your line, and the members of it, in holding them together and binding them to a contract with the corporation, and the injunction proceedings and specific performance suit, and the conferences in connection therewith,
20 and the other work done by him he was never paid for, was he? A Not as regards the contract, no.

Q Now, when you discharged Mr. Franklin from employment, that was sometime about a month before the case came up, wasn't it, on the 3rd of June? A Sometime in June, I think.

Q When was it that you got the substitution of solicitor, on the 13th of April, wasn't it, 1925? A I don't remember the date.

Q It was around a year after you first employed Mr. Franklin, wasn't it? A Roughly.
30

Q Now, after that and on or about the 15th of May, 1925, did the men sign a renewal of that contract? A Renewal?

Q Yes. A No, sir.

Q Did you get a contract dated the 15th of May, 1925, from Mr. Franklin renewing that, or entering into the same kind of an agreement between the corporation and the men? On or about the 15th day of May, 1925? A I have no recollection of it.
40

Samuel D. Lines, cross.

Q No recollection of it. Now—

The Court: Is that an exhibit?

Mr. McGeehan: It isn't an exhibit, your Honor, in the case, and I haven't the original. Therefore, I cannot present it. I will drop it. 10

Mr. Osborne: If I can be of any assistance, if there is any question about it—we don't want a paper referred to in that way and left up in the air on theory it cannot be followed through.

Mr. McGeehan: That is merely a typewritten carbon copy. We haven't the original.

Q Was an agreement dated the 15th of May, 1925, received by you from Mr. Franklin and taken to your offices, or the corporation offices, and executed so as to have the contract continue from May, 1925, on for another year? A It may have been submitted, but I know it was never signed. 20

Mr. Osborne: Now, may it please your Honor, I don't understand it is claimed any such agreement was executed. As it is left now, the situation is in such doubt as to leave the impression— 30

The Court: He says it may have been; he doesn't know.

The Witness: It was never signed.

The Court: If it was never signed it was never entered into.

Samuel D. Lines, cross.

Q Was it never signed? A Never signed.

Q Do you remember such a contract? A I have no recollection of getting it.

Q Now, after Mr. Franklin brought the proceeding in the Court of Chancery, and up to the 3rd of June, 1925, no other buses were sold, were they? A One bus was bought by the company, but not sold to the Public Service.

Q But no buses were sold contrary to the wishes of the majority of the owners, were they? A No, sir.

Q And at the hearing you say Mr. Franklin lost the case. He succeeded in getting the temporary injunction, didn't he? A Against the Lehrhoff buses?

Q Against the Lehrhoff buses, against Greene and against every owner of a bus on his line? A If he did they didn't do any good; I don't know what it accomplished.

Mr. McGeehan: I ask it be stricken out.

The Witness: I don't know whether he did or not.

Q Don't you know an injunction was obtained against you and the other members to prevent the sale of the buses, upon the institution of injunction proceedings against all of you, in addition to the Lehrhoff and Greene suits? A Well, whatever that is; I haven't the legal procedure.

Q Something to protect you though, isn't it? A I presume it ran along with all the rest.

Mr. Osborne: May I ask if counsel refers to the preliminary restraint on the rule to show cause, or injunction?

Samuel D. Lines, cross.

Mr. McGeehan: There was restraint on the granting of the rule to show cause, and on the return of the rule to show cause it was continued; the Court granted a preliminary injunction pending—until final hearing.

The Court: Won't the files here show it?

Mr. Osborne: The papers will show, I presume, whatever the case was.

10

Q Then there was no sale at all before June, was there? A Only the one I refer to.

Q I mean no sale outside? A That is correct; no sale outside.

Q Now, that was what you gentlemen wanted to have accomplished principally, wasn't it, to keep them from selling? A Yes, sir.

Q Now, during that time the courage of the men returned, didn't it, during the year's breath that you got? A Well, I can't say. If you want to express it that way, perhaps.

20

Q The men were no longer as afraid of the Public Service as they were before, were they? A No, I don't think they were.

Q They weren't as easily scared by propaganda sent out among their ranks? A No, sir.

Q You had agents riding on the buses and seeking to induce sales constantly before the contract, didn't you? A I don't know.

30

Q You know that men did come on your buses, former owners seeking— A They didn't come on my line; that is all I can testify to.

Q Weren't you ever spoken to by former owners trying to persuade you to sell? A They never got on my bus.

Q How about Bernstein? A Yes, we were all offered prices.

Q Bernstein owned a bus? A Yes, sir.

40

Samuel D. Lines, cross.

Q He was hired by the Public Service after he sold, wasn't he? A I don't know whether he was or not.

10 Q Wasn't he a supervisor in jitney work for the Public Service after he sold a bus on that line? A He might have been; I have no direct knowledge whether he was or not.

Q Well, you believe he was? A Yes, I believe he was.

Q And were you offered a good position with the Public Service if you would get the men to sell? A Well, I wouldn't say offered; hints were thrown around.

Q There were constant efforts to force sales of buses, weren't there? A Oh, yes.

20 Q Now, then, when the next buses were sold, when these complainants sold, were the others then willing to sell themselves, you among them? A Mr. McGeehan, you are skipping a little there. There was buses sold—

The Court: Just a minute. Answer the question.

Mr. McGeehan: I will withdraw the last question.

30 Q Now, Mr. Lines, after the 3rd of June, what happened in connection with the situation? A After the Chancery Court we had three or four buses sold out in that time.

Q That is when the temporary restraint was lifted on the dismissal of the bill? A After Judge Backes' decision, whatever you call it.

Q Now, after that some sales took place, did they? A Yes, sir.

40

Samuel D. Lines, cross.

Q How many? A Three or four.

Q And were they the complainants, or any of them? A No, sir.

Q And then after those three or four buses sold, who next sold? A There were seven other buses sold.

Q How many altogether after the 3rd of June were sold? A I think twelve. It figures out twelve. We had nineteen. Two Lehrhoffs and Greene was sixteen; one was sold to the company, leaving fifteen; and there were four left. It must have been eleven.

Q All right. Now, when you got this substitution of attorney from Mr. Franklin, he didn't refuse to grant an order of substitution, or sign one, did he, consent to it? A No, sir.

Q And you had already consulted other attorneys at that time? A Yes, sir.

Q And you knew, didn't you, that Mr. Franklin, if he didn't sign the consent to the order of substitution, that your proposed substituted attorneys could apply to the Court for an order and the Court would substitute them? A I didn't know that. I ain't familiar with legal procedure. Mr. Franklin made no objection to the substitution if his interests were protected.

Q And then when the substitution was entered into you signed this agreement, didn't you, Exhibit D? You understod what you were signing when you signed Exhibit D, which is the one signed by the company and several men at the time of the substitution? A Yes, sir. That is the substitution?

Q No. At the time of the substitution you signed this and gave it to Mr. Franklin, didn't you? A Yes, sir.

Samuel D. Lines, cross.

Q Now, you said in that, "We understand that suit has been instituted in the Court of Chancery by you in our behalf against the Public Service Transportation Co. and Marty Lehrhoff and Louis Lehrhoff in one action and against Max Greene and Public Service Transportation Co. in another action. Both of these suits are for specific performance of a contract entered into between the Springfield Avenue Bus Co. and the owners of buses on the Springfield avenue jitney bus route who have signed a contract to sell their buses and the goodwill of their business to the Springfield Avenue Bus Co. We understand that answers have been filed by Merritt Lane for the defendants and that the cases have been referred to Vice-Chancellor Backes for a final hearing on Wednesday, June 3, 1925." So you knew that in the middle of March? A Yes, sir.

Q "We also understand that preliminary hearing on rule to show cause why temporary injunction should not issue have been heard before Vice-Chancellor Backes. We are desirous at this time of substituting other counsel to try the cases above mentioned at the final hearing on June 3rd and, without prejudice to a contract which exists between the owners of buses and yourself, we request that you permit us to substitute an attorney in your place and stead to proceed to the final hearing of these causes." Signed by the bus company, and approved by the individuals, including the complainants in this case, is that right? A Yes, sir.

Q You didn't object to signing that, did you? A No, sir.

Q And you realized that Mr. Franklin was entitled to compensation for his work that he had done, didn't you? A Well, that is a question again.

Samuel D. Lines, cross.

Q Well—

The Court: Did you think he was?

The Witness: I didn't think he was; no, sir.

The Court: You didn't think so at the time? 10

The Witness: No, sir.

The Court: Why did you sign the agreement then?

The Witness: As we understood, we simply left that question to be determined later. It took his compensation agreement out of this matter. In other words, the substitution was made without prejudice to his compensation agreement. We didn't consider the compensation agreement at that time. We simply wanted the substitution, and the compensation agreement stood as it was unless we could get it back. We couldn't get it back. 20

The Court: Had you raised any question with him up to that time as to the validity of that agreement?

The Witness: Of the compensation agreement? 30

The Court: The compensation agreement.

The Witness: I don't think we raised any question as to the validity.

The Court: You never disputed it with him that it was binding upon you?

The Witness: No, I don't think so.

Q You never did after, until suits were brought against these three men, or four men, upon it, did you? A You see, Mr. McGeehan, 40

Samuel D. Lines, cross.

the men thought if they won their suit the buses would be transferred to the Springfield Avenue Company, which would offset the compensation agreement, because your agreement says that he shall be paid unless they are sold to the Springfield Avenue Bus Company.

10 Q You think that the men had in mind that some day they would get these buses, or some of them, in the name of the Springfield Avenue Bus Company, and thereby not have to pay Mr. Franklin at all? A I think that thought was in mind.

Q But they never had in mind that the contract with Mr. Franklin was objectionable to them as it stood, did they? You never went to Mr. Franklin and said, "Here, we have had a
20 month, or a week, or six months, or a year, to think this over, and considering the work that you are doing, we don't think it is fair; we think it is too much you are charging." Did you ever do that or go to him in any such spirit? A We never did; no, sir.

Q And even after Osborne & Astley were substituted in the Chancery matter on final hearing, you didn't take it up with him at all, did you? A After the substitution was made we never
30 consulted Mr. Franklin and never entered his office.

Q You haven't sold your bus, have you? A No, sir.

Q Now, you don't know of any delay that Mr. Franklin was guilty of in connection with the prosecution of the suits in Chancery, do you? A Yes, I do.

Q What delay? A Well, it is kind of hard for me to explain to make myself clear, but in
40 the drawing of the papers, for one thing, there was a mistake made that had the effect of—

Samuel D. Lines, cross.

whether it is proper execution of affidavits, or what it was, we had to go to the bottom of the calendar again. I think it held it up about three months, but I am not a lawyer. I can't explain it now what it was, but it was some miss in Mr. Franklin's office that put it to the bottom of the calendar after we were ready to go on.

10

Q Bottom of what calendar? Wasn't June 3rd the first day set for hearing? A No, sir; I think it was a day before that.

Q You mean on the return of the order to show cause? You think there was some delay then? A There was a delay somewhere there, Mr. McGeehan. I am not sufficiently familiar with your legal terms—it had the effect of delaying the whole matter.

Q The first sale was on the 8th of September, 1924, that is right, isn't it? A Yes, sir.

20

Q Do you know that the order to show cause was obtained on the 19th of September, 1924, and returned September 30th, and that two continuances were had totaling twenty-one days, and the argument was on the 21st of October, 1924, when the temporary restraint was given? A I can't recollect all those dates.

Q Well, do you know of any delay around that time that you objected to? A Somewhere from the time those buses were sold until final hearing there was a bad break in the time that should have gone on.

30

Q Now, as a matter of fact, Mr. Lines, the longer the case took to come on for final hearing the better satisfied you men were, isn't that a fact? A No, sir; it worked the opposite.

Q Didn't you know that your buses, that they were restrained from selling during that period?

A Three had sold and they weren't restrained.

40

Samuel D. Lines, cross.

Three had sold and gotten their money and gone their way.

Q Well, that was under—that is when the Public Service tried powers of attorney as a means of getting under the contract, wasn't it, on the Greene bus? A I have heard of that but I couldn't say it was. I don't think it was.

Q Of course, you know there had been no threats to sell or no sales before the 8th of September, don't you? A There were no sales consummated; there was threats of sales.

Q Did Mr. Franklin keep in constant touch with the men and with you, asking if any threats had occurred that would entitle him to institute suits? A No, sir. At that time I was coming here very seldom. I notified him that those three men had sold. He got up the papers and I served all the papers in the matter to save expense. All the papers that he issued I took around and served on these men.

Q Now, Mr. Lines, you said something about the men suggesting \$500 to you, or authorizing you to offer some such sum. You didn't offer that to Mr. Franklin? A I told him the men were willing to do that.

Q You told him that? A Yes, sir.

Q In whose presence did you do that, do you know? A Just he and I were in the office.

Q As a matter of fact, you never discussed that with him at all, did you? A Yes, sir, I did, when I asked him for a substitution. He said, "Well, you know this won't affect my compensation agreement; that is still good." And I went back to the men and reported that Mr. Franklin wouldn't give up his compensation agreement, and they said, "Well, offer him \$500 and see if you can get it back." Mr. Franklin refused to

Samuel D. Lines, re-direct.

accept any amount at all; he simply kept the compensation agreement. We took our substitution and went back only for papers the other lawyers needed from his files.

Q You went back several times to Mr. Franklin after that? A Only to get papers.

Q And he gave you whatever papers you asked for at the time? A Yes, sir. 10

Q Did he? A Yes, sir.

Re-direct examination by Mr. Osborne.

Q Mr. Lines, you have indicated the prices of the buses. Are those prices of your own knowledge or just hearsay? A Only from hearsay.

Q Were the meetings that you had with Mr. Franklin with regard to the plan before the contract was signed? A We had meetings with him regarding his agreement before it was signed, yes, sir. He came up and offered it to us and spoke about it. 20

Q Did he give you any assurance—that is, you or the men any assurance, to use the expression, that it was “airtight”? A Yes; he told the men he thought it would hold.

Q And did you rely upon that assurance in making the agreement? A Yes, sir, absolutely. 30

Q Was there any understanding as to when the agreement would be considered off? A At the end of the year. It was drawn for one year.

Mr. McGeehan: What agreement?

Mr. Osborne: The compensation agreement.

The Witness: I thought you meant the other agreement.

The Court: Doesn't the agreement speak for itself as to the termination? 40

Samuel D. Lines, re-direct.

Mr. Osborne: Why, I don't think it has any specific term.

Mr. McGeehan: When the buses were sold.

10 Mr. Osborne: They had some understanding between themselves; in fact, the agreement did not speak for itself in the Court of Chancery because it was found that while it said one thing it meant another.

The Court: You are talking about one thing and I am talking about another.

Mr. Osborne: I appreciate that fact, your Honor.

20 Q I am speaking now, Mr. Lines, of the compensation agreement. Was there any other understanding as to when the agreement—as to whether or not the buses reached a certain price the agreement would be in effect from that time on?

Mr. McGeehan: I object to that.

The Court: Objection sustained.

30 Q In connection with the contract of sale was there any understanding as to when that contract should be terminated? A I think it was drawn for one year.

Q Well, was there any price understood to be the limitation?

Mr. McGeehan: I object to that.

The Court: Doesn't the agreement mention that, \$11,000?

Mr. Osborne: The agreement doesn't mention the price at which the agreement

40

Samuel D. Lines, re-direct.

shall cease to be operative. You see, the difficulty with this—

The Court: It says that it should be on all sums over \$11,000.

Mr. Osborne: Yes, but there was some understanding—you see, these men relied on the assurances given them by their counsel in connection with this whole transaction, and their understanding at times was extremely vague, and sometimes, perhaps, was not in conformity with the strict letter of the contract. 10

The Court: Judge, in view of the fact that their bill is based on what amounts to fraud and violation of the confidential relationship, I am going to permit you to examine him, but I do not think you can convince me by putting this witness on the stand that he did not know what he was doing and did not understand all the terms of the contract. I think he knew what he was doing all the way through. I think he is intelligent enough to appreciate everything that he did. 20

Mr. Osborne: I don't question Mr. Lines' intelligence at all.

The Court: Nobody should, after they heard his testimony. 30

Mr. Osborne: I wouldn't suggest that he isn't an intelligent man.

Q You were examined with relation to Exhibit D on your cross examination. Who prepared that paper? A I think Mr. Franklin. I am sure of it.

Q And submitted it to you to procure the signatures of the men. The men seem to have signed it. A Yes, sir. I think I took his copy 40

Samuel D. Lines, re-direct.

and transcribed it on the Springfield Avenue paper. That isn't my composition. I know I didn't compose that.

10 Q When this arrangement was made by which —agreement was made between the company and the men, the Springfield Avenue Company and the men, I understood you to say that you had a garage on your hands? A Yes, sir.

Q And that the importance of holding the men was due to the fact that you had assumed this obligation? A Yes, sir; the garage had just been completed and we had very heavy debts, notes, or contractor's claims hanging over our heads.

20 Q Was it understood that this contract was to be enforced by the company? A That is the contract between the company and these stockholders?

Q Yes. A Well, that is rather hard to say, judge. Some of the men thought it would be, and some never believed it would. It is really very difficult to say. The agreement was signed by them all, but just how they all thought about it it is rather impossible to say.

30 Q What was that last? A I say they all signed it, but how thoroughly they understood it I don't know. I don't think some of them understood it very well, although it was explained to them and they thought they did, but afterwards we would hear comments about being sorry, it didn't mean anything, it was this and it was that; that is what I had to put up with all the while.

40 Q When you went to Mr. Franklin to state your problem, or the problem that you wanted him to solve for you, did you explain to him about this garage, the fact that you had built this

Samuel D. Lines, re-direct.

garage, and taken these obligations and the necessity for holding the men? A Certainly. I showed him the position we were in.

Q You say that the men lost confidence in Mr. Franklin because they felt that from the way he was handling the case that it wasn't to his interest to bring it to a successful conclusion? A 10
That is the way the men felt, yes, sir; that is what they told me.

Q Did they understand that if they won this case that he would get no commission? A That is right; that was part of the original agreement.

The Court: No commission on what?

The Witness: On anything he done, because it wasn't sold to Public Service.

The Court: Well, there were only three 20
sales involved then, weren't there?

The Witness: Yes, but they had all signed the compensation agreement and they were all liable to its provisions; every man was involved; and the understanding when they signed that agreement was it would only be collected if they sold to the Public Service, not if they sold to the Springfield Avenue Bus, and that is borne by the fact when company bus 259 was sold there was no compensation. 30

The Court: Don't argue it.

Q When the bus was sold to the company was there any compensation? A No, sir; Mr. Franklin didn't collect for it because the owner had signed Mr. Franklin's agreement and sold his bus to the Springfield Avenue Bus Company.

Samuel D. Lines, re-direct.

Q Was there any understanding as to what basis the payments should be made on if the buses were sold for more than \$15,000?

Mr. McGeehan: I object to it as leading—I will withdraw it.

10

Q Was there any limit of \$15,000 talked about or came into the situation in any way? A When we signed that agreement I don't think there was a man on the line that didn't think that \$15,000 would be the top. Nobody has ever thought it would go beyond that.

Mr. McGeehan: I object to that.

20

Mr. Osborne: I consent that it be stricken out because it is not responsive.

The Court: Strike it out.

30

Q It isn't the thought, or what they understood by reason of anything that was said or done. If you don't recall, never mind. Now, Mr. McGeehan referred to a supplemental agreement, which I heard of this morning for the first time, dated on the 15th day of May, 1925, and you said you didn't know whether you had signed such a paper or not. Perhaps if I might be permitted to ask Mr. McGeehan whether they contend such a paper was signed—

The Court: That isn't the testimony, judge. The testimony is that he doesn't recall ever having seen the agreement, and he knows it wasn't signed.

Mr. Osborne: I didn't understand him to say he knew it wasn't signed.

40

The Court: No, he said the agreement was never executed.

Samuel D. Lines, re-cross.

Mr. Osborne: You don't contend it was signed?

Mr. McGeehan: I don't know, to tell you the truth. I will frankly say this was prepared, and we have the carbon copy. Whether it was signed up at the Springfield avenue office we don't know. 10

Mr. Osborne: It isn't offered in evidence?

Mr. McGeehan: No, I never intended to offer it.

The Court: It cannot bind him if it was not executed.

Mr. McGeehan: No.

Mr. Osborne: That is true, but I don't like these atmospheric aspects in the case.

Mr. McGeehan: It might be important with a jury— 20

The Court: Atmosphere does not count so much here as it would before a jury.

Re-cross examination by Mr. McGeehan.

Q Now, Mr. Lines, aren't you a little bit mixed up as to what was his interest in not winning the Lehrhoff suit? A I don't think so.

Q Don't you know that the compensation agreement made exact provision for a bus that would be taken by your own corporation so as to protect Mr. Franklin if it should subsequently sell it? A You mean if the company should take it and then sell it? 30

Q Yes. In other words, wouldn't Mr. Franklin's position be exactly the same if they succeeded in getting the bus back from the Public Service that Lehrhoff had sold to it, except the title would be in the name of the corporation in- 40

Samuel D. Lines, re-cross.

10 stead of in the name of Samuel D. Lines, and then after that it was sold to the Public Service, or any private outside party, Mr. Franklin would get his compensation on that? A We didn't understand it that way. We understood that if it was sold to the Springfield Avenue Bus Company, Mr. Franklin's interest in the compensation on that bus ceased.

 Q Your lawyers who were substituted read the contract that you had with Mr. Franklin? A I think so.

 Q They never advised you that that would be the effect, did they? A I don't know that they did.

20 Q Well, do you remember that the contract which you signed said this, "If the said parties of the first part or any of them shall at any time transfer said buses to such corporation formed by them for the above purpose, then the afore-said sum shall not be due and payable to party of the second part until the sale of such bus or buses, respectively, to a third party, in which event upon such sale to a third party the said parties of the first part each agree to pay five per cent. on any amount received by the party of the first part over and above \$11,000 from and out of the sale price of each of said buses to the party of the second part." Didn't you know that exact provision was there? A No, we didn't.

30 Q You mean to say you formed distrust of an attorney without reading the contract out of which you thought such a situation would arise? A Well, possibly it had something to do with it.

40 Q And isn't it a fact that what you had in mind when you testified to that is the allegation that you have in your bill that you distrusted Mr.

Samuel D. Lines, re-cross.

Franklin because he wouldn't get a commission if the sale that Lehrhoff had made were set aside; that is, that he was entitled to \$50 if that sale stood, and that if the Court set it aside he thereby would not be entitled to that commission, isn't that what you set up in your bill as the reason for that distrust? A I can't say.

10

Q Isn't that what you were thinking of when you testified on direct examination before that that entered into your distrust? A I don't think that the question of compensation on the three buses—

The Court: Strike it out.

Q (Question read by the stenographer.) A The men felt distrust of the whole affair when these three buses were sold and lost to us, as far as we were concerned. In other words, he failed to hold them.

20

Q Why, it was when they were sold that you came in and had him go ahead with this litigation, isn't that so? A Why, certainly. We had to make some effort to get it back, and the fact that he couldn't get those buses returned and they were Public Service property.

Q But you wouldn't know that until the 3rd of June when the final hearing took place, would you? A Well, I don't know whether we knew legally or not, but actually as a practical fact, the buses were owned by the Public Service, painted the Public Service color, and ran every day on the street in competition with the rest of us, so it is only a theory they didn't belong to the Public Service. That is something I don't know, but actually they were there.

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Samuel D. Lines, re-cross.

Q Why did you wait five or six months after forming such a distrust and signing affidavits and papers for Mr. Franklin, and working with him in the proceedings in Chancery, if before that you distrusted him? A When those buses were sold we thought he would act and we would get results.

10 Q He did act, didn't he? A We didn't get results so the men felt there wasn't any use of bothering with him any more, we would get somebody else to do it.

Q He got the result of holding you men together until the price went up to around \$30,000, didn't he? A No, he didn't, because they sold right after this court decision for around \$15,000.

Q You swear that they did sell for around \$15,000? A That is my information and belief.

20 Q Wasn't it around nearer \$18,000 than \$15,000 at that time? A They had various prices, various buses.

Q Do you know any bus on that line that sold for between \$15,000 and \$16,000 after the 3rd of June? A All I know about it is what I hear on the street, that bus 402 sold for \$16,000 or \$15,000. I didn't go to the Public Service and ask them what they paid for it; they wouldn't tell me.

30 Q But you do know that \$30,000 each was paid to these complainants, don't you? A Yes, because the company had a bus involved there and I had first-hand information.

Q Now, Mr. Lines, you knew that at the time Mr. Franklin appeared before your meeting, he was invited by you to come up there, wasn't he?

A The first time someone else invited him.

Q Well, one of the members of your company. A One of the men, yes.

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Samuel D. Lines, re-cross.

Q In other words, he came at the request of your association? A Yes, sir, explaining what he had; that is right.

Q You knew that in engaging Mr. Franklin, the large number of buses and the great amount of work involved, that he had to have assistance on this work, didn't you? A Oh, that is something we didn't know anything about. 10

Q You knew that? A Whether he had any assistance or not? The company had a contract with one man.

Q But you knew that I accompanied him in explaining the contract, don't you? A You came up there to a couple of meetings.

Q You know I attended meetings in Mr. Franklin's office in connection with the litigation on it, don't you? A Occasionally, yes, sir. 20

Q And you knew that Mr. Franklin had the assistance of some other attorney in the matter, didn't you? A I knew you worked with him, yes.

Q And, of course, you knew that the compensation that you agreed to pay to Mr. Franklin was the full compensation for any legal services that you got from him or through him, didn't you? A As regards that contract, yes, sir.

Q Now, did you feel that I was also untrustworthy in your eyes in connection with this? A Well, personally I never felt so. What the other men felt I don't know. They didn't comment on you as much as they did Mr. Franklin because for one reason, they didn't come in contact with you and they didn't know as much of you as they did of Mr. Franklin. 30

Q But you never came to Mr. Franklin and said anything about the Lehrhoff—never discussed with him whether his interests were hos- 40

Frank J. Noll, direct.

tile to the interests of his clients, or anything like that, did you? A I kept telling him the men weren't satisfied with the slowness of the procedure.

10 Q That is all you told him, wasn't it? A And the fact that these three buses were being run by the Public Service and the men weren't satisfied.

Q You knew there was nothing else he could do, didn't you, except what he was doing in the Chancery Court? A We didn't know. We all thought he could have if he wanted to.

Q You didn't know what he could do? A No; we weren't lawyers; we didn't know.

20 FRANK J. NOLL, one of the complainants, being duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Osborne.

Q Mr. Noll, where do you live? A Irvington.

30 Q Were you secretary of the Springfield Avenue Bus Association? A I was for a period starting in 1924, after the bulk of the men had sold out, when there were 19 men left.

Q Were you secretary on the 26th of April, 1924; May 13, 1924; May 15, 1924; November 20, 1924; November 25, 1924, and April 9, 1925? A Yes; starting around March or April, 1924, I was secretary until the corporation was closed out.

Q Did you keep the minutes on those dates? A Yes, sir.

40 Q Is this your signature as secretary? A Yes, sir.

Frank J. Noll, direct.

Q I show the witness minutes under date of April 26th of the minute book. Is that the minute book of the Springfield Avenue Bus Association? A Yes, sir.

Mr. Osborne: Now, as a matter of convenience, I have extracted such minutes as seem to relate to this matter, and I would hand counsel and the Court copies, if they so desire—offering the book, of course, and offer the minutes of the dates which I have mentioned. 10

The Court: For what purpose?

Mr. Osborne: Well, for the purpose of showing the action of the company in connection with this transaction, as appears on their minute book. It shows that Mr. Lines was authorized to go see Mr. Franklin; it shows Mr. Franklin came up; that Mr. McGeehan was there and that they explained matters; and it shows that the \$500 legal fee was authorized to pay to him, and it shows that the fee was offered to him in lieu of the provisions in the contract, for such services as he might have performed before his discharge; that a motion to authorize the president in order to have Mr. Franklin's release as legal representative, and that the company employ other necessary counsel. These are all material matters to this issue. Any objection? 20 30

Mr. McGeehan: I don't want to object to anything; I want it to be an investigation rather than any other thing, but I cannot see where the minutes would assist in that investigation when we have got the president of the company here to testify. The only 40

Frank J. Noll, direct.

10 thing in there that I think ought to be gone into is that statement that \$500 fee was paid Mr. Franklin. I asked the witness whether anything was paid for his services under this contract. I take that to mean that the \$500 that was paid was for some entirely extraneous work, and was admitted by the complainants in this case to be so. If there is any question about it, I think it ought to be gone into to see what it was for, and whether it was in connection with that, but I don't think the minutes show anything.

20 The Court: I doubt very much in this proceeding whether the minutes can be binding on either of the parties, but I am going to admit them for what they are worth. They may not be worth anything. If they do throw any light on the real issue here, I would like to have them.

Mr. McGeehan: Withdraw my objection.

Mr. Osborne: Let me hand you a copy so that you may see. Shall I hand your Honor this?

(Marked Exhibit C. 1.)

30 Q Now, Mr. Noll, Mr. Lines is not a party complainant in this matter, is he? A No; he hasn't sold his buses yet.

Q And you are one of the defendants in a proceeding brought by Mr. Franklin to recover a commission of five per cent. on the sum of \$30,000, the selling price of your bus to the Public Service? A Yes, sir.

Q And are one of the complainants in this case? A Yes, sir.

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Frank J. Noll, direct.

Q Do you recall the circumstances which led up to the signing of a contract between yourself and other members of the association, as individuals, and Mr. Franklin, to pay five per cent. commission on the sale of buses? A Well, I wasn't as active in the bus business as most of the men who had signed the agreement. I had been working and I had never operated my own bus on the avenue the way the other men had done at that time. After the men sold out I was made secretary of the association, and I would get up there at night, and usually they would hatch these things out beforehand, and tell me about it at night, and then the thing would be done, so I don't know much about the preliminary work as to this contract. 10

Q Well, you knew that there was a corporation known as the Springfield Avenue Bus Owners' Association? A Yes, sir. 20

Q Composed of the independent operators? A That is right. It was Springfield Avenue Bus Company, Incorporated.

Q They had, for their mutual benefit, erected a garage, had they not? A Yes, sir.

Q Costing about what? A \$51,000.

Q And borrowed the money? A Yes. The contractors were after us for money and we had loans at the different banks. 30

Q And each individual operator was supposed to own a share through his stockholdership in the corporation, was he not? A Yes, sir.

Q They were all supposed to be equal? A Originally they were equal, but after the 22 men sold out, why, then the ownership started to vary. I mean it wasn't in equal shares any more.

Q Did they reason in operating to that garage—did the men park their cars there? A Yes; we stored our cars there. 40

Frank J. Noll, direct.

Q And paid the company for that privilege?

A Yes, sir; and we also had a man there selling gas and oil and an accessory store.

Q Now, when these 22 men sold out, those were the 22 out of the 41 of the men that left, is that right? A That is right.

10 Q When they sold out how did that affect this situation with regard to the garage and the obligations which the company had assumed? A Well, we wouldn't have received enough income from the garage to pay the carrying expenses, and we were naturally very much concerned about it because the contractors had not been paid at that time; they had been paid on account, and the bank had temporary notes, and we didn't have our mortgage, and the contractor
20 was going to take the garage, or something on that style; and everything was all mixed up, and we were naturally very much afraid, especially after these 22 men sold, we were afraid that they were going to sell their stock in the corporation to the Public Service and then we would be in the minority and they would put us out on the street.

Q That was the serious aspect of it, was it not, if they sold their stock to the Public Service
30 it would place your remaining operators in the minority and then if that occurred you would be out? A Well, the director of the Public Service in Irvington told us that we couldn't be on the street, and this garage was built on the end of the line on account of the difficulty that we had in getting a parking space between trips, so this garage was put at the end of the line and we parked in there between trips and started all of the trips in there, so if the 19 men were leaving,
40 they had to get out on the street and that would put us to the same trouble again of trying to find

Frank J. Noll, direct.

parking space in between the trips, you know, on the lay-over time, and we were interested on that account to have the garage, that particular garage, to have a place to put our buses during the day.

Q Who represented the company at that time? A Mr. Franklin.

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Mr. McGeehan: At what time?

Q Oh, no; at the time these 22 men sold out and this serious situation confronted you? A Mr. George Seymour had represented the company at that time.

Q Was Mr. Lines, as president of the association, authorized to go to see Mr. Franklin? How did that come about? A Well, Mr. Lines was made president at the time the 22 men sold out. They were all very suspicious, and one was afraid of the other one, and there was talk around that the old president had been bought by the Public Service, and Mr. Lines said he wasn't going to do anything unless he was instructed at the meetings to do it, and we told him to go down and see Mr. Franklin about his agreement.

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Q How did you come to send Mr. Lines to see Mr. Franklin; had this situation arisen on another line in the city? A Well, we had heard from other independent operators that Mr. Franklin had an agreement that would stop the men from selling. A man on Market street had told me—

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Mr. McGeehan: I don't like to object—

The Court: It isn't binding, what he heard. It may be material as indicating his

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Frank J. Noll, direct.

reliance being what somebody else said rather than what Mr. Franklin told him.

10 The Witness: I had my information that the contract was good from a man on the Market street line. He said that Mr. Franklin had a contract that was good and would stop the men from selling. We had had experience on our own line with options, and Mr. Seymour had drawn up options, and the men sold in spite of the options. Twenty-two of them sold in spite of the options, so we were looking for something that would stop the men from selling, and we heard that this was the thing.

20 Q Having heard of this, Mr. Lines was directed to go see Mr. Franklin? A Yes, sir.

Q Did Mr. Lines report back? A He reported back—or rather, in the meantime, I think Mr. Franklin had attended a meeting with his contract and explained the thing.

Q Is that one of the meetings referred to in the minutes? A Yes, sir.

30 Q Were the men present at the meetings—most of them, or all of them? A I don't think all of them were present. I think there were one or two missing.

Q How many meetings did Mr. Franklin attend and explain his plan, do you know? A As far as I can remember, I was only at one meeting that he explained that contract.

Q Mr. McGeehan was there once, wasn't he? A Well, Mr. McGeehan was at a meeting—I think he was at a meeting. Then he was at a meeting where we had some arrangements of buying out these 22 men's stock in the garage.

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Frank J. Noll, direct.

Q Well, as a result of Mr. Franklin's coming there and explaining his views, was he retained to represent the company? A Yes; he was going to stop the—to hold us together.

Q And did he prepare any paper pursuant to that arrangement for that purpose? A Yes, sir.

Q What paper was that? Was that the contract between Springfield Avenue Bus Company and their stockholders too as individuals, which was taken subsequently in the Court of Chancery? A Yes; that is what I always call the contract of sale. 10

Q That is Exhibit A in your bill? A The contract of sale.

Q And was that submitted to the meeting for approval? A Yes, sir.

Q Did he leave copies for the signers? A I don't think so. I don't think anybody had a copy of that. I know I never had a copy of any of the agreements. 20

Q Was there any other compensation agreement signed in addition to that at some subsequent date? A Well, as far as I can remember, it was about the same time that the association agreement—the two things worked together, because we naturally wanted to know how much it would cost. 30

Q And when his plan was unfolded and the agreement between the men and the company submitted for signature, what was understood at the time as to the compensation to be paid to Mr. Franklin for his services in that connection? A Well, we understood that we would have to pay him five per cent. above \$11,000. Five per cent. of the amount we received on the sale above \$11,000.

Q Up to what figure? 40

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Mr. McGeehan: I object to that. He hasn't said that. The contract speaks for itself.

The Court: Objection sustained.

Q From \$11,000—

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The Court: He has answered the question, judge.

Mr. Osborne: I am not trying to make him say anything?

The Court: His answer was that the agreement provided for the payment to Franklin of five per cent. commission on all sums above \$11,000 per bus whenever they were sold.

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Q \$11,000. Now, then, was an agreement submitted for signature with that provision? A I believe that was the agreement that was submitted for signature.

Q You testified that was your understanding. Now, that was incorporated in an agreement and submitted for signature by the men? A Yes, sir.

Q That is Exhibit B, I believe, to the bill.
30 And was that prepared by Mr. Franklin? A Well, he brought it up there.

Q It was submitted by him? A Yes.

Q Was any representation made by Mr. Franklin when he explained his contract as to its efficiency? A Well, we had told him that we had an experience with George Seymour, that he drew an option and he assured us that the option was no good, and Mr. Franklin when he was ex-

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Frank J. Noll, direct.

plaining there for quite some time, he told us that his agreement was good and would stop the men from selling.

Q Then in spite of this agreement, I understand some men did sell? A Three of them sold in the fall of the year, around September.

Q Do you remember what their names were?

A Yes; the two Lehrhoffs and Greene.

Q And was anything done about that? A

A Why, we started to get all upset about the thing and told Mr. Lines to go down and get the buses back and he went down to see Mr. Franklin and he told us that he asked Mr. Franklin what to do about it, and as I recall it, he was getting out an injunction, or something, and then we were finally served with an injunction so we couldn't sell while this other suit was pending.

I know I was served with an injunction so I couldn't sell my bus. Then some of the men they came to me and they said, well, if you—"There is some of us wanted to sell"—they said, "There is some of us want to sell. If you will vote with us we can throw out this whole thing because we will have a majority of the stock in the corporation and we can take the contract and tear it up," but I told them I wanted to see how this suit was coming out and have the matter straightened out, first.

Q You knew that Mr. Franklin did institute a proceeding in the Court of Chancery on behalf of the corporation against these members as individual signers of the contract, the purpose of which was to prevent them—

The Court: He hasn't said what the purpose was.

Frank J. Noll, direct.

Q Well, now, he brought such a suit? A I know we told him to get the buses back, and he had started legal machinery to get them back. Then I know I was served with papers to stop me from selling my bus.

10 Q You were one of the defendants in that suit, weren't you? A Well, I don't know what I was.

The Court: I assume he was or he wouldn't have been restrained.

20 Q Mr. Franklin was subsequently discharged as attorney for the company? A Well, the thing—we would have Mr. Lines up there and ask him how the suit was coming along, and he would tell us a lot of stuff how long it was taking, and all that sort of thing, so I went to my employer and asked him who a good lawyer was, and he wanted to know why—I mean a good man in the Chancery Court, and he wanted to know why. I said, “Well, I will tell you; we signed an agreement with Mr. Franklin to pay him five per cent. over \$11,000 when we sell the buses, and we understood that would stop the men from selling all buses, and now three of the men have
30 sold and we want to get them back, and we are not getting them back; the buses are running up and down on the avenue racing with our buses and painted yellow, and I don't think we will ever get them back, and I don't think Mr. Franklin will do anything to get them back because if he gets these back the other 16 will have to sell to the Springfield Avenue Bus Company and then he won't get any money for this work.” So he told me to see Osborne & Astley, and I told Mr. Lines

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Frank J. Noll, direct.

about it, and we both went over there to see Osborne & Astley about taking the case so we would get the three buses back.

Q Was it your understanding that Mr. Franklin would get nothing unless the buses were sold to the Public Service? A Yes, sir; and it wasn't until this proceeding was started and I got a copy of the contract and then I saw that it stated definitely that when they were sold to a third party we would have to pay. 10

The Court: What compensation did you understand Mr. Franklin was going to get for his services if the buses were sold to the Springfield Avenue Bus Company?

The Witness: I understood he wasn't going to get anything. 20

The Court: Did you think he was going to try to prevent the sale to anybody else and give you his services for nothing if he succeeded?

The Witness: No; I thought that we had already paid him—I mean between the time that we made up the contract for the work he had done in another matter, we had paid him \$500, and I didn't know how he was figuring on this thing; I thought at the time that he figured that the buses would be sold very soon, that it wouldn't go over a long period of time. 30

The Court: Did he tell you that?

The Witness: No; but we had an agreement there, an agreement amongst ourselves, that when the price reached \$15,000 on the buses that we would tear up the contract and make some other provisions with whoever wanted to go in. 40

Frank J. Noll, direct.

The Court: Did he know about that?

The Witness: I think he knew about that.

The Court: Then the agreement wasn't intended to ultimately prevent you from selling, it was merely to boost the price?

10 The Witness: That was it. I understood that everything was all upset at that time, and naturally we assumed that if we could wait until things got on an even keel we could get a better price.

The Court: That was the purpose of the agreement?

20 The Witness: Yes, sir, and we also wanted to keep the nineteen men in the garage paying us rent so we could get the garage situation straightened out, because the contractor wanted to put some liens on it and take the building away from us and rush us out on the street, and if the Public Service knew we would have to go on the street, and the trouble we had with Director Stanley up in Irvington, they wouldn't pay us \$10,000 for the buses because they knew we couldn't go anywhere.

30 The Court: So far as you were concerned, the prime purpose of the agreement was accomplished?

The Witness: In the beginning, yes.

The Court: I mean you got more than \$15,000 for your business, didn't you?

The Witness: Yes.

The Court: How much did you get for yours?

The Witness: \$30,000.

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Frank J. Noll, direct.

The Court: You got double what you were willing to sell for?

The Witness: Well, I don't know whether I was willing to sell or not.

The Court: Well, you just said that you had an agreement amongst yourselves which had been made known to Mr. Franklin that you would tear up that agreement when the price went up to \$15,000? 10

The Witness: Yes, but at that time you would have to determine what you wanted to do.

The Court: I understand. But what you wanted to do was to work this price up to \$15,000?

The Witness: Yes, sir. 20

The Court: That was the purpose of this agreement?

The Witness: Yes, sir.

The Court: That was the main purpose of it?

The Witness: I believe so, yes.

Q And did you understand that at that time—I think you said something to this effect, that when the price reached \$15,000 you could tear up the agreement? A Yes, because if we all agree to tear it up we just tear it up. 30

Q Did you understand you could break it at any time? A No.

Q Why when the price reached \$15,000? A Well, we thought that that would be the top price. We thought that that was the limit the men would get for the buses, and we didn't want to hold anybody in the business after we had accomplished our business. We thought they were 40

Frank J. Noll, direct.

worth more than \$10,500 that we could have gotten at the time the agreement was signed.

10 Q Were there other services rendered by Mr. Franklin independent of preparing this contract and the compensation agreement, that is the contract between the Springfield Avenue Company and the men, and the compensation agreement and the filing of these suits for which he was paid? A Yes. Well, we always considered Mr. Franklin and Mr. McGeehan. Mr. Franklin had sent Mr. McGeehan up at the time we had dealings with the twenty-two stockholders who had sold their buses, and I believe we paid him \$500.

Q Mr. Franklin wrote you a letter, Exhibit C, wrote the company a letter and asked for \$500, did he not? A Yes, sir.

20 Q That was sent to him? A That was sent to Mr. Lines, but we paid the \$500, I know that.

Q And was he paid for other services? A By the Springfield Avenue? To my knowledge I don't know what else there was done. I don't think there was anything else done. I personally—

Q I mean representing individuals? A Yes.

30 Q And was he paid for that? A Yes, I had some cases on which he was suing a man for me, and my brother had some cases.

Q And he was paid for those services? A Yes.

Q What services, so far as you know, did he perform in connection with the compensation contract? A Compensation contract?

40 Q Yes. What services did he perform in connection with his contract for five per cent. compensation? A Well, we told him—after he drew the contract I tried to figure out how we would give the men thirty shares of stock they were sup-

Frank J. Noll, direct.

posed to get for signing this contract. So we asked him about that, and then there was another matter; the nineteen men had bought the stock of the twenty-two men and they didn't buy equally; they didn't put up the same amount of money. We thought first we could retire those shares of stock and leave seventy-six shares, or thirty-eight shares to be purchased, and then some of the men, they didn't want to put up the money for this stock, and we had to raise the money because I think it was fifteen days that Mr. McGeehan had for us to get the money together, so I told him that you could get thirty shares for signing the contract, the men who put up the money for this extra share of stock will be way out of proportion. For instance, you originally had to pay \$712 for two shares of stock. Now you put up \$820 for two more shares of stock and then when the men—I bought two more shares, so I had to put up \$1,600 for four shares of stock, and the men that had not bought the two shares he would have put up \$712 for two shares and he would have got thirty shares for signing the contract, so the thirty-two shares cost \$712. I only got thirty shares for signing the contract, and I would have thirty-six shares which would have cost me \$2,300 and some dollars, so it was way out of proportion, and we were talking the matter over with him and he suggested that we issue a bonus of fifteen shares for each share that was purchased by us. So we amended the certificate of incorporation that we could issue all these shares. Each man then would get sixty shares of stock, plus his four that he had bought, the shares when the twenty-two men sold out, and each would take these four shares of stock at that

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Frank J. Noll, direct.

time, so he amended the certificate of incorporation so we could issue that stock.

10 Q Was it part of the plan which he unfolded to you to issue these thirty shares of stock to get the men to sign the contract? A That was in the agreement; in fact, that wasn't issued at the time, but when we came down, when this thing was mixed up, he said, "Did you issue the thirty shares of stock?" We said, "No." He said, "You will have to issue that, according to this contract."

20 Q Well, has there been any ruling on the validity of that issue by the court? A Why, I had bought some of the stock and didn't get any money back. I don't know. I had paid one man \$450 for fifteen shares of the stock, and when they closed up the corporation I didn't get anything for that fifteen. The stock was supposed to be turned back and then some of the men had sold it, and I was unfortunate enough to have bought some of these thirty shares and I never got any money for those sixteen shares I paid \$450 for.

30 Q Was this thirty shares the inducement to the men to sign the contract? Was that the purpose? A I don't think so, because they were all to get it. I mean that everybody got thirty shares; I don't see where there was—

40 Q What was the purpose of it? Why was it incorporated in the plan? A I don't know. I guess to give them something for signing the contract. I mean the nineteen men were each going to get thirty shares, so they weren't getting anything, because it didn't make any difference at the time; if you owned two shares, if that was two shares, and the corporation consisted of thirty-eight shares, or whether it was thirty-two

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shares and it consisted of nineteen times thirty-two. That didn't change the value of the stock any.

Q Weren't those shares issued as partial payment on the buses as part of the consideration for the option, so-called? A Yes, I think there were ten shares that were issued; not thirty, but ten. We were supposed to appoint appraisers who would appraise the buses and the physical value, and then we would give them ten shares for that, but the men never took those ten shares; they refused to take them, so that they were just held up here in an envelope. They took the thirty, but they never took the ten. 10

Q Now, were you familiar with the letter which was written by Mr. Franklin when the substitution of attorney took place? A Well, Mr. Lines had the letter and I signed it up there. 20

Q What was your understanding of the purport and effect of that letter? A Well, we told Mr. Lines to get the compensation—or rather, when we went to Osborne & Astley they told us that they wouldn't take the case unless they had a substitution, so we instructed Mr. Lines—I didn't have any time—I did this on lunch hour—so—

Q You were working somewhere else? A Yes, and I think—I don't know whether I told him, or if we had a meeting and told him, but we told Mr. Lines to get the substitution and then he came back to the meeting and he said Mr. Franklin wouldn't give us a substitution unless we signed a letter that he would prepare, and he said that he gave him the letter and he typed it, and there it was, and I understood that he wanted his compensation at the rates that were in effect at that time, like one man had been offered—I mean 30 40

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one of those men who was trying to induce me to vote my stock, for he had been offered \$13,000, so he would have had to pay \$100.

Q That was Lehrhoff? A No. I don't want to say who it was because there may be some feeling about it.

10 Q Well, one of the men? A One of the men, yes.

Q Did you finish your answer to the question? A Yes. Mr. Lines told us that Mr. Franklin wouldn't allow us to engage the other lawyers unless we had signed this letter that he had prepared.

Q So you signed it? A So we signed it.

The Court: Was it read to you?

20 The Witness: Yes, sir.

The Court: Did you understand that Mr. Franklin was not surrendering his compensation agreement?

30 The Witness: We understood—I don't know—the letter as read now it says without prejudice to his compensation agreement. I thought I would have to pay him the price that was in effect at the time that the men had offers at that time; that is, \$13,000. I thought I would have to pay him \$100.

Q You thought then that what you would have to pay under your agreement was the price at which the buses were selling at the time his services as counsel were terminated? A Yes, sir.

The Court: Did Mr. Franklin tell you that?

40

Frank J. Noll, direct.

The Witness: I never saw Mr. Franklin.

The Court: Did anybody tell you that?

The Witness: That is what I understood from Mr. Lines, because he was the man that saw Mr. Franklin.

Q Was Mr. Lines authorized to make an adjustment with Mr. Franklin—make an adjustment on behalf of the company and the men with Mr. Franklin for his services? A Yes, he was supposed to offer him \$500 to get the agreement back, get the compensation agreement back.

10

Q That was never carried out, as far as you know? A No; he said he got in an argument with Mr. Franklin and he wouldn't take the \$500 and he wouldn't give the agreement back, and so that the deal was off.

20

Q I understand that you are willing to pay Mr. Franklin on the basis of the commission—based on the sale price of the buses at the time his relations as counsel terminated?

Mr. McGeehan: I object to that.

The Court: It doesn't make any difference whether he is or not.

Mr. Osborne: Well, it seems with this suit coming into court, he could with propriety, and should indicate his—

30

The Court: I will permit him to answer it but I do not think it makes any difference.

Mr. Osborne: If you don't think it makes any difference I will withdraw it. I don't want to encumber the record with questions that are not important.

The Court: You may suit your own pleasure.

40

(Recess taken until 2 P. M.)

Frank J. Noll, cross.

AFTERNOON SESSION, 2 P. M.

Q Mr. Noll, did Mr. Franklin have anything to do with selling your bus finally? A No, sir.

Q So far as you know did his activities cease after the relation of attorney and client had been severed? A Yes, except he did handle one suit
10 for me and I paid him for it the agreed price.

Cross examination by Mr. McGeehan.

Q Mr. Noll, you had a pretty good understanding of what the contracts that you signed contained, didn't you? A Yes, as I stated.

Q And at the time you entered into the contract between the men and the corporation, and the contract between the men and Mr. Franklin,
20 you did not enter into either of the contracts, or the discussion around them, the garage situation, did you? A I don't quite get it.

Mr. McGeehan: Withdraw it.

Q At the time that you were talking about these two contracts, Exhibit A and Exhibit B, the garage was not mentioned in those contracts at all, was it? A Well, I don't know. I think at
30 the time—no, at that time I don't think so. It may have come up at the discussion because that was our main trouble then.

Q If it did it was incidental to your other talk, wasn't it? A Yes.

Q Later on the situation on the garage became acute on account of the mechanics' liens on it and contractors' claims, is that right? A Yes, sir.

Q And the situation was that the corporation
40 had built a garage and there was some money

Frank J. Noll, cross.

owing to contractors, and the corporation was desirous of finishing it and retaining ownership in the building, wasn't it? A Well, the building was just about finished and it wasn't paid for.

Q And the company wanted to retain ownership of that building, did it not? A Oh, yes, it was necessary for us to do that.

10

Q Now, the men who had sold still held stock in the Springfield Avenue Bus Company after they had sold their buses to the Public Service, isn't that right? A Yes, sir

Q And it was necessary, wasn't it, first to obtain their agreement to convey their stock to the remaining bus owners in order to get them out of the company? A It was necessary to clean it up in some way or other because they had threatened to sell the stock to the Public Service and put us out in the street because there wasn't such a very good feeling among the men at that time.

20

Q Well, those who remained, including yourself, desired to buy the stock of those who had previously sold out, did they not? A Yes, sir.

Q And in buying that stock all of them desired to enter into it, didn't they, the nineteen remaining owners? A Well, I don't know. Some of them didn't put up any money for the stock when we did buy it.

30

Q Some of them did not? A I think three of them didn't, and one man about half a share, or something like that.

Q But at any rate most of you wanted to buy the stock? A Yes, sir.

Q Now, there was a meeting, was there not, at which a discussion was had about the value of those shares of stock and how much the owners would sell for and how much the remaining bus owners would pay for them? A Yes, that was the meeting where you came up.

40

Frank J. Noll, cross.

Q All right, we will come to that. There was such a meeting, wasn't there? A Yes, sir.

10 Q And that had to do with the buying of stock sold by one individual to another individual, didn't it, so that the remaining owners would control the corporation? A No, I don't think it was individual, because we retired some shares. We were interested in holding the garage and we considered ourselves the remaining bus men, the nineteen considered themselves the remaining bus men and we were interested in holding the garage; we were willing to put more money into the corporation so we would own it.

Q Weren't you talking about selling it for \$60,000 to the Public Service Company? A No, sir, because we couldn't.

20 Q All right; you answered you weren't considering that? A No, sir.

Q You didn't have a committee of your men go to the Public Service and discuss how much they would buy the garage for? A At all the meetings I was at I never heard that mentioned.

30 Q Now, what did happen was that A. A. Marsh, Louis Lehrhoff, Gus Hagmann, Eugene E. Brown, Charles Waechter, Edwin M. DeHart, Edward M. Reichell, George J. Grimm, Isidor M. Noll, Charles Lehrhoff, Max Greene, Benjamin Rose, Samuel D. Lines, Frank J. Noll, Antonio Grieco, Harry Jubin, William Leo Elliott, Joseph Ehrhardt and Marty Lehrhoff bought the stock of the twenty-two other men, didn't they? A Well, I think you listed nineteen there, is that right?

Q Well, do you know of any of those I listed who didn't buy it? A Yes, some of them didn't buy it.

40 Q I mentioned nineteen men? A Yes, sir.

Frank J. Noll, cross.

Q Now you think some of them didn't buy it?

A I know some of them didn't because I bought—each man was supposed to buy two shares and I bought six.

Q Now, don't you know that the price was finally agreed on that the twenty-two owners would sell out at? A Yes, it was \$62,500. 10

Q That was the basis of the valuation of the garage, wasn't it? A Yes, sir.

Q And their stock value was reached by dividing the number of shares outstanding into that sum, wasn't it? A Well, taking that as the basis and then taking off what we owed, and so forth, to arrive at the equity we had at the value of \$62,500.

Q That was arrived at? A Yes, sir. 20

Q And then you would agree to pay \$7,837.50 down and a balance of \$7,837.50 within fifteen days from the date that you paid the other amount down, with the understanding that Edward A. Schilling, an attorney, would hold the stock in escrow, isn't that right? A Yes, I guess those figures are right.

Q Now, I ask you if this is the original receipt given by Mr. Schilling to you and the eighteen others for the purchase price of that stock? A Why, I never saw this receipt before. I can't say it was the original receipt. It may be the original receipt; I never saw it. 30

Q Now, in buying that stock you and the others, you mean that some of them put up smaller amounts than others, is that right? A Some of them didn't put up anything. We had an idea first that if we retired these shares that each man could buy two shares. There must have been forty-four shares— 40

Frank J. Noll, cross.

Q Never mind what your idea was. These twenty-two men owned some shares of stock, didn't they? A Yes, sir.

Q And you first had to get them from them, didn't you? A Yes, sir.

10 Q And you did that, didn't you; you bought their stock? A That is right.

Q Now, did you and each of the nineteen owners buy an equal amount of that stock, first of all? A They were supposed to but they didn't when it came time to get the money.

Q Then some of them bought more than others, is that right? A Yes, sir.

Q But all of this outstanding stock was purchased, wasn't it? A Yes, sir.

20 Q Now, after that stock was purchased or in conjunction with it, was there certain discussion or argument or conference regarding the interest of all of the parties in the pool money that was on hand at the time? A I don't know. The pool money was in that figure because some of the twenty-two men who were selling their stock, they owed the corporation pool money so we had to first determine what was due to the corporation, and then what the corporation owed the contractors, and so forth.

30 Q Wasn't that left outside of the stock purchase to be separately adjusted, the interest in the pool, or money owed to the pool by any parties? A No, because that all entered into that figure that you mention to pay for the stock because the corporation only had two assets; it had the building and what its members owed it for the pool, so that thing had to be adjusted.

40 Q Now, a part of the arrangement was that the contractor should receive a mortgage to be executed by the corporation within that fifty-two

Frank J. Noll, cross.

days, was it not? A Well, I don't know. I know that we owed the Springfield Avenue Trust Company \$15,000 on a note.

Q Well, you owed Jacob Bayme money on his contract, too, didn't you? A No, he was going to loan us money. He was going to give us a mortgage and take up this bank note and the money that we owed the contractors, but that was never done. 10

Q Now, when you bought this stock, what was it you said about ten shares of stock being issued at some time? A Well, that was afterward when Mr. Franklin asked us if we had given the men the ten shares which we were supposed to give them on account—to apply on account of the physical value of the business.

Q Now, you are mixed up on that, aren't you? 20

A I don't think so.

Q Wasn't it thirty shares that were to be delivered at the inception of the contract? A Yes, sir.

Q And that was delivered, wasn't it? A That was delivered a couple of months afterwards because we didn't have the thirty shares to give out. We had to wait until we amended the certificate of incorporation before we could give out thirty shares. We didn't have enough. 30

Q Was there any ten shares that entered into that at all in any form? A Yes, sir.

Q How? A Why, I believe according—we were supposed to appraise the buses and determine the physical value and pay the men ten shares at a par value of \$100 each, which would make it \$1,000 on account, physical value of the bus, and the pool was to be paid in notes. 40

Frank J. Noll, cross.

Q Now, wasn't the physical value of the bus to be appraised at the end of the year? A Well, after reading over the contract now, yes.

Q And there was no ten shares at any time issued in connection with this contract, was there?

10 A Yes, sir. I mean the men wouldn't take them, but we made out the ten shares after the Lehrhoffs had sold, and Mr. Franklin told Mr. Lines that he would have to pay the ten shares on account, and I made them out.

Q But they were never delivered to any of you, were they? A Why, Mr. Lines said they wouldn't take them. I also made out the notes that they were to get, you know, for the physical value.

20 Q Oh, yes; that is upon the exercising of the right to purchase that those notes were to be made out, isn't that right? A Yes, sir.

Q Not at the beginning when the men entered into the contract? A No, not at the beginning; no.

Q Now, do you remember any effort on the part of your company to sell stock on the open market? A Yes, we sold some preferred stock.

Q Yes; that is why you increased your capitalization, wasn't it? A No, sir.

30 Q Sure of that? A Yes, because we only sold the preferred stock when we bought that bus permit number 259.

Q That is when you increased your capitalization, isn't it? A No, we wanted to increase the capitalization immediately because some of the men wanted their thirty shares of stock for signing the agreement. They were supposed to get thirty shares, and they demanded the thirty shares, and the officers were telling them "We

Frank J. Noll, cross.

can't give you the thirty shares because we haven't got enough." I think we only had—well, I don't know what we had. We didn't have enough.

Q Are you certain of that, that the thirty shares weren't issued as soon as you signed up the contract and at the same time? A Yes, sir. 10

Q Now, the \$500 that was paid was for the work in connection with the garage situation and the buying of the stock by individuals from individual owners, isn't that right? A Yes, sir.

Q And you knew that that wasn't part of the agreement with Mr. Franklin to render services in connection with the contract between the men and the corporation, didn't you? A Mr. Lines reported that we would have to pay him separately. 20

Q You were satisfied to pay it? A Yes, he said that was the arrangement.

Q You did pay it? A Yes, sir.

Q And the men that remained became the owners of that garage, didn't they? A Yes, sir.

Q And it has increased in value substantially? A No, sir; we never got out the price we paid on it. We lost money while we were operating it and we eventually sold it for \$60,000. 30

Q How much did it cost you? A \$51,000, and when we settled with the 22 men we settled on the basis of \$62,500, and we were trying to lease the garage right along and we couldn't get \$50,000 for it.

Q Well, how long did you use it for your buses before you sold it? A Oh, we used it from the spring of 1924 until the time we sold it in October, 1926. 40

Frank J. Noll, cross.

Q Well, you got a lot of benefit out of it by storing all of your jitney buses, didn't you? A Yes, sir; but we always lost money on it because from our experience it took \$600 a month income to run that garage.

10 Q And that accommodated your 20 or more buses, didn't it? A Well, it was built to accommodate 40. We couldn't get any outside storage because they were afraid the buses would damage their car when you put it in.

Q Now, you said, Mr. Noll, on your direct examination, that at one time you considered selling because "We have the majority of the stock and we could sell or tear up the agreement." You knew that the majority of the stockholders had the right to act in behalf of the corporation, didn't you, at any time, on that contract? A Had the right to act? I don't know what there was to be done.

20 Q You knew that the corporation's acts were controlled by the majority of the holders of stock, didn't you? A Well, by the board of directors, yes.

Q And you elected the board of directors, the majority of you in stock, didn't you? A Yes, sir.

30 Q Now, when Mr. Franklin drew that contract he told you, did he not, that it could be at any time rescinded if all of the men desired to rescind it? A Yes, sir.

Q And when you said you had agreed between yourselves that if you ever could get \$15,000 that you would tear up the agreement, you meant that was a private understanding in conversation between some of the jitney men? A No; it was at one of the regular meetings. I

40

Frank J. Noll, cross.

don't think it appeared on the minutes—I don't know why it didn't appear on the minutes, but my recollection is that it was at one of the meetings.

Q You never heard Mr. Lines say that he would never sell his bus for \$15,000, did you? A That wasn't to make the men to sell the bus; it was only that we were to release everybody from the agreement when the price reached \$15,000 and they could do anything they wanted to at the time. 10

Q When Marty Lehrhoff sold he got \$17,500, didn't he? A I don't think so.

Q I will withdraw that. When the first sales were held after the 3rd of June, 1925, how much were those sales at? A Well, I understood from one of the owners, Mr. DeHart, that he got \$13,000 and paid Mr. Franklin \$100. 20

Q After the 3rd of June? A Yes, sir.

Q Do you know that to be so? A Well, I don't know any of the prices to be so except those that I got myself.

Q Yes. A And then what we—

Q You didn't sell at \$15,000 ever, did you? A No.

Q And the agreement was not at any time destroyed until after the Court of Chancery dismissed the bill founded upon it in June, 1925, isn't that right? A Well, I think Mr. Lines kept the agreement. He had it. He had it in his personal papers. I mean it wasn't floating around our garage office. We didn't have very big offices, we just had a desk there for the watchman to sit there, and he didn't keep the papers there, he had them all at home. Probably he destroyed it. 30 40

Frank J. Noll, cross.

Q Now, you say Mr. Seymour had drawn some kind of a contract for you, or option? A I think it was an option.

Q And that was ineffective? A Yes; Holz-
hauer sold out—

10 Q Twenty-two of them sold out? A No; three of them sold out the option. After three of them sold out they said the option was no good.

Q Then more sold out? A No; then no more sold out until the 22 men went.

20 Q Twenty-two went after that option had been drawn up for you sometime before, hadn't they? A Well, that I don't—I think Holz-
hauer sold, and then we drew up the option, and two more were sold, and then we discovered the option was no good, and then nothing happened until the 22 sold.

30 Q Now, when you said that you wanted something so you could all get on your feet, you meant by that something that would keep you together long enough so that when you did sell it would be not through panic or fear, but because you voluntarily would agree on a price with the purchaser, is that right? A The main purpose was to get these contractors satisfied so they wouldn't take the garage, and we wanted to operate and we reduced our guaranteed pool rates so that there was a surplus of money, and we paid up the pressing obligations to show our good faith so they wouldn't close down on us until we got the mortgage to hold the garage.

40 Q Mr. Noll, what did this contract have to do with the garage, directly or indirectly, the contract for the sale of the buses by individuals to the corporation? A Why, the garage was our asset of the corporation. We had stock, we had sunk our money into the garage and we had to

Frank J. Noll, cross.

hold the buses together so we could hold the garage. We didn't want to throw away all the money we had put in the garage by letting the men sell out.

Q Did you have anything inserted in the contract about the garage, or refer to it at all? A No; but we drew up the contract so we wouldn't have to sell the garage and the buses. 10

Q When you dealt with Mr. Franklin on the question of the holding together of the men for the purpose of retaining your buses, the garage had no connection with that purpose, did it? A Certainly it did.

Q Wasn't it a fact that you wanted to hold your buses because you thought they were worth more money than you could get at that time? A The main fact was that we wanted to hold our buses but we wanted to hold the garage, and if we didn't do something to hold the garage and get some of this money paid off we owed the contractors, why, we would have lost all the money we had put into the garage. 20

Q How much money had the company put in the garage at that time? A Well, I don't know. It amounted to—well, that will be the sum which amounted to practically 41 times \$712.

Q No, I am not asking you what you assessed or appraised the value of the garage at— A No. 30

Q Please listen to the question. How much money had the company put into that garage before it made the arrangement by that separate agreement for the purchase of stock by the 19 of the 22 owners? How much cash was there in that garage when the mix-up occurred in connection with it? A If I had a pencil I could figure that out easier. 40

Frank J. Noll, cross.

Q How much cash had the company put into that project at that time? I don't want it exactly; I thought you might tell approximately?

A Possibly 41 times 712; then the only was the difference between \$62,500 and \$15,000 that it cost us, that is \$11,500; about half of that is
10 \$5,000; about \$24,000.

Q That is, that the company had put cash into it of around \$24,000 before they got into difficulties with the contractor? A Yes.

Q And it was costing around \$51,000? A There may have been a few thousand in between there—no, twenty-four was right.

Q When you became owners of the garage, the corporation did, and the stock of the 22 was acquired by the 19, and the mortgage was fixed up, you still ran your buses, didn't you? A
20 Yes, all during that time.

Q And you retained the garage for a couple of years after that, didn't you? A Yes; we were trying to sell it, but we couldn't get anybody to buy it. We were trying in the end of 1925—we were trying to sell the garage and also in 1926, and the only way I could sell the garage is when I made arrangements with Mr. Boylan to buy my bus, we argued over one matter—

30 The Court: If you will confine your answers to the questions, without so much explanation, we will get along a whole lot faster. At this rate, we won't finish in two days.

Q You say that Mr. Lines said to you that you were to pay five per cent. on the price the buses were then selling for at the time you discharged Mr. Franklin; is that right? Did Lines
40 say anything like that to you? A That is what I understood him to say; yes, sir.

Frank J. Noll, cross.

Q You didn't get any letter or writing from Mr. Franklin to that effect? A No.

Q Never took it up with Mr. Franklin? A No; I didn't have any time to run around to see him.

Q When you signed the agreement for Mr. Lines, who presented it to you, with the discharge of Mr Franklin which would not affect or prejudice the compensation agreement, that was done up at your company offices, wasn't it? A Yes. 10

Q Every one of the remaining owners signed that, didn't they? A Yes.

Q They were at that time consulting independent advice, weren't they? A I don't know whether they were or not.

Q Don't you know that at the time that was being signed, that Osborne & Astley had been consulted by you again? A No; because I was afraid that Osborne & Astley—I know what had gone on with Osborne & Astley. He didn't tell us anything about that; he told us to get the substitution. 20

Q Then you had consulted counsel to the extent that he told you to get the substitution? A He wouldn't take the case unless he had the substitution. 30

Q And you were getting the substitution to the name of that firm of attorneys, were you not? A Yes, sir.

Q And you therefore had contact with those lawyers before you were in this agreement with Mr. Franklin? A Yes.

Q And then you had it in your hands for several days? A I don't know how long Mr. Lines had it; he brought it up there and I signed it. 40

Frank J. Noll, cross.

10 Q At the time you signed that agreement you did it willingly, and intending it to mean what it said, didn't you, the agreement, Exhibit D, the agreement that was signed when the substitution of solicitor was given? A I didn't sign it willingly; I was willing to do anything to get that case out of the way, because that meant a whole lot to us.

Q You signed this Exhibit D unwillingly? A I signed it because I had to sign it to get the substitution.

Q What makes you think you had to sign it to get the substitution? A Mr. Lines told us that Mr. Franklin wouldn't give us the substitution unless we signed it.

20 Q Did you take that up with your substituted solicitors? A No, sir.

Q Did you think that an attorney could refuse to allow the client to change his attorney, if he wanted to, and that the Court would allow him to hold you up, if you thought you were being held up? A I don't know anything about it.

30 Q Why didn't you ask your new lawyer, if you thought you were being forced to sign something that you were unwilling to sign? A I didn't know whether I had to sign it or didn't have to sign it. I considered I had to sign it to get substitution; that is all I knew about it.

Q Did Mr. Lines tell you that Mr. Franklin very willingly gave the substitution? A No, sir.

Q What did he tell you; that he was refusing to give it? A He wouldn't give it unless we signed this letter.

40 Q You read the compensation contract very many times, haven't you? A No; I have read it over, I think, about—I must have read it when I

Frank J. Noll, cross.

signed it; I didn't have any copy of it. I signed it when Mr. Franklin started suit, after I sold my bus, in October, 1926.

Q You were secretary of this company? A Yes.

Q At any rate, whether you were or not then, you were later, weren't you? A Yes. 10

Q And that compensation agreement, a copy of which was among the papers of the company—
A Not the papers that I saw; I never saw a copy of it. After I had signed it, I didn't see a copy until after I had sold my bus, in 1926.

Q You saw that in your company's possession, then? A When?

Q After you sold your bus, in 1926, where did you see a copy of it then? A I asked Mr. Lines if he had a copy of it; he said he could dig it out among the papers, and he got it for me. 20

Q So it was in Mr. Lines' possession? A Yes, sir.

Q At all these meetings that preceded the signing of the agreement between your men and the company and the compensation agreement between Mr. Franklin, there were long discussions lasting hours; it was into the night? A Yes.

Q And almost every man there asked a number of questions on every phase of the situation, didn't he? A I know in all those meetings they would be arguing among themselves; there would be a group talking there and a group talking here, and maybe someone would be up talking to Mr. Franklin; I don't know. 30

Q Weren't there questions put aloud in the presence of all of the men and answered openly there, on the various phases of the contract and the effect of it? A Yes. 40

Frank J. Noll, cross.

Q And you understood business procedure and stock transactions pretty well at the time, didn't you? A Yes; I knew about stock.

10 Q And when you agreed to pay five per cent. on any amount that it should be subsequently sold for above \$11,000, you knew that that was in lieu of any other compensation, didn't you, for that work? A Yes, sir.

Q You knew you paid no retainer or paid no expenses being incurred in connection with the work on it, didn't you? A Yes; I knew that.

Q And you knew that you were free or that the majority of the stockholders of the company had control of the company's end of the contract, didn't you? A Yes, sir.

20 Q And you knew that if any man wanted to sell, and a majority of the stockholders or other owners felt that it was proper for buses to be sold at the time, that the majority of the stockholders could release any of the individuals from the contract by the consent of those individuals? A I understood that.

30 Q And you knew that if sales were made under \$11,000, that Mr. Franklin would not receive any compensation, didn't you? A Yes, sir; but that was unlikely, unless the price had gone down.

Q You were all afraid the price would go down, weren't you? A No.

Q You were afraid you would be forced out or left at the back end of the procession on the line and be forced out of business? A Yes; we figured the last man would be stuck.

Q And also figured the last men would be stuck? A No; I figured the last man.

40 Q And no one wanted to be last? A No.

Frank J. Noll, cross.

Q And the moment anyone sold, the others got ready, didn't they? A They started to get excited and running around.

Q They were not on their feet, were they? A They were doing a whole lot of running around.

Q They were not solid on their feet, were they, at that time? A Financially? 10

Q No; with respect to their determination to hold their buses until they were ready to sell them for a price that they thought was proper. A One said he would sell at \$35,000, and someone else said \$15,000, and someone else said \$20,000; they didn't know what they wanted.

Q But they did want to be on their feet so they could sell when they wanted to sell, and for what they thought the bus was worth, didn't they? A Yes. 20

Q And that agreement was entered into to accomplish that, wasn't it? A That agreement, as far as we were concerned, would hold us together until we got our garage straightened out, then we would have more money and would be in a better position to hold out and do what we wanted to in respect to the buses.

Q When you sold, you were ready to sell, weren't you? A I wasn't, frankly.

Q You were not, even then? A No, sir. 30

Q You received what you were willing to take for your bus, didn't you, \$30,000? A If I could have my own company, I wouldn't have sold the bus for \$30,000. I needed the money and I took the price that was being paid at that time; I didn't want to sell it.

Q Your agreement with the Public Service to sell it was a voluntary one, wasn't it? A Yes; they were the only people that would pay me the amount of money that I got for it. 40

Frank J. Noll, cross.

Examination by the Court.

Q You wouldn't take twenty-five from them for it, would you? A No; because they were paying thirty.

10 Q You got what you wanted, didn't you? A Not what I wanted; I wanted to hold my bus.

Q You got fifteen thousand more than you were willing to sell for at the time the agreement was made? A No; I didn't have any idea at the time that the agreement was made.

Q You told me this morning that you had all agreed among yourselves that when you got up to \$15,000, you were going to tear up the agreement? A Yes; and let each man determine what they wanted to do.

20 Q You were satisfied with that? A No; I wouldn't have sold.

Q You were satisfied with the agreement? A That was to hold them together.

Q You made the agreement, didn't you? A Yes.

30 Q You made the agreement among yourselves, or entered into the agreement among yourselves, that you would tear up the agreement when the price got up to \$15,000? A Yes.

Q Then you did get \$15,000 more than you had agreed among yourselves that you would accept? A Your Honor, I don't understand if I made myself clear. We didn't agree to accept \$15,000, but some of the men wanted to sell at \$15,000, and we said, "Well, when we get up to that, we will tear up the agreement, and whoever wants more can go into a new agreement, or do whatever they want," but they didn't say they were going to sell. I didn't say I was going to

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Frank J. Noll, cross.

sell. When I made the agreement, I didn't know what I was going to do.

Q Everybody was free after it got up to \$15,000? A Yes.

Further cross examination by Mr. McGeehan.

10

Q You didn't tear it up? A I didn't have it to tear it up.

Q You didn't see that it was torn up? A Before the price reached \$15,000, the Vice-Chancellor said it was no good.

Q Do you mean that? A Yes.

Q You know a temporary injunction was obtained in November, 1924? A Where I was served—

Q October. A Where I was served with the papers? 20

Q Yes. A I was served with papers that I couldn't sell, and I didn't attempt to.

Q You wanted each of the other men to be served with a paper that they couldn't sell? A Yes.

Q And that happened? A Yes.

Q And that lasted throughout part of October, November, December, January, February, March, April and May of the following year, didn't it? A Yes. 30

Q That was the condition during those months, wasn't it? A What was the condition?

Q That you were all bound by injunction not to sell your buses? A We were all bound, I suppose, by an injunction.

Q You know it was an injunction, don't you, as well as if you were a lawyer? A If I had wanted to sell at that time, they could have all sold, because if I had voted my stock with it, they would have torn up the agreement. 40

Frank J. Noll, cross.

Q You had even that understanding? A Yes.

Q You knew that while that injunction was in force you were prohibited from selling your bus and each of your colleagues was prohibited from selling his bus? A Yes.

10 Q And you knew this, too, that the majority of the stockholders of your corporation, the corporation being the complainant in the action, could apply, or have counsel apply to the Court of Chancery to vacate those injunctions; you knew that, didn't you? A All I knew about that was that these men, five of them, wanted to sell, went down to the Public Service, and they got their lawyer to come to me and said if I would give them a proxy to vote my stock, they could throw the whole thing out and they could sell.

20

Q Whenever any of those plans occurred, you ran down to Mr. Franklin's office? A No; I didn't have any time.

Q You had Mr. Lines do it? A I told Mr. Lines about it.

Q You knew he went down, didn't you? A I don't know how often he went down.

Q To come back to what I asked before, you figured that out, too, didn't you, that a majority of you controlled the attitude of the corporation? A That is what the Public Service lawyers told these five men.

30

Q You knew that all the time five or six lawyers were working on this for the Public Service? A I don't know how many.

Q You knew that the Public Service had several special counsel in addition to their regular legal staff on the jitney cases? A I suppose so.

40

Frank J. Noll, re-direct.

Q You knew that? A I knew only two of them.

Q And on June 3rd was when the bill was dismissed? A I think so.

Q That is when you say the Vice-Chancellor told you the agreement wasn't binding; isn't that right? A Yes. 10

Q Who first sold a bus after that? A I don't know. There were five of them that sold out pretty closely after that.

Q By that time the men didn't fear the propaganda that had upset them at the beginning? A We were worrying about insurance at that time; they were trying to scare me on insurance.

Re-direct examination by Mr. Osborne.

Q These ten shares, there seems to be some confusion about that. Did I understand you to say that the ten shares were issued on account of the thirty that were to be issued pending the amendment of the charter? A No, sir; the thirty were not issued until the charter had been amended, and we started to issue the ten— 20

Q Was that ten part of the thirty that was to be issued? A No; the ten was to apply to the physical value of the bus when it was sold to the Springfield Avenue Bus Co. 30

Q A payment on account? A Yes; we were supposed to have ten shares of the stock and the balance in notes in two years. I know I had an awful lot of notes.

Q Then these thirty shares were entirely separate and distinct from that; that was a bonus or gratuity? A Thirty was a bonus for fifteen shares for each share of stock which had been previously owned by the twenty-two men; who- 40

Frank J. Noll, re-direct.

ever bought that stock that was owned by the twenty-two men, got fifteen shares for each share that they had bought from him, in order to make it even, because every one of the nineteen received the thirty for the contract.

10 Q Was that part of the plan that Mr. Franklin evolved for you? A Yes; I was personally at his office at that time, because I was going to lose a lot of money on account of the balance not being maintained in the corporation. I wasn't going to get much for my \$1,600 that I had put in to buy out those twenty-two men.

20 Q You said, I think, this morning, that the issue of these thirty shares of stock didn't mean anything; what did you mean by that? A I meant for the bonuses issued it would have meant a whole lot, but Mr. Franklin advised us to give the bonus, that thirty shares bonus; so after the bonus was issued, the original men who had owned two shares originally, and who had bought two shares from the twenty-two men, he would have sixty-four shares of stock; whereas, before, if there was no contract and no bonus, he would have had four shares of stock, but the four shares would have been worth as much as the sixty-four.

30 Q These men held different number of shares? A Yes.

Q If you issued them all thirty shares, didn't that change their proportionate interest in the company? A Yes; and I went down and told Mr. Franklin that, and he said, "You have got to issue a bonus," so after the bonus was issued, the proportionate interest was nearly—I mean you had the share that you paid for.

40 Q Did these men pay rent for the use of this garage? A Yes.

Frank J. Noll, re-direct.

Q How much did they pay a month? A It is a long time ago; I think the bus that I had at that time I paid fifteen dollars a month.

Q Was the monthly rental credited in accordance with the size of the bus? A Yes; it was based on what the regular garage rates were. In fact, some of the men didn't put their bus there, because they could get it a couple of dollars cheaper on the outside. 10

Q At the meeting that has been referred to, where a great many questions were put and answered, were the questions put by the man and answered by Mr. Franklin or Mr. McGeehan for him? A I don't—

Q Questions relating to and explaining the contract and its provisions to the men. A I am very hazy on that, because I just started to take an interest in the bus business at that time. I had only attended one meeting before that time—there were two meetings, and there was always so much noise up there with all these men around the room yelling, that I am very hazy on what happened. I know I wasn't sitting up at the table there. 20

By the Court.

Q I want to see if I understand through this maze of questions from both sides, what the real situation was with respect to this bonus stock which was issued. 30

I understand your testimony to be that when Mr. Franklin came to you first, or when you solicited his services, the first thing you took up was the question of getting an agreement among nineteen bus owners to keep them together, so that they wouldn't in a panic dispose of their 40

Frank J. Noll, re-direct.

buses. That was the first thing that came up, wasn't it? A I think the whole thing was taken up together.

10 Q Everything taken up together all at one meeting? A They were all very incoherent; one would yell about this and the other would yell about that.

Q Why was it necessary to take up with the twenty-two stockholders, the twenty-two bus owners, who had already sold, any question of buying their stock in connection with this agreement among the nineteen? A At this time there were never any more than nineteen men at the meeting; the twenty-two didn't appear.

20 Q If I am wrong in my understanding, I want you to tell me so, but I will state to you now what I understand to have been the arrangement which was entered into. The remaining nineteen bus owners entered into an agreement by which they were not to dispose of their buses without the consent of all, as I understand it. Then the question came up about the garage which you had built and which was not bringing in the income which you had anticipated, because there were only nineteen left out of the forty-one or two or three. You were in financial difficulties over that and you found out that nineteen had to take care of that proposition. That is correct, isn't it?
30 A Yes.

Q Then for the purpose of taking that situation and working out the finances, you determined to buy out the twenty-two who had already sold their buses to the Public Service and who were threatening to sell their stock to the Public Service Company. The nineteen decided to buy out these twenty-two to protect their own interest in the garage; is that correct? A Yes.
40

Frank J. Noll, re-direct.

Q If I am wrong in my understanding, I want you to tell me so. A I think the question of holding the buses and all that was all one big question; I mean I don't remember them in any particular order.

Q The first meeting you had after you engaged Mr. Franklin was on the twenty-sixth of April, 1924, wasn't it? A I guess so; yes, sir. 10

Q That is the date of the minutes which you furnished an abstract of. That was the time when the agreement was entered into among the nineteen, wasn't it? A I think it was about that time; I think that was the date.

Q Look at that abstract of the minutes and see if that is correct. A (After examining minutes.) Yes, that is the time.

Q Was there anything said at that meeting, so far as your minutes indicate, about the garage or about any agreement for buying out the stock held by the twenty-two who had sold their buses? A No, sir. 20

Q Now, the next meeting of which you furnished me an abstract of the minutes was May 13, 1924. Was there any discussion at that meeting about the garage? A That was the meeting when Mr. McGeehan was there and the twenty-two men were there and the nineteen men were there, the two factions. He talked to the nineteen and the twenty-two would wait outside, and then he would chase us outside and talk to them. 30

Q That was when you took up the question about saving the garage? A No, that was taken up because we told Mr. McGeehan to negotiate for it, because the two factions were not friendly.

Q When had you taken it up before? A It was some time before. 40

Frank J. Noll, re-cross.

Q Was it after the meeting of April 26th or before? A I don't recall the date, it must have been after the meeting of April 26th.

Re-cross examination by Mr. McGeehan.

10 Q Have you any minutes there of March 25, 1924? A No, sir; I wasn't secretary at that time.

Q That is the date of the contract?

Mr. Osborne: There are no minutes between March 20 in the minute book.

Mr. McGeehan: The minutes of March 20 refer to a contract about to be signed.

(Minute book produced by Mr. Osborne and handed to Mr. McGeehan.)

20

Q Do your minutes show the execution of a contract, or when the contract was executed between the bus men and the company? A I have the minutes here that the president and secretary were ordered to sign the agreement on April 26, 1924.

30 Q You don't of your own knowledge know whether it was signed a month before that, on the twenty-fifth of March, 1924? A I don't think it was, because I signed the agreement—I believe I signed the agreement and I wasn't secretary at that time.

Q When were you made secretary? A We had a meeting on April 22nd and we elected officers and so forth, and Mr. Franklin told us that it wasn't any good, so we held a meeting on April 26th and I was made secretary at that time; because the first, on April 22nd, the directors just got together and elected officers, and Mr. Frank-

40

Benjamin Rose, direct.

lin told us that we had to have a stockholders' meeting and elect directors, and directors elect the officers.

BENJAMIN ROSE, sworn for complainants. 10

Direct examination by Mr. Osborne.

Q Are you one of the complainants in this case and one of the defendants in the suit at law brought by Mr. Franklin for fees? A Yes.

Q You were one of the signers of the agreement between the Springfield Avenue Bus Company and its stockholders? A Yes.

Q And which they signed as individuals? A Yes. 20

Q You also signed the compensation agreement for Mr. Franklin? A Yes.

Q When was this matter first brought to your attention and under what circumstances? A As I recall, the men were selling their buses—rumors around about Public Service buying. Every once in a while one or two men would sell out, and we heard that Mr. Franklin had some kind of a contract drawn up that would prevent the men from selling out, and we talked about it at one of our meetings, and we told Mr. Lines to go down and talk to Mr. Franklin about that. Soon after that Mr. Franklin was at one of our meetings explaining the contract. 30

Q You operated a bus on Springfield avenue at the time? A Yes.

Q And have you since sold your bus? A Yes.

Q And did Mr. Franklin have anything to do with the sale of your bus? A No. 40

Benjamin Rose, direct.

Q When did you first see this arrangement—
either of these agreements, the one between the
company and the members of the company and
the other between the members and Mr. Franklin,
when were they first presented to you? A At
10 one of our meetings at the Labor Lyceum in the
latter part of April.

Q Who presented it? A Mr. Lines.

Q Did he have them with him or did he just
explain them? A If I can recall right, Mr.
Franklin was there also.

Q Mr. Franklin explained the purport of the
agreement? A He did explain something about
the contracts.

Q Did you ever have a copy of that? A No,
sir; I don't believe I read that one fully.

20 Q What was your understanding from the ex-
planations given to you of the purport of the
agreement between the Springfield Avenue Bus
Company and the men?

Mr. McGeehan: I object to that; I don't
think his understanding of that is so impor-
tant. I think it would be of the fee agree-
ment.

The Court: I will hear it.

30 A I understood that was to stop anyone from
selling out at one time.

Q At one time? A One at a time.

Q What was your understanding as to the
form of that agreement; how long was it to run,
if you had any such understanding in mind? A
I thought it would be for a year.

Q Was it your understanding that that agree-
ment was to be enforced so far as the company
was concerned? A Yes, sir.

40

Benjamin Rose, direct.

Q And the suit was brought for that purpose?

A Yes.

Q What was your understanding as to the compensation agreement as it was explained to you? A The compensation agreement I really didn't know much about that; I was willing to sign it, because I wanted to do what was right.

10

Q And you did sign it? A Yes.

Q Did you understand that Mr. Franklin had prepared a paper which he signed when someone else was substituted for him as counsel for the association in the conduct of certain litigation in the Court of Chancery? A I remember Mr. Lines coming up with a letter and he said Mr. Franklin wouldn't give us a substitution unless each man should sign the compensation agreement—would sign this letter, and I signed it.

20

Q Did you have any understanding as to the effect of that letter? A I understood that the compensation agreement would be off.

Q Would be off? A Yes, sir; cancelled.

Q Did you have any understanding as to what, if anything, you would owe Mr. Franklin when you terminated your relations with him?

Mr. McGeehan: I object; he just answered.

30

The Court: He said the agreement was to be cancelled. That is true, but he still owed him some money.

A I didn't expect that Mr. Franklin—all the work that he had done up until that time would be done gratis. I was under the impression he would have to be paid for the amount of work he did at that time.

40

Benjamin Rose, cross.

Cross examination by Mr. McGeehan.

Q That was why you signed the letter? A Yes.

10 Q You didn't mean to say that you understood that when you signed that letter, that it meant that the compensation agreement would be cancelled, did you? A From then on.

Q It didn't say that, did it? A That is the way I understood it when Mr. Lines spoke to us about it.

Q You read it when you signed it? A I don't remember reading it.

Q Mr. Franklin wasn't around when it was presented to you, was he? A No, sir.

20 Q But you had with you the president of your line and the other men who were signing? A I don't know if they were all together at that time, as we were working, and he would get us when he could.

Q You can read, can't you? A Yes.

Q You did read this, didn't you? A I don't remember reading it.

Q Where did you get your understanding of what it was; from what Lines told you? A Yes.

30 Q Did Lines tell you that, before you signed, what you were signing would be a cancellation of the compensation agreement? A He said he went to Mr. Franklin to get the substitution of attorney. I was driving the bus at the time, and he would get me at the end of the line when I had a few minutes lay-over.

40 Q Answer the question; did Lines tell you from whom you say you got your impression of what this was, that the effect of what you were to sign would be to cancel the compensation that you had with Mr. Franklin? A I understood that if we got the substitution.

Benjamin Rose, cross.

Q Answer the question.

Mr. Osborne: The witness is not obliged to adopt the language of the question. He is asked specifically whether Mr. Lines said certain things, and certain words were put in the question.

10

The Court: I see no reason why I should restrict counsel for defendant any more on cross examination than I did you on direct.

A I understood the way Mr. Lines spoke to me about it, that after Mr. Franklin would give us the substitution, that we wouldn't have anything to do with him any more in regard to the contract.

The Court: Did you have any understanding in reference to that agreement, based on anything except what Lines told you?

20

The Witness: Mr. Lines was the man that was going back and forth from what we told him to Mr. Franklin's office, and telling us what Mr. Franklin said.

The Court: I ask you again, did you have any understanding with reference to that agreement based on anything except what Mr. Lines told you?

30

The Witness: My own understanding was that if Mr. Franklin was no longer doing any work for us—

The Court: How did you arrive at that understanding?

The Witness: —he was to give us a substitution.

40

Benjamin Rose, cross.

The Court: How did you know that?

The Witness: Mr. Lines told me.

The Court: Did you know anything about it except what Mr. Lines told you?

The Witness: No, sir.

10 The Court: Did Mr. Franklin tell you anything about what the agreement meant?

The Witness: No, he told us a lot of things at the meeting that didn't turn out so.

Q When Lines was talking to you, you had this written paper before you that you were signing? A I don't remember.

Mr. Osborne: May I have the paper designated with some particularity?

20 Mr. McGeehan: Exhibit D annexed to the bill.

Q You say it was your understanding that the agreement was to be enforced, referring to the agreement between the men and the bus corporation? A Yes.

30 Q You mean by that, do you not, that it was to be enforced in the event that any man tried to sell himself without consent of the others? A I understood that the company could take my bus from me if all the other men were satisfied to give theirs to the company.

Q You knew that when you entered into the contract with the corporation, that they were not going to enforce it against you, unless you attempted to sell contrary to the desire of the majority of the stockholders? A No, I didn't know that.

40

Benjamin Rose, cross.

Q That was your understanding? A I understood they could take it at any time.

Q When you signed that contract, you didn't expect that you would have to sell your bus to the corporation for thirty shares of stock in it plus certain promissory notes based on the value of the bus, did you? A It wouldn't be any different to me after they took the bus than before they took the bus, to me. 10

Q Were you there when you or others, in your presence, asked these questions: "Well, I won't have to give my bus up to the company unless I try to sell it to the Public Service, or sell it to them, when the company can recover"? A I remember those questions being asked, but we were asked by men who had sold for eleven, twelve and thirteen thousand dollars. 20

Q When that meeting took place, none of the men who had sold previously were there, were they? A When the meeting took place, the nineteen men were there.

Q None of those men had sold for any price before that, had they? A No, but they were the ones that were more scared than any of the rest, and they asked the questions.

Q When you signed this contract you knew that it was controlled by the desires of the majority of the bus owners both as individuals and as stockholders in the corporation, didn't you? A Yes. 30

Q And it was the understanding that you had, was it not, that it could not be enforced against you unless you violated the agreement to convey to the Lines corporation by selling to some other company? A I understood that it could be enforced any time. 40

Benjamin Rose, cross.

Q You didn't understand that it was the purpose to enforce it at any time, did you? A The purpose of it was to keep the men from selling.

Q Yes, until the majority of them were ready to sell, is that right? A And there was nothing done about that until the three men sold.

10 Q But your intention was to keep the men from selling until the majority of them had thought that the time had come to sell, isn't that it? A This didn't have anything to do with the majority; every man was for himself.

Q You were not willing to convey your bus to the corporation? A I was willing to do what was right.

Q You thought what you signed was right? A I signed so many papers there that I thought that everything I signed was right.

20 Q And every one of them your lawyer, Mr. Franklin, read through. A As far as I can remember.

30

40

Benjamin Rose, cross.

Continuation of testimony in the above-entitled cause, before Hon. Maja Leon Berry, vice-chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, November 9th, 1927, at 10 A. M.

Appearances:

10

Mr. Harry V. Osborne, for complainants.

Mr. John W. McGeehan, for defendant.

BENJAMIN ROSE, recalled for

Cross examination by Mr. McGeehan.

Q Mr. Rose, when you signed the compensation agreement with Mr. Franklin, you knew what the terms of it were, didn't you? A Yes.

20

Q And you heard the testimony of Mr. Lines and the other complainant in this case on the stand, as to the purpose for which you went to Mr. Franklin, didn't you? A Yes.

Q You went for the same purpose as they did, didn't you? A Yes, that is right.

Q At the time there was a substitution of solicitors in the case pending against Lehrhoff and the other cases, did you go personally to Mr. Franklin's office at any time to get the substitution signed? A No, sir.

30

Q Who attended to that for you? A Mr. Lines.

Q And when you engaged other counsel you knew, did you not, that you were still obligated to Mr. Franklin under your agreement for which he had rendered services? A After we signed the substitution?

Q Yes. A No, sir.

40

Benjamin Rose, re-direct.

Q You knew that you owed him some money?

A Yes, sir.

Q You knew you would owe him some money when the bus was sold, didn't you? A Yes.

Re-direct examination by Mr. Osborne.

10

Q Did you know when this letter was procured by Mr. Franklin, that you could get your substitution without signing that letter? A No, sir; if I did, I wouldn't have signed the letter.

Q You say you suppose you owed him something. What did you think you owed him?

Mr. McGeehan: I object to that.

20

Q What was your understanding of the obligation at that time?

Mr. McGeehan: I object to that.

The Court: Objection sustained, unless the understanding is based on something that Mr. Franklin told him.

30

Mr. Osborne: I understand whatever understanding he must have had was based on the whole transaction, some of which he got from Mr. Franklin, and some of which came through the meeting and the general situation resulting in the understanding on his part.

The Court: I say the understanding based on Mr. Franklin's representation, either by word or by act, may be admissible, but otherwise not.

40

Q From anything that was said by Mr. Franklin at any of these meetings in which the contract was discussed, and the contract between the company and the men, and the contract between Mr.

George J. Grimm, direct.

Franklin and the men, did you have any understanding as to what the compensation should be upon the termination of the agreement?

Mr. McGeehan: I object to that. He can testify to what was said.

The Court: Objection sustained. 10

GEORGE J. GRIMM, sworn for complainants.

Direct examination by Mr. Osborne.

Q Mr. Grimm, where do you live? A I live now in Springfield, New Jersey. 20

Q Did you operate a bus on the Springfield Avenue Line? A Yes.

Q Are you a member of the association? A Yes, sir.

Q Did your association have an agreement with Mr. Franklin regarding compensation? A Yes, sir.

Q And did that arise out of an agreement which Mr. Franklin prepared? A All I know about the compensation agreement is I was driving my bus when Mr. Lines called me in and asked whether I signed this compensation agreement. I said, "What is it all about?" He told me it is about paying five per cent. all over eleven thousand. If anything would happen to the buses Mr. Franklin would see that we get that for them. I didn't read it, but signed it and jumped on the bus and drove down the avenue and went out and went to work. 30

George J. Grimm, direct.

Q Did you sign the subsequent paper when the substitution of attorneys was made? A Yes, sir.

Q What were the circumstances surrounding that? What was your understanding of that?

10 Mr. McGeehan: I object to the latter part of the question; I think the paper speaks for itself.

The Court: The latter part of the question is objectionable.

Q What were the circumstances surrounding that? A All I know that the buses were sold and Mr. Lines told me—I wasn't a director of the company at that time; I didn't know anything about it.

20

Mr. McGeehan: I object to what Mr. Lines told him.

The Court: Objection sustained.

A (Continuing.) All I remember is that he said about signing the substitution to get another attorney to fight the case, and he said all we had to pay him would be up to that time for what he has done for us. That is all I remember.

30

The Court: Who told you that?

The Witness: Mr. Lines explained that.

Q Did you know that it wasn't necessary for you to sign that paper in order to get a substitution? A No, sir, I did not.

Q Were you present at the meetings when Mr. Franklin explained the agreement which was supposed to hold the men together? A Yes.

40

Isidor M. Noll, direct.

Q How many of those meetings were there?

A I just cannot remember.

Cross examination by Mr. McGeehan.

Q At the time you signed the paper with reference to Mr. Franklin's fees at the time the substitution was made, did you see Mr. Franklin yourself at all? A At the time of the substitution, no, sir. 10

Q Did Mr. Franklin say anything to you in regard to signing or not signing the substitution at all? A I didn't see Mr. Franklin; I couldn't.

Q You had no communication with him in any manner regarding his rights under the compensation agreement, did you? A No, sir.

Q And Mr. Lines acted as your agent in getting the substitution signed? A Yes. 20

Q He didn't tell you at any time that Mr. Franklin refused to sign the substitution, did he? A No, sir; not as I remember.

Re-direct examination by Mr. Osborne.

Q You didn't see Mr. Franklin at any time except when he came up to explain the agreement? A That is right. 30

ISIDOR M. NOLL, sworn for complainants.

Direct examination by Mr. Osborne.

Q You are the brother of Mr. Noll who has already been on the stand? A Yes.

Q Did you operate a bus on the Springfield Avenue Line? A Yes. 40

Isidor M. Noll, direct.

Q That wasn't the same bus your brother operated? A No.

Q You had your own bus? A Yes.

Q Were you a member of the association? A Yes, sir.

Q Did you sell your bus? A Yes, sir.

10 Q Did Mr. Franklin have anything to do with the sale of it?

Mr. McGeehan: I object as calling for a conclusion. One of the questions before your Honor is what he had to do with obtaining that price. I withdraw the objection.

A No, sir.

20 Q Were you one of the signers of the agreement prepared by Mr. Franklin for the purpose of holding the men together? A Yes, sir.

Q And did you also sign the compensation agreement? A Yes, sir.

Q Did you also sign the paper for Mr. Franklin when the substitution of attorneys took place?

A Yes, sir.

30 Q Were you present at the meetings when Mr. Franklin explained the agreement between the association and the men? A Yes, at one or two meetings.

Q And when the compensation agreement was discussed by him? A Yes, sir.

Q What was your understanding of the terms of those agreements? What did you understand the arrangement to be? A When the bus was sold to the Public Service, we were to pay Mr. Franklin five per cent. on any amounts received over eleven thousand dollars.

Isidor M. Noll, cross.

Q And when the relations with Mr. Franklin were terminated and a substitution of another attorney obtained, what was your understanding of that situation?

Mr. McGeehan: I object to that. That is the same as before. 10

The Court: Unless it is based on something that Mr. Franklin told him or represented to him.

Q Did Mr. Franklin talk with you about that paper or the termination of the relation between the men and Mr. Franklin? Did you have any talk with him about it? A No, sir.

Q Was that paper relating to the substitution presented to you for your signature by someone else? A Yes, sir. 20

Q By whom? A Mr. Lines.

Q Did you understand that you could obtain this substitution without signing that agreement? A No, sir.

Cross examination by Mr. McGeehan.

Q You say Mr. Franklin had nothing to do with the sale of the bus when it was sold, but he had a great deal to do with your not selling the bus when prices were down around eight thousand dollars, in the early part of 1924, didn't he? 30
A Up to a certain time.

Q Up to the time you got your feet on the ground and were able to hold your bus for the price that you thought was fair; isn't that right?

A No, sir. Up to the time we found the agreement was no good.

Q You found the agreement was good for a year or more to accomplish your purpose, didn't 40

Isidor M. Noll, cross.

you? A From March, 1924, until June, 1925, and that agreement was in force then.

Q And it accomplished the purpose that you had up to that time in going to Mr. Franklin?

A Yes, sir.

10 Q And at the final hearing, on the third of June, 1925, the Court refused to grant a permanent injunction, didn't it, before the Chancery Court, when Osborne & Astley were handling the substitution? A I know there was an injunction up to that time.

Q During the year and several months that the agreement was in existence, you felt it was beneficial to you, didn't you? A Yes.

20 Q You knew that Mr. Franklin during all of that period was repeatedly in conference with your representative, Mr. Lines, and other members of your line, didn't you? A Yes.

Q And you knew that he was consulted in regard to all the aspects of the bus situation that involved the holding together of the men? A Yes, sir.

Q You know Mr. Franklin appeared before the Public Utilities Commission for you on numerous occasions? A I don't know.

30 Q Do you know that he was constantly going before Mr. Crawford and other city officials at the City Hall? A That I don't know.

Q You knew that from the reports of Mr. Lines to you, didn't you? A No, sir.

Q You left everything to Mr. Lines, did you? A Yes, sir.

40 Q And at the time you signed the original agreement and at the time you signed the compensation agreement, you were present at the same time that Mr. Franklin was present, weren't you? A Yes, sir.

Isidor M. Noll, cross.

Q And you had sent, or you men had sent for Mr. Franklin to come to your meeting, hadn't you? A I don't know how it came about; I know he was there.

Q And at the time that he was there you were also there for several hours, weren't you, on two or three occasions? A Two, I think. 10

Q And during that period you and your co-jitney men on the Springfield Avenue Line were all asking a lot of questions regarding the nature of the contract, the purpose of it, and the effect of it, and Mr. Franklin's opinion on many different situations that might arise on the line, weren't you? A Yes, sir.

Q And by the time you signed this agreement, you had a perfect knowledge, did you not, of its contents—the agreement between the men on the line? A We thought we did good enough to accept the agreement. 20

Q At the same time there was discussed the matter of compensation of Mr. Franklin, wasn't there? A Yes, sir.

Q And you men didn't want to pay a retainer of cash, did you, to him as attorney? A I don't know how it came about —

Q You didn't want to pay any retainer or fee in advance for this work, did you? A I don't think we did, no. 30

Q And at the time the meetings were had regarding the contract, the contract between the men, the fee agreement was spoken of and terms discussed on which Mr. Franklin would give his services during all the time necessary to assist in accomplishing your purpose, isn't that right? A Yes, sir.

Q And later on the fee agreement was signed, wasn't it? A Yes, sir. 40

Isidor M. Noll, cross.

Q And before the fee agreement was signed did you and the other men send Mr. Lines several times back and forth to Mr. Franklin's office, discussing the terms of that agreement? A I cannot say as to that. I know Mr. Lines was to see him; how many times I cannot say.

10 Q Whenever he went there he reported to you and the other men about how he was getting along with Mr. Franklin on having the agreement for fees, didn't he? A Yes, sir.

Q And finally when you signed this agreement to the effect that Mr. Franklin was to be paid contingent on a sale of the buses over eleven thousand dollars, that he was to be paid five per cent. on such excess, you were satisfied, weren't you? A Yes, sir.

20 Q And you knew what it meant, didn't you? A Yes, sir.

Q And you knew that if the bus was never sold for as much as eleven thousand dollars, you would never have to pay Mr. Franklin anything, didn't you? A Yes, sir.

Q And at that time no bus on your line had been sold for any eleven thousand dollars, had there? A They hadn't been sold; there were offers.

30 Q There had been no sales, had there? A No, sir.

Q Then after that you knew that Mr. Franklin had the agreement prepared; that he sent notices to the Public Service, John T. Geran, and the general transportation agent, don't you? A Yes.

Q You know that he served a notice upon each owner of a bus who had signed such a contract?

40 A Yes, sir.

Isidor M. Noll, cross.

Q And then from then on you felt at liberty to consult Mr. Franklin, or send your representative, Mr. Lines, and others, for anything that needed to be done in the way of legal work, in so far as the general corporation interests of the men in running their jitneys were concerned, didn't you? A He agreed to do that; that was in the contract. 10

Mr. Osborne: I object to the question. I cannot understand what counsel means by "general corporation interests" in connection with the men running the buses.

The Court: Suppose we substitute "association" for "corporation."

Mr. Osborne: I don't object to that technical aspect of it. The men were running the buses; the corporation was not running the buses. 20

Mr. McGeehan: I withdraw it.

The Court: Strike out the question and answer.

Q From the time that the contract was signed with Mr. Franklin and between the men on the line, you knew that the terms of the contract required Mr. Franklin to render any and all services necessary to carry out the purpose of the agreement between the men; you knew that, didn't you. A Yes, sir. 30

Q And from then on you as a jitney owner, together with the other men on the line, would either go or send Mr. Lines to repeatedly consult Mr. Franklin and have him do work to carry out his agreement, from then on up to the time the substitution was signed; isn't that so? 40

Isidor M. Noll, cross.

10 Mr. Osborne: I object to the question; first, because it asks the witness to assume to say what other people did; and secondly, because it assumes a situation for which there is no justification in the testimony; that is, that this man repeatedly sent Mr. Lines to consult Mr. Franklin regarding this matter.

The Court: Mr. Lines was his representative. He has already said that.

Mr. Osborne: The question is whether this man repeatedly sent him. These questions are all very leading; they are putting testimony in the witness' mouth.

The Court: Read the question.

(Last question read.)

20 The Court: Objection overruled.

A No, sir, I did not, because I worked at night and I very seldom saw Mr. Lines myself.

Q You seldom saw Mr. Lines? A Yes, sir.

Q Mr. Lines was president of your line, wasn't he? A Yes.

Q Mr. Lines was your representative in all matters concerning your jitney interests, wasn't he? A Mostly everything.

30 Q Who else represented you, if any one, on your line besides him? A What I mean is, he didn't do all my business.

Q He did all the business that you had as far as— A Business concerning Mr. Franklin.

Q He was your agent and representative in dealing with Mr. Franklin and in handling the jitney problem that was involved and referred to in the contract, wasn't he? A Yes.

40 Q When you say you didn't see Mr. Lines often, you ran your bus every day, didn't you? A Yes.

Isidor M. Noll, cross.

Q Did you run it at night or in the daytime?

A Nights.

Q Always at night? A Yes, sir.

Q Never ran it in the daytime. A I had another man running the day shift; I worked at night.

Q Did you run it yourself in the daytime sometimes? A At night from three-thirty in the afternoon on. 10

Q Did Mr. Lines run a bus on that line? A He did not drive himself.

Q He would go from bus to bus and see the different men during that period, wouldn't he?

A Yes.

Q And you saw him repeatedly, didn't you?

A Once in a while, when he had something that he wanted to see me about. 20

Q You had regular meetings of the men up there, didn't you? A Yes.

Q How often did you have them? A I cannot say; I didn't go to them; they were at night and I worked at night.

Q Didn't you attend any of them? A Once in a while, if there was anything of great importance.

Q It was at night, for instance, when on the two occasions for several hours each time you listened to Mr. Franklin discussing these contracts? A Oh, yes. 30

Q So you would get away at nights and had a relief driver? A I could get one any time.

Q You knew what was going on on your line all the time through Mr. Lines and the others?

A I don't know everything; what I was told, I knew.

Q And you were satisfied to have Mr. Lines represent you in dealing with Mr. Franklin, weren't you? A Yes. 40

Isidor M. Noll, cross.

Q He knew the jitney interests; he knew the jitney situation; you knew that, didn't you? A He was supposed to be taking care of our interests.

10 Q You considered him to have a good, practical knowledge of the jitney men's requirements, didn't you? A Yes, sir.

Q And when the negotiations were taking place for the contract with Mr. Franklin, you knew he was going for you and the others to Mr. Franklin, didn't you? A Yes, sir.

Q And later on, when the substitution was gotten, did you know that he was going to Mr. Franklin for the substitution? A Yes, sir.

Q And did you know that he obtained the substitution from Mr. Franklin? A Yes, sir.

20 Q And did he present to you the stipulation, or agreement, Exhibit D in the complaint, that is, the understanding that the paper that was signed at the time the substitution was obtained from Mr. Franklin, concerning the continuance in effect of the agreement for compensation; you signed that, didn't you? A We had to sign something to get the substitution for Mr. Franklin, is that what you mean?

30 Q You signed a paper when the substitution was gotten, didn't you? A Yes.

Q Who presented that to you? A Mr. Lines.

Q And do you know whether that was signed before the substitution was signed or not? A No, sir, we had to sign that to get the substitution.

Q Do you know whether the substitution had been signed before you got that paper to sign or not? A I was told we had to sign that to get the substitution.

40

Isidor M. Noll, cross.

Q Then you were told what that was, weren't you? A I believe I had some explanation about it. I didn't read it myself; it was presented to me while I had people in the car and I signed it.

Q You read English, don't you? A Yes, sir.

Q And were there several other men on the line there when that was signed? A I cannot say; it was presented to me while I was driving my bus; stopped there and signed it. 10

Q It wasn't at a meeting of jitney men? A I didn't sign it at any meeting.

Q Mr. Lines himself gave it to you? A Yes.

Q He explained what it was? A He didn't have any time to explain anything. "You have got to sign this," and I signed it.

Q You knew what you were signing, didn't you? A He said, "You have got to sign this to get the substitution from Mr. Franklin." 20

Q You knew what was said long before you signed, didn't you? A No, sir.

Q You mean to say you didn't have any idea what you were signing at all? A Yes, I had to sign it to get the substitution; I didn't look at it to see what it was or anything; I didn't have time.

Q Didn't Mr. Lines tell you what it was that you had to sign to get the substitution? A No, sir. 30

Q You don't sign papers as they are handed to you, for Mr. Lines? A I did.

Q You knew that wasn't a bill of sale for your bus, didn't you? A He told me I had to sign this to get a substitution from Mr. Franklin.

Q Did Mr. Lines at the time he told you that in any way complain that Mr. Franklin wouldn't sign a substitution until something that he didn't want you to sign or the others to sign, was given? 40

Isidor M. Noll, cross.

A Yes, he had some kind of an argument with him, and that we could not get the substitution unless we signed this letter, whatever it was.

Q So, then, this letter that you were going to sign, or whatever it was, was something that you knew from Mr. Lines he did not want to give to
10 Mr. Franklin; is that right? A I don't suppose he wanted to give it to him; he said we had to give it to him to get the substitution.

Q Did he say to you, "Mr. Franklin won't sign a substitution unless he has this signed," and words to the effect that we should not sign it, but we have to sign it; did he say anything like that? A He said words to that effect. Not that we should not sign it; he said we had to sign it.

Q He just said to you, then, "Here, we will
20 have to sign this to get the substitution"? A Yes, to get it.

Q And you didn't look upon it as anything that was in the nature of an unjust demand, from anything that Lines said to you? A I didn't think that he should have went that far to make us do anything like that.

Q You thought that at the time it was presented to you by Mr. Lines? A Yes.

Q You understood what you said just then,
30 didn't you? A Yes.

Q When you say that you didn't think he should go that far to make you sign anything like that, you must have known, then, what the contents of "anything like that" was, didn't you? A No, sir; we had signed one compensation agreement; what more did he want?

Q Did that enter into your mind, that you signed that? A I thought we had signed a compensation agreement; what more could he want from us?
40

Isidor M. Noll, cross.

Q So you knew, at least, then, that this had something to do with compensation, didn't you?

A No, sir.

Q You didn't? A He was to be paid by that compensation agreement for all the work that he did for us.

Q You have always intended that, haven't you? A Yes. 10

Q And if that paper merely says that, then you were not signing anything that you objected to signing, were you? A I cannot say what the paper said.

Q A moment ago you said, in addition to your statement, that you didn't think he ought to make you do anything like that, the next answer you gave was that you did sign one compensation agreement, why should you sign that paper, and that you had that in your mind at the time you were about to sign it. How could you have that in your mind if you had no knowledge from Lines or from reading the paper, that it was in relation to compensation? A I don't know that that paper was in relation to compensation. 20

Q You don't know that yet? A No, sir.

Q You mean to say that you don't know what you signed for Mr. Lines, or gave to Mr. Lines at the time the substitution was being gotten? A Yes. 30

Q You don't know now? A I never looked at it; I never read it.

Q At this moment as you are on the stand, do you or don't you know what the paper was that you signed at the time Mr. Lines obtained for you a substitution in the chancery case? A I do not.

Q Don't you even know what it is in regard to? A No, sir. 40

Isidor M. Noll, re-direct.

Re-direct examination by Mr. Osborne.

Q Was the original agreement between the association and the men and the original compensation agreement signed at the same time? A I think they were both signed at the same time.

10 Q And the fee agreement was not signed later on, as stated in the counsel's question—Mr. McGeehan's question to you? A I cannot say; I think we signed both of those at the same time, the agreement and the compensation.

Q When was it that you found that this agreement which Mr. Franklin had prepared to hold the men together, was no good; when did you first discover that? A When he sued to get these three buses back.

20 Q Was that when the first man sold—the first, second and third man sold? A No, that was after twenty-two had sold. These three sold in spite of the agreement.

Q That is when you first discovered it? A After the Court ruled it was no good.

Q You were asked whether you did not have a perfect knowledge of the agreement between the association and the men, and Mr. Franklin and the men.

30 Mr. McGeehan: I object; I don't think I asked that question.

Mr. Osborne: I recall writing your words down at the time.

Mr. McGeehan: Then I withdraw the objection.

Q Whatever agreement you had, whether perfect or imperfect, was obtained from Mr. Franklin in those meetings which he attended? Yes, sir.

40

COMPLAINANTS REST.

Merritt Lane, direct.

MERRITT LANE, sworn for defendant.

Direct examination by Mr. McGeehan.

Q You were of counsel for the Public Service Company in relation to litigation arising out of a contract on several of the jitney lines in the city? 10

A I was.

Q And during the period covered by the litigation arising out of the contract did you appear individually and by assistants at various hearings that were held? A I did.

Q And did you perform services in relation to the general situation existing during the years 1924 and 1925 of the buses or bus lines of the city? A Yes.

Q With particular relation to the agreement intending to hold them together that had been signed on the various lines? 20

Mr. Osborne: I object unless the inquiry is confined to the Springfield Avenue Line.

Mr. McGeehan: There is and will be no inquiry on any other line. This relates to his knowledge of the matter.

A I did.

Q During such representation of the defendants in those proceedings did you get in contact with the complainants' attorney, Mr. Franklin, and sometimes with myself? A I did. 30

Q Where would you come in contact with the complainants' attorneys in those matters? A At the Chancery chambers in Newark, and at the private chambers of the vice-chancellor.

Q Can you tell, Mr. Lane—by the way, you were asked to be a witness just as you sat here just now? A I was going to say that in a moment myself. 40

Merritt Lane, direct.

10 Q And under the circumstances you have no recollection, I presume, of the various dates and specific activities in the matter, have you? A I have not; it has been three years—approximately three years—two years at any rate; I have forgotten or haven't had it brought to my mind since that time.

Q Can you tell whether or not he did—a great deal of work was done by Mr. Franklin in connection with these bus matters?

Mr. Osborne: I object unless we know what particular bus matters the question refers to.

20 The Court: This is Springfield Avenue Line, as I understand it.

Q Do you remember the actions on the Springfield Avenue Line? A My recollection is that there was an application for an injunction, a temporary injunction and an argument on that, and I think several appearances on Springfield Avenue Line. I may be mistaken, but that is my recollection. There were several lines involved there and several suits, several litigations.

30 Q Mr. Lane, in connection with the Springfield Avenue litigation were there or were there not many legal points raised in and considered in relation to the validity or invalidity of the contract and with relation to the right of the complainants to a temporary, and later with respect to their right to a permanent injunction against purchases by the Public Service and other parties in alleged violation of the contract? A I would say that there were.

40

Merritt Lane, cross.

Mr. Osborne: Raised by you?

The Witness: There were many raised by me.

Cross examination by Mr. Osborne.

Q And they were successful ultimately, were they not? A The record speaks for itself on that. 10

Q In the Court of Chancery? A The record speaks for itself on that.

Q You say there were litigations involving other lines? A Yes.

Q A number of other lines? A Three or four, I think, at any rate.

Q And there were contracts, or copies of contracts served on your clients by Mr. Franklin? A Yes, numerous notices and numerous contracts. 20

Q Not only in connection with the Springfield avenue buses, but numerous other lines around the city? A Yes, I say numerous; I say three or four.

Q And they were all in the same general form? A I think they were.

Mr. McGeehan: I object.

The Court: Objection sustained. You yourself insisted on holding this down to the Springfield Avenue Line. 30

Mr. Osborne: Mr. Lane mentioned other lines.

The Court: It was not in response to any direct question of Mr. McGeehan. He stated that in response to your question.

Q On the termination of this litigation the defendants were required to pay costs, were they not? 40

Merritt Lane, cross.

Mr. McGeehan: I object. The record would show that in this court.

The Court: I will permit it. It is usual that the losing party pays costs.

10 Q And a counsel fee? A My recollection is that that is so. I do not remember the counsel fee. There may have been counsel fee included. I think it was, but it was small.

Q \$500? A Something perhaps around that. I remember we collected some costs.

20 Q Are you able to distinguish or differentiate in your recollection between the appearances and services which you observed Mr. Franklin rendering between the cases of the operators of the Springfield Avenue Line and other lines? A I should say no, except in a general way. My recollection is that the Springfield Avenue Line was considered an important line. I cannot take my mind back two or three years and differentiate between the different actions, but I think that was important.

30 Q There were other cases brought before that, were there not? A Yes, I think there were, if my recollection serves me right, two or three individual cases involving the Springfield Avenue Line.

Q The Springfield Avenue Line cases were the last ones, were they not? A I think that is so.

Pearce R. Franklin, direct.

PEARCE R. FRANKLIN, sworn for defendant.

Direct examination by Mr. McGeehan.

Q You are the defendant in this proceeding?

A I am.

Q You were the plaintiff in the suits instituted against George Grimm and others in the Court of Common Pleas, were you not? A I was. 10

Q You are, of course, a practicing attorney and counsellor at law and solicitor of this court?

A Yes.

Q Do you remember the occasion of beginning the representation of the Springfield avenue jitney owners in connection with the situation existing upon their line in the early part of 1924? A I do. 20

Q Prior to that time had you had any special knowledge or experience in connection with the jitney buses and their problems and the law pertaining to the same? A I had.

Q State briefly what that experience was. A My first connection with the jitney situation and the problems concerning jitney men was in the years 1921 and 1922, when I was a member of the Assembly. It was then that the first onslaught on the independent jitney operators started, and I became associated in a general way with the jitney people, knew their troubles, and as time went on became interested in their framing and re-framing and final passage of the Elliott Bill. Then from then on until 1924, when the Public Service determined to buy jitney buses, I represented individual jitney operators from time to time, not as an association, but individuals. 30 40

Pearce R. Franklin, direct.

Q The Elliott Act was the statute regulating jitney buses through the State and creating jurisdiction in the Public Utilities Commission under certain circumstances generally with the city and others? A That is correct.

10 Q At the time that you entered into the Springfield avenue situation, the contract that was the basis of these proceedings, had you been making a study of the situation that was developing then, wherein what you call the onslaught against independent owners, was occurring? A I say I had been attending conferences between the municipal authorities of Newark, Irvington and all the surrounding municipalities, wherein jitneys terminated, learned their attitude towards the continuance of independent jitney operation
20 in this county at least. I had appeared before the Public Utility Commission on many occasions and knew their attitude towards independent jitney operation. Judge Osborne, by the way, was a member of the commission at that time, and I knew that there was nothing to fear, and I broached the jitney subject with the men from that point of view.

30 Q You say you "broached the subject"; how did you come to broach the subject with relation to the Springfield avenue; how did you come to first meet that? A Mr. Lines came to my office—

Q And then what did you do after Mr. Lines came to your office? A I had a conference—Mr. Lines came to my office, and that very night I attended a meeting of the Springfield Avenue Bus Company.

Q How did you come to go up there? A Mr. Lines had asked me to come up.

40

Pearce R. Franklin, direct.

Q Then when you went up to the meeting how many men were there? A I cannot state clearly, but I think all of them were there, the nineteen; only the day prior the twenty-two had gone out in a group to the Public Service and sold, and these men were in a frenzy.

Q How much did they sell for, if you remember? A I cannot recall, but fabulously low prices. 10

Q About how much? A Six or seven or eight thousand or nine thousand—no higher than nine.

Q And had they all sold at one time or had those sales been strung over a period of a number of years? A No, as I recall it, they went approximately all at the same time.

Q Do you think any of them brought as high as ten thousand dollars? A I do not. I do not for this reason, that the price that was prevalent at that time was \$9,100, and that was the basis of the contract for compensation. 20

Q You mean it was the basis of the proposed contract that was later changed to eleven thousand? A Right.

Q Now, when the men came to you, or Mr. Lines came to you and invited you up to that meeting, the remaining nineteen owners were there? A I think they were. 30

Q What did they state to you about their desire; what did they state their problem to be, their fears and their purposes in consulting you? A They felt they had made—they stated that they had consulted with several attorneys in an effort to obtain something which would hold themselves together as against themselves; that they were selling to the Public Service; that none of them actually wanted to sell; that they wanted 40

Pearce R. Franklin, direct.

to continue, but that each one was being grabbed off, so to speak, by the Public Service, for prices which they considered to be inequitable. They wanted something to hold them together so that they could prevent themselves, except as a group, from selling to the Public Service or anyone else.

10 Q In your opinion were those prices inadequate that they were receiving? A They were usually based on the income and the value of each particular bus.

Q Did you make a survey of the Springfield Avenue Line and other lines to determine what their gross income was, approximately? A I did.

20 Q What was the gross income, approximately, of the buses on the Springfield Avenue Line—their gross monthly income? A About \$1,800 a month.

Q Did they reach that high back in 1924? A I think they did.

Q Do you know what the net income averaged upon that line for buses at that time, after deduction of the operating expenses, approximately? A Well, a gross income of fifty or sixty dollars a day, there was a net return to them of at least twenty a day.

30 Q So that the buses were making something like \$7,000 a year net at the time, apiece? A Yes, sir.

Q And the prices that were being paid were a thousand or two or three over that? A That is correct.

Q Did that include the transfer of the franchise or permit? A It included the permit, the good will connected with it and the bus.

40 Q Did the men want to sell their buses at those prices? A They did not.

Pearce R. Franklin, direct.

Q Were the majority of the men on the line, or had the majority of the men on the line sold for those prices, or under it? A They had; there were forty-four originally.

Q There were forty-four originally on the Springfield Avenue Line? A Yes.

Q With respect to these eighteen men, what was the first plan that was proposed to them and which was rejected? A They proposed, or I proposed that each of the men transfer to the corporation itself the title to the bus, together with the permit, and have issued to him and them stock representing the full value of not only the bus, but the business, but the men said that would not do. 10

Q Why would that not do? A Because they distrusted each other. 20

Q Did they say so frankly? A Absolutely. You couldn't get them to do it.

Q Were there other plans suggested to them that you believed would be completely effective to prevent individual sales? A We proposed—

Q Were there other plans? A Yes, there were.

Q What was the fear in each man's mind as to what would happen if these sales continued?

Mr. Osborne: I object. 30

Mr. McGeehan: I meant to determine the purpose of the men, what they wanted. I withdraw the question.

Q What did the men want to have? A They wanted to avoid sales by individuals.

Mr. Osborne: I object to the question in this form. It is asking the witness to state and testify as to the state of mind—

Mr. McGeehan: I withdraw it. 40

Pearce R. Franklin, direct.

Q What did the men tell you they wanted to avoid? A They told me they wanted to avoid immediately sales by the men, so that the last few or the last number would not be left high and dry without anything to sell for a proper price.

10 Q Were you familiar with the effect of a condition in which a small number of independent operators would be running on a line with a large number of Public Service buses? A I was familiar.

Q Were you familiar with racing and reorganization of schedules and allotment of trips and all that? A The reorganization of trips was a very important feature, for after the Public Service obtained a majority of the buses on the line, they had put in force what they called
20 "group operation," that all the independent jitney operators traveled in a group, and that if the last one did not come to the one terminus of the line until a minute after his proper time, he was left over until the entire Public Service group had started out.

Q Without going into the details, was the ownership of a small number of buses—a very small number compared with the Public Service ownership of a large group, detrimental to a
30 profitable operation of the bus by one of the minority independent operators? A It was very detrimental.

Q Did the men discuss that with you? A They did.

Q After they rejected the corporate plan you spoke of, or whatever other plan you suggested, was the agreement which is the basis of this proceeding finally brought up for discussion? A It was.

40

Pearce R. Franklin, direct.

Q Did you advise the men as to whether you considered it as strong or as positively effective to accomplish their purpose as a corporate plan?

A I considered it not to be as strong, not to be as certain.

Q Did you tell them that? A I did.

Q Did you give your opinion as to the effect of this agreement? A I did. 10

Q Did you guarantee or assure them of any positive results of various litigations that might arise at any time? A I did not, because I could not.

Q What did you tell them was your opinion as to the effect of the agreement? A I told them that upon the signing of this agreement, if there were any threats made, that I thought we could get an injunction in the Court of Chancery, which injunction would be temporary, and would prevent the individuals from selling their buses until such time as a final hearing could be had. 20

Q What was your instruction as to the specific performance action under the agreement? A It being personal property, the subject of which I told them I thought, even though this was personal property, it was of such a peculiar nature that I thought the Court of Chancery would countenance an action like that. 30

Q Had the Elliott Act been passed before that time? A Oh, yes, long before.

Q And were the permits issued to buses on lines which adopted the policy of the Public Utility Commission, limited to the number then operating? A It was limited to the number then operating.

Q And were new permits obtainable on those lines, or had any been obtained on any of the 40

Pearce R. Franklin, direct.

lines in the last five years or four years? A They had not.

Q Was the permit or franchise transferable on sale of a bus. A It was transferable only upon obtaining the municipal consent and the approval of the Public Utility Commission.

10 Q And had such approval been given on all sales of buses whereby a bill of sale—the bus was transferred, so far as you know? A The Public Utility had been approving them, yes.

Q In the subsequent application for a temporary injunction, was one of the points raised that a bus being personal property was not the subject of a decree by the Court of Chancery for specific performance, because the remedy would be obtainable at law for breach of said contract?

20 A That was raised, together with many others, and the only one that was sustained in the first litigation in the Court of Chancery was that with reference to the transferability of the stock which we issued as part payment on account of the physical value of the buses.

Q Did that come up on this line? A That did not come up on this line.

Q But on this line was the question raised as to the specific performance question? A It was, together with many others.

30 Q Was that decided at the time the original temporary injunction was granted?

Mr. Osborne: I object, as counsel said in making a similar objection when I was trying to cross examine Vice-Chancellor Lane, the record will speak for itself.

The Court: This is in reference to this particular record?

40 Mr. Osborne: The record isn't here.

Pearce R. Franklin, direct.

Mr. McGeehan: I withdraw the question as to what the vice-chancellor held at any stage.

Q After this, at the time this meeting was held with the men, how many meetings were there before that contract was signed? A I don't recall, but two or three. 10

Q How long did they last each time? A Sometimes all night long, starting from half-past seven or eight o'clock.

Q Up to what time? A Eleven or twelve, sometimes one o'clock; they wrangled so much.

Q And these nineteen men which you say were there, did they all participate, or only some of them participate in the talk concerning this contract? A It was a general discussion by all of them. All of them asked questions. 20

Q Did they do more than ask questions, I mean more than ask questions of you; was there a general talk between them? A A general discussion between all of them.

Q Arguments and such things? A There was.

Q Did they finally agree to sign the contract? A They did and they all signed it.

Q Was there any portion, sentence or word in that contract that wasn't gone over by these jitney men with you before they signed it? A There was not; they spent a great deal of time on it. 30

Q Did they question you about situations that might arise under it?

Mr. Osborne: May I ask which contract you refer to?

Mr. McGeehan: The basic contract between the men I am speaking of. 40

Pearce R. Franklin, direct.

A They did. As I say, there were two or three meetings, at which every conceivable question with respect to their interests was discussed.

Q Was your compensation discussed by you with those men, particularly with Mr. Lines, then or about that time? A Not at the first meeting
10 or even the second meeting; after the third meeting.

Q Was it discussed before the contract was signed by the men? A Oh, yes, many times.

Q And what had you stated to them with reference to your fees; what had they stated to you with reference to fees? A I stated to them that this being a contingency—

Q Why was it a contingency? Did they say anything about wanting to pay a retainer? A
20 They did not; they didn't have the money to pay it. They were operators who made just enough money—

Q How did you know that? A They told me, and I knew them; I was in contact with these men for three or four years.

Q Did they discuss with you what the terms would be for your undertaking to represent them? A They did.

Q And what was the first amount discussed
30 that you would charge on this contingency? A The first amount proposed by me, and the one that I wanted, was seven and one-half per cent. above \$9,100 up to \$12,000, and above \$12,000, five per cent.

Q And were the men willing to pay that? A They were not; they questioned about it, and said that there had been offers here and there for \$11,000, although, in fact, there were not, but I consented to make it five per cent. above \$11,000.
40

Pearce R. Franklin, direct.

Q How had the \$9,100 been established? A The \$9,100 had been established as the highest price which could have been obtained at that time, and that was the starting point; they felt that up to that time they could sell their bus without any assistance, and beyond that point there was a question as to whether they would ever get any more. 10

Q And then later they said, as you testified, that there had been sales or offers of \$11,000? A They say so, but there weren't.

Q You agreed to fix \$11,000 as the minimum amount upon which you were to receive compensation? A I did.

Q Had the contract been drawn with the original amount? A Yes, when I drew the contract, I drew it according to my understanding, and then when they came to sign it, I just struck out the typewriting, and put in the eleven thousand, five per cent. above the eleven thousand. 20

Q Who was it that carried on those negotiations? A Mr. Lines.

Q And did you go over it with the other men as well? A I went over it with Lines particularly.

Q Had you gone over it at the meeting, the original figures of seven and one-half per cent. over \$9,100? A With the men. 30

Q And did Lines carry to you the negotiations, or carry on with you the negotiations, and then later when this was signed, was it signed in your presence, the compensation contract, or was it done by Lines? A It was done by Lines, I think; I wasn't present at any of the meetings when they signed that agreement.

Q That is dated the fifteenth of April, 1924; is that the date when it was signed? A That is the date when it was signed. 40

Pearce R. Franklin, direct.

Q And it was about a month after the other was signed, almost a month. A The original contract is dated the twenty-fifth of March, 1924.

The Court: What do you mean by the original contract? There are two contracts here.

10

Q You said one was signed a month before the compensation agreement was signed. A I meant the contract between the association and the men to sell the buses to the association.

Q The contract between the men and the bus association is dated the twenty-fifth of March, 1924; do you know if that is the date when it was actually signed? A That is the date when it was signed, actually signed.

20

Q From March, when it was signed, up to sometime at or near the third of June, 1925, did you perform services under this contract? A I did, and I performed many services.

Q Will you describe what service you rendered? What did you do after that contract was signed? A From the time that contract was signed, aside from the court work—

30

Q What did you do after the contract was signed? A Sent notices to the Public Service and all its subsidiaries, all its agents who were then buying buses, whom I knew to be buying buses, notices that this contract had been signed and for them to keep their hands off. They were sent by registered mail and with a return receipt requested. After that Mr. Lines representing these men and sometimes in company with these men, came to the office sometimes two and three and four times a week, whenever there was any rumor on this line or any other line, Lines would come in and want to know the purport of it.

40

Pearce R. Franklin, direct.

They expressed their fears and wanted to know whether or not they should be concerned. The question of schedules from time to time was discussed, and appearance at the City Hall—

Q By whom? A By me, appearances at the City Hall, trying to keep these schedules out of effect, or to permit the men then operating to operate the schedules that would be at least half-way beneficial to them. They always were under the fear that they were going to be driven out of business, and there were indirect attempts to do it, aside from getting them to sell their buses, as I mentioned before, and group schedules. I appeared before the Public Utility Commission for them. I had many appearances in court to obtain a temporary injunction, and then instituted the suits against Max Greene and the two Lehrhoff boys, after they had sold. There had been no threats by the men on this line to sell until the Lehrhoff boys suddenly sold, and it was on that basis that the injunction proceedings were obtained.

Q Was there a separate suit for specific performance against the Lehrhoffs and the Public Service brought, as well as the injunction suit against the remaining men on the line, that suit being brought in the name of the corporation? A Yes, and with that temporary injunction continued until after the Max Greene and the Lehrhoff cases were decided, these suits were discontinued by consent of the Springfield Avenue Bus Company and the men, some time in July, 1925, a month at least after the Lehrhoff and the Greene cases for specific performance were decided.

Q You said the first threats of sale occurred just before you brought the suits in the Lehrhoff matters? A Yes.

Pearce R. Franklin, direct.

Q When was that, approximately, that the Lehrhoff sale took place? A I think September, 1924.

Q And how soon after that occurred did you take action against them? A Within a week, perhaps days.

10 Q Did you at or near the same time take the injunction proceedings against the other owners of buses in the name of the corporation? A Yes, I took that first; I took the injunction against the men first.

Q And in doing that did you have the express approval or not of Mr. Lines and the other men on the line? A Yes, not only their approval, but their request to do it, and do it immediately, which I did.

20 Q Were various affidavits signed by Mr. Lines and others in those papers? A Yes, sir, verifying the bill, and they were voluminous affidavits.

Q Then when you applied for your preliminary restraint order, the preliminary restraint was given on *ex parte* appearance, was it? A Yes, it was.

Q Then when you applied for the temporary injunction, was there an argument upon that? A There was an argument.

30 Q Do you know how many appearances you made at that time in connection with it and the continuance of it? A There were several continuances, and then one final argument.

Q You are speaking now of the general injunction suit against the men? A Yes.

40 Q And did you have similar proceedings in the Lehrhoff case? A I did. The Lehrhoff case was instituted in September; Vice-Chancellor Lane asked for time in which to file an answer. He filed his answer on December 30.

Pearce R. Franklin, direct.

There had been several continuances in the case, and the reference was made in February, and in March, Vice-Chancellor Backes set the date as of June. That was the nearest date he could give us. There was no delay in that case.

Q Sir? A There were no delays in that case at all. 10

Q At the time that the men, including these complainants, through Mr. Lines, asked for substitution, what month was that in, do you remember? A It was in May.

Q And at that time had the vice-chancellor designated the date for the hearing? A He had designated it in March, two months before that.

Q You were awaiting that time? A That was all I could do.

Q Did you inform the men that the case was set down for the third of June? A Yes, not only verbally, but by correspondence, of which I have copies. 20

Q Were you ready to proceed with these cases on the third of June? A I was.

Q In addition to the matters that you have spoken of, was any new plan devised by the Public Service to put into operation as an effort to get buses on the line outside of a direct sale, and a test of its validity of these proceedings? A Yes. 30

Q What did they do then in connection with the contract? A That proceeding was to have the men give the Public Service Transportation Company a power of attorney to operate his bus, not by a sale, but by a power of attorney, and they pay him the full compensation that they were paying the other men up to that time, and that had the effect, although it didn't violate the contract, it had the effect of obtaining what the Public Service wanted, and that was the ability to run buses; and it was after that that the men voluntarily discontinued the contract without 40

Pearce R. Franklin, direct.

testing it out in court—discontinued the contract because we feared that a number of these men—that is, a majority of those remaining on the line—should turn over their buses to the Public Service, under this power of attorney, and the stock connected with it; that there would be then sufficient strength in the hands of the Public Service to enforce this contract as against the minority, or the few that remained.

10 Q Did you test the effectiveness of that plan in the Court of Chancery under the contempt proceedings? A I did, against a man named Dominick Farrarer.

Q Was that on this line? A No, that was not.

20 Q Mr. Franklin, under the contract that you prepared, what was the understanding of the men as to their rights to determine by a majority of the members on the line to sell their buses at any time?

Mr. Osborne: I object.

Of course, it is objectionable, unless it is the understanding arrived at from something that they told him or represented to him.

Mr. McGeehan: I withdraw the question.

30 Q At the time you had the talks with the men at the time the contract was signed, what did you explain to them to be the effect of it so far as the majority of the owners of buses having the right to at any time cancel the agreement? A I told them that so long as the majority desired, the contract as against all of them would stand; that as long as a majority desired to sell, or not have the contract in effect any longer, they could by a majority vote wipe out the contract.

40

Pearce R. Franklin, direct.

Q That is they could release—they could act for the corporation? A And release any one or all of them.

Q And any man that wanted to be released then could be released? A Yes.

Q What did they want at the time with respect to some plan that would enable them to act or not act in a group and together? 10

Mr. Osborne: I object, and suggest that the question should be reframed so as to indicate the time, and also not what the men wanted, but what they said.

The Court: I assume that he knows what they wanted only from what they told him.

Mr. Osborne: Yes; his understanding or recollection of what they told him. 20

Mr. McGeehan: I withdraw the question.

Q What did the men say when you were discussing their needs and their desires with them at the original meetings that you had with them? What did they say regarding what their purpose was with respect to having action on sales through a majority of the members, rather than through an individual action? What was their statement to you about that? A They said that they wanted something to hold them together, so that if a majority desired to sell, then it was the will of the majority, and that would be at such time as they felt that they could get the price that would be beneficial to the most of them. 30

Q Did they say to you whether or not ultimately they expected to sell some time to the Public Service? A They expected to sell ultimately. 40

Pearce R. Franklin, direct.

Q Was any price at all discussed as to how much they wanted in group or individually for the buses—the men who did not sell? A They said they never expected to get more than \$15,000.

10 Mr. Osborne: That is a very vague question.

Mr. McGeehan: I will consent to that being stricken out.

Q The question is, did they at the time individually or collectively fix any amount at which they would some time sell to the Public Service; not what they expected they might be offered, was there any agreement by any one of them or all of them as to how much each would be willing to sell for sometime? A No.

20 Q Was there anything put in the contract as to a maximum amount? A There was not.

Q You have spoken of these visits two or three times a week of Mr. Lines; how long did they continue? A They continued up until June, 1925, for a year and several months.

Q Did they continue after the substitution was given? A I think they did not continue after that.

30 Q You mean May, 1925, do you? A May, 1925.

Q At the time the substitution was given, Mr. Franklin, was any reason presented to you for their wanting a substitution of solicitor? A I have nothing definite in my mind of any reason why they took that away.

Q Who came in to see you on that? A Lines.

40 Q Was there any complaint made to you by them of any delay or any other thing? A Nothing was ever mentioned to me about that?

Pearce R. Franklin, direct.

Q Did you at the time he asked for a substitution of solicitor, refer to your contract of compensation? A I did, and I did that only as a matter of protection. There was no ill feeling about that in the least.

Q Was there any demand by them for a substitution and statement by you that you would not give a substitution unless they signed the paper that you prepared? A I was even willing to co-operate with them—there was not. 10

Q Did you draw the paper, a copy of which is annexed to the bill, Exhibit D? A I did; I drew that and handed it to Lines, and he took it out and had it signed.

Q And he brought it in to you again? A Yes.

Q Was there any argument or discussion on the part of Lines or any other communication from any of the men, that you should not be entitled to what they had agreed to pay under the compensation agreement? A There was no discussion, and looking back now, I cannot see any reason why that matter was taken away. 20

Q Were you willing and ready to continue to represent them under that contract until such time as they should determine to sell? A I was.

Q Did you receive any payment from these men for any of the work performed by you under and pursuant to the contract they entered into with you? A I did not. 30

Q Mention has been made about the purchase of stock by the nineteen remaining owners from the twenty-two previous co-owners of jitney buses. Do you remember that occasion? A I do; that occasion arose in May. That was some months after the—or a couple of months after this contract was drawn. 40

Pearce R. Franklin, direct.

Q There was a bus corporation in existence when you were first consulted, was there not? A There was a bus corporation in existence?

Q Yes. A The Springfield Avenue Bus Company, they had been organized sometime in December.

10 Q Did you know that they had a garage building? A I did, yes.

Q Did that garage in any respect enter into the discussions or conferences that preceded and culminated in the contract Exhibit A? A It did not.

Q Was that any part of the discussions or talks that were had at that first meeting, or second or third meetings? A It was never discussed; the first discussion was in May, when you and I went up there.

20 Q Was I present at some of the meetings at the time the contract was drawn? A Which contract?

Q The original contract, Exhibit A. A Yes.

Q On that stock situation which developed in May, what took place in connection with that; what was the object of the meetings in connection with that? A The meetings in connection with that were to permit the remaining bus owners to take over the stock, so that they could operate and own this garage which had previously been held by the twenty-two and the nineteen. After the nineteen got out they had no buses, and they wanted to dispose of that stock, and they were willing to dispose of it to the remaining nineteen, rather than to anyone on the outside.

30 Q So that the nineteen individuals were buying the individual stock of the other twenty-two? A Right.

40

Pearce R. Franklin, direct.

Q Were the other twenty-two represented by counsel? A They were represented by Edward Schilling.

Q Were there conferences with one group and then with the other group and negotiations carried on there for the purchase and sale of the stock? A Yes, we conferred with them on two occasions at the Springfield Bus Company garage building; we had conferences with Mr. Schilling at his office, at your office and my office, and the conference between the groups at the garage was for the purpose of determining the value to be fixed for the stock. 10

Q And what entered into that value? A The equity in the garage, the cost of construction, the amount due the bank, the amount in the pool, the amount that the individuals owed the pool at the time of their retirement, all of that went in to fix the value of the stock. 20

Q Do you know whether the owners of stock were demanding more than what would be the book value of the respective shares owned by them at the time of the negotiations? A They were.

Q Did that situation or the work in it have anything to do with the operation of the buses or enter into the sale of the buses in any respect by the nineteen men? A It had no connection with the contract between the men or the compensation contract. 30

Q Did it have anything to do with the things that they spoke to you about when they engaged you to represent them on the situation that you described trying to keep the men from going out? A It was not anticipated.

Q Were you paid separately for the work that you did in connection with the purchase of the 40

Pearce R. Franklin, direct.

stock of one group of stockholders by the other?

A We were.

Q How much was paid? A \$500.

Q And that included my fee as well as yours for that work? A It did.

10 Mr. McGeehan: I acknowledge the receipt.

Q In connection with that transaction, was all of the money paid at one time that was agreed upon? A No, they paid something on account, and that was to be held in escrow by Mr. Schilling until such time as the nineteen men were able to get the balance of the sum together, when the stock was to be turned over, and there were receipts to that effect.

20 Q Something has been said about ten shares of stock or twenty shares of stock and the increase of the authorized capital stock of the corporation for the purpose of sale issued. A That wasn't correct.

Q In the first place when the contract was signed, were the thirty shares of stock issued that were called for in the contract? A They were.

30 Q When you say they were issued, do you know that they were actually handed to the individuals or not? A I haven't a direct remembrance whether I personally prepared them or whether I directed them to be prepared, but they were prepared.

Q The thirty shares for each one? A Yes.

Q And was there any requirements for an increase of the capital stock, so far as you know, at the time this agreement was entered into? A There was not.

40 Q Was there any ten shares entered into? I mean, did it enter into it in any way? A It had no connection with any phase of the subject.

Pearce R. Franklin, direct.

Q In addition to the thirty shares issued under the contract, at the time it was entered into, was there a provision for a future payment, as the balance of consideration if the contract were carried out? A Yes, at the end of the year the fiscal value was to be determined, and then they were to be determined on the physical value at the time they elected to exercise the contract— or the purchase. 10

Q Was there any appraisal and issue of a thousand dollars' worth of stock in promissory notes to the nineteen men who were owners of buses on this line? A There was no appraisal at the outset, no.

Q Was there any at any time that you remember in connection with any of those buses? A I don't remember whether we had an appraisal made on this line or not. 20

Q Then without appraisals there would be no stock issued extra and in addition to the thirty? A No.

Q Was there at one time an increase in the capital stock of the Springfield Avenue Bus Company? A There was, and that was for the purpose of permitting the remaining owners to sell stock to the public. They wanted to increase their activities on that line and on other lines, and they had a prospectus prepared and were selling it to the public at large, and for that reason they wanted their capital stock authorized, increased. 30

Q I show you what purports to be a circular announcing the first public offering of some preferred shares of stock in that company; whom did you receive that from? A I received that from Mr. Lines. It is signed by Mr. Lines; it is what I call the prospectus, that they issued at that 40

Pearce R. Franklin, direct.

time in the endeavor to sell some preferred stock—eight per cent. preferred.

Mr. Osborne: Will you fix the date?

Q Do you know about when that was? A I cannot fix the date, but it was a considerable time after this contract was drawn.

10

Mr. McGeehan: I ask that that be marked.

(Marked Exhibit D. 1, November 9, 1927.)

Mr. McGeehan: I also offer in evidence the compensation agreement.

(Marked Exhibit D. 2, November 9, 1927.)

The Court: That is the contract which is here attacked.

20

Q You have been asked by Judge Osborne the date that that occurred. Were you paid separately for the work done in increasing the capital stock for that public sale? A I was.

Q Have you any memorandum in your papers that might assist in giving the date? A Yes, my book there (indicating). (After examining book) September 30, 1924.

Q What is that? A September 30, 1924, is the first time when the certificate for the increase of capital stock was filed with the Secretary of State at Trenton.

30

Q How much did you charge for the increase of the capital stock? A For the services rendered \$25, and for filing the certificate \$20; for obtaining certified copy, one dollar, and for recording it in the Court House, County Clerk's office, one dollar and a half.

Q Forty or \$50 you were paid for increasing the capital stock? A Actually paid me for services \$25.

40

Pearce R. Franklin, cross.

Q Mr. Franklin, taking into consideration the work performed by you, the amount involved for each of these complainants, and their interest in the subject matter of your work and services rendered by you, in your opinion is the amount which you name in your suit from each of these complainants, \$950, reasonable and proper? A 10
It is.

Q These men, when you dealt with them, did you find them intelligent or unintelligent? A For the greater part, intelligent. The men on this line were rather intelligent.

Q And in your dealings with Lines, did you at any time believe him to be unintelligent or incapable of understanding what he was doing in his business relations with you? A I never did.

Q Was there ever a complaint from the time that you signed and the men signed this compensation agreement—was there ever any complaint about the nature of it, or any appearance before you of Mr. Lines or anyone else, asking that you surrender or cancel that compensation agreement? A I never did, there was never a word of dissatisfaction spoken to me. 20

Cross examination by Mr. Osborne.

Q How many men did you say participated in this compensation agreement? A On this line? 30

Q Yes. A Nineteen, I think.

Q How many other lines were there involved?

Mr. McGeehan: I object.

The Court: Objection sustained. There were no other lines involved in this contract.

Mr. Osborne: I will change the question.

Q How many other lines for whom you were performing similar services— 40

Mr. McGeehan: I object to that.

The Court: The objection is overruled.

Pearce R. Franklin, cross.

Q Were the services which you performed for this line of the same character that you were performing for other lines? A Each line had its own individual peculiarities and its own individual necessity for various representation.

10 Q Were the papers which you filed with the Public Service which you have testified to on behalf of this line the same as filed on behalf of other lines?

Mr. McGeehan: I object to that.

The Court: It is admissible for one purpose. It perhaps isn't permissible for the reason on which you are basing your objection, but I will admit it. I don't think it hurts you any.

20 A The notices you mean?

Q Yes. A The notices were substantially the same in each case.

Q Did you have any suits at law or in equity for the other lines of a similar character? A I had other suits in equity for other lines, yes.

Q And of a similar character? A Generally the same.

Q In which the same questions were involved?

30 A In most instances.

Q In most instances? A Yes. This was the only line on which the specific performance suits were instituted. This line generally had the most work in court for it.

Q Were all these services which you have testified to, performed in connection with this compensation agreement? A With this contract here in evidence?

40 Q Yes. A All the services that were performed on the Springfield Avenue Line, excepting the various collateral services that have been

Pearce R. Franklin, cross.

testified to, have been done in consideration of the compensation agreement, yes.

Q Was it your understanding—were all of the services which you testified to, other than this appraisal excepted by you in the testimony, was it your understanding that you were to be compensated for such services through this contract? 10

A I was to be compensated from this contract for those things which are specifically set forth in the contract, namely, to keep these men together in line as against the onslaughts of the Public Service, and to hold them together by all means necessary until such time as they desired to sell by a majority.

Q You testified to a number of services which you say you performed here for these men? A Yes. 20

Q And were all of those services performed by you under this contract? A Yes.

Q And intended to be compensated for under this contract? A Yes, except the others that are specified here.

The Court: You mean except those which were paid for separately?

The Witness: Yes. 30

Q Except such as you specifically indicated in your testimony were separate transactions? A There may be some that I have been paid for that haven't been testified to.

Q And that you haven't testified to in connection with this contract? A That I, if they are shown to me, I would say that they are not in connection with this contract. I represented these men generally, you know, in all their business.

Q Did you keep books? A I kept books, yes. 40

Pearce R. Franklin, cross.

Q Did you keep a record of the services that you rendered? A How?

Q Your clients, and in particular these clients. A Not in connection with the contract, because I wasn't being paid for it; it was a contingency.

10 Q Did you keep a record of services rendered by you other than services in connection with this contract rendered for these clients? A Yes.

Q And have you produced here, in response to a notice, your record of such services? A Yes.

Q And does that record show the exceptions that you mentioned in your testimony here this morning? A Yes.

20 Q You had had prior to the making of this agreement in question here, that is, the agreement between the men and the company, similar situations on other lines, had you not? A Substantially.

Q And it was because of that fact that the Springfield Avenue people came to you?

Mr. McGeehan: I object to that.

The Court: I don't know whether he knows or not. He may or may not know.

30 A I think they came to me for relief that they couldn't get other places.

Q Wasn't it because of the fact that you had been doing the same thing for other operators on other lines? A I don't know that to be so.

Q Didn't you and Mr. Lines discuss it along that line? A I think they came to me because they wanted the relief that they couldn't get other places, that they had tried to get.

40 Q Didn't you and Mr. Lines discuss the fact—either he suggested it or you said it to him—

Pearce R. Franklin, cross.

that you had similar situations in connection with other lines? A He knew that I had attended court.

Q He knew it? A He knew that I had been getting the relief; that is what they were after.

Q That is the reason they came to you? A Possibly; I don't know. 10

Q Don't you believe that to be the reason?

Mr. McGeehan: I object.

The Court: It doesn't make any difference what he believed.

Q Didn't you tell Mr. Lines that you had evolved a plan to meet this situation which was confronting this group? A I probably did, all of which he knew. 20

Q And didn't you tell him that it was airtight? A I did not.

Q Or that it would hold water? A It held water.

Q It did? A It held water, yes.

Q Until what time? A Until such time as the men desired to have it discontinued as against themselves.

Q Didn't the Court of Chancery find that it was an invalid contract? A It did not. 30

Q It held that it was sound? A It held that it was sound.

Q Didn't you understand, and didn't you tell Mr. Lines that this contract would accomplish the purpose for which it was ostensibly intended? A A I told him, as I told all others, that I hoped it would, and I believed that we could get an injunction, which we did, and which injunction continued for over a year, until such time as the men of their own volition through other counsel discontinued this contract and voluntarily discon- 40

Pearce R. Franklin, cross.

tinued the injunction proceedings that were pending in court. Your record shows that.

Q By an injunction, you mean the temporary restraining order? A Yes.

Q Pending final hearing? A Yes.

10 Q The final hearing was had? A Was never had. You confuse the specific performance suits with the general injunction proceedings.

Q Were there two proceedings? A Why, certainly there were.

Q What were they? A There was a suit suit by the Springfield Avenue Bus Company against each of the men individually under this contract, Exhibit A.

20 Q Exactly. A Upon which a temporary restraint was obtained, which temporary restraint continued until July, 1925. In the interim suits had been instituted against Max Greene and the Lehrhoff boys after they had sold—suits for specific performance, which suits came up in June, 1925, at which time this temporary restraint against all the men was still in force and continued in existence even after June 3, when the hearing was had for the Lehrhoff boys and Max Greene, and was voluntarily discontinued after the Springfield avenue men left
30 me, by consent, George Seymour representing the men individually and Osborne & Astley representing the company.

Q Let me see if I understand this situation as you do; a bill was filed by the Springfield Avenue Bus Company against its members, the signers of this agreement, that was to restrain them from selling—wasn't that it? A That is correct.

40 Q And that involved the interpretation of the validity of this contract? A Exhibit A, yes.

Pearce R. Franklin, cross.

Q While that was pending, individual suits were brought; these other suits were brought against individuals, wasn't that right? A Against what individuals?

Q Greene and Lehrhoff, after they had sold? A Yes.

Q After the original suit that I have just mentioned was brought? A Yes, that is right. 10

Q Now, then, the suit by the Springfield Avenue Bus Company against its members on Exhibit A finally came to trial, didn't it? A It did not come to final hearing.

Q That never came to trial? What suit was it that did come to trial in which this contract was involved, and in which this contract was interpreted by the Court? A This contract was not interpreted by the Court; the suits that came to final hearing were the specific performance suit by the Springfield Avenue Bus Company against Max Greene, Marty Lehrhoff and Louis Lehrhoff, and those suits came to trial on June 3. 20

Q And were those suits based on this contract Exhibit A? A Yes.

Q Then the Court of Chancery did decide some case based upon this contract, didn't it? A Yes.

Q And those were the cases? A Yes. 30

Q And it was after the Court decided that the contract was invalid that the other suit was discontinued? A Yes, but not until after the question of the right to purchase under power of attorney had been litigated.

Q It was after and because of the fact that the Court of Chancery had declared this contract unenforcible, that these other suits were discontinued? A In the Max Greene case—

Mr. McGeehan: I object to this. 40

Pearce R. Franklin, cross.

A I mean on this contract it was not; that was not the reason.

Q Which case was it that you gave the power of substitution in? A In the Max Greene and Louis Lehrhoff and Marty Lehrhoff cases.

Q In the other cases? A No.

10 Q Was it your understanding that in the Max Greene and Lehrhoff cases that you were to perform the services under this contract? A I was performing them and filing the bill and got the restraint for him.

Q Did you ever make any demand for any other extra compensation in those cases? A I did not.

Q Is this your letter (indicating)? A That is.

20 Q Will you read the last paragraph, which seems to be an addenda? Whom is the letter to? A The letter is to the Springfield Avenue Bus Company, November 20, 1924.

Q Go ahead. A "The cost to prosecute the Max Greene case to a final decision in the Court of Chancery shall be \$500 and the cost to prosecute the joint case of Marty Lehrhoff and Louis Lehrhoff to a final decision in the Court of Chancery shall be \$500."

30 Q You wrote that? A I did.

Mr. Osborne: I offer that in evidence.

(Marked Exhibit A for complainants, November 9, 1927.)

Q When you came up to this meeting to explain the contract, you had the contract with you? A What contract?

40 Q Your contract between the association and the men, Exhibit A. A The first meeting that I attended you mean?

Pearce R. Franklin, cross.

Q Yes. A I think not.

Q How soon after that did you bring up the contract? A I don't think I ever brought their contract until it was ready for signature.

Q When was that? A Around March 25, 1924.

Q Do you know when the twenty-two men sold? 10
A I cannot recall, no. They sold the day before I had been there; I think it was some time late in January or early in February, something like that.

Q Would that fix the date? A That would fix the time when I was there first, yes.

Q And at the time you were there first, you were there at the request of Mr. Lines? A Yes—probably not Mr. Lines at that time; probably Mr. Bernstein, who was the then president. 20

Q Was that the visit that led to the making of this contract, or was that a later visit? A That was the first of a series of visits that led to the signing of the contract.

Q When did you first lay out this plan of the men which resulted in the signing of this contract? A I think that first night.

Q In March? A Prior to that. The first night that I was there.

Q That was in March, I think you said. A 30
March 25 was the day that contract was signed. There had been many conferences before that.

Q Where were those conferences held? A Some of them were held in my office, and some in the Labor Lyceum.

Q Was it before or after these twenty-one buses were sold? A The day before.

Q Isn't there a possibility that you might be mistaken in the date when you fix it in March? A I didn't fix it in March that they sold, the 40
twenty-two men.

Pearce R. Franklin, cross.

Q I understand that you went up there the day after they sold? A I believe that was the time.

Q You say that was in March? A I think late January or early February when the twenty-two sold.

10 Q Would these minutes, under date of April 21, refresh your recollection? I want to fix it with some accuracy and not for the purpose of contradicting you. A That is not when; that does not refresh my recollection.

Q You don't think it happened then? A It doesn't refresh my recollection.

Q If the sale was in April, that was when you went up there? A I have rather fixed my connection with them with the sale by these men.

20 Q You explained this contract to them, didn't you? A I did.

Q And explained it fully, as you understood it? A I did.

Q You also drew up the compensation agreement, didn't you? A I did.

Q And took it up there for signature? A I did not. I was not present when that was signed.

30 Q Did you ever explain that to them? A I explained it in general meeting, not at the moment they signed it, however.

Q But you explained it first and then went down to your office and drew it up and gave it to Mr. Lines? A Yes, and a considerable time expired.

Q Did you ever explain to them that they could terminate that contract at will? A I don't know whether I—I wasn't anticipating.

40 Q You don't recall that you did? A No.

Pearce R. Franklin, cross.

Q You were representing them at the time?

A At what time?

Q At the time the contract was signed you were their attorney? A Yes, I had drawn this other contract prior to that.

Q After discussing the compensation you went down and drew up the contract, and did you draw it up in accordance with the understanding as you discussed it at the meeting with them? A The contract for compensation generally at the time this other contract was discussed, but I didn't draw that contract up; I let it slip by until a month after when the contract was signed. I probably should have been diligent in my own behalf, and have it signed at the same time, but I didn't. 10

Q An interval of time was elapsed and then it was drawn up by you? A Yes. 20

Q And it was drawn up in accordance with your understanding as explained to the men? A Yes, our agreement.

Q And when were the changes made in it? A The changes were made at the time they signed it; at the time Lines came in the office I took it out prepared, and it was at that time he said that they didn't want to pay that; I struck it out and put in eleven thousand. It is my writing and my striking out. 30

Q Then that was done after you had prepared it and after the meeting in which you explained it, and at the suggestion of Mr. Lines, or his objection to the amount? A Yes.

Q Then it wasn't drawn up in accordance with your understanding as you explained it to the men? A It was drawn up in accordance with my understanding with the men of that night, and he came in at a later time and didn't 40

Pearce R. Franklin, cross.

want to pay that much, and pay only five per cent. above eleven, and I let it go at that.

Q Did you explain to Mr. Lines at the time that that contract could be terminated?

Mr. McGeehan: Which contract?

10

Mr. Osborne: The agreement for compensation.

A I don't know whether I went into that. I certainly didn't tell him the contrary, though.

Q Did you know that the men understood that this contract would be called off—this agreement between the company, Exhibit A, and the men, would be called off when the price reached fifteen thousand? A No, sir, that figure was never settled upon.

20

Q Was any discussion had with regard to when that contract should be called off, or dissolved or abrogated? A The contract with me?

Q Exhibit A. A No, there was never any understanding when it was to be called off; they were only too desirous to have it hold.

Q Wasn't there any talk as to the maximum price which might be reached? A No, they all had an idea in their minds of how far it would go. They never agreed to sell at any price.

30

Q How did you look at this idea in their minds? Did they say so? A Yes; I was consulted day in and day out as to whether or not the price that had been reached was the highest price, and at no time did I ever advise the men to sell. After the price reached \$17,500, after that I put it entirely up to them. Up to that time I told them not to sell.

Q You said that they had in their minds the fact that a certain price—a certain maximum

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Pearce R. Franklin, cross.

price would be reached. A At the outset they had that. They became encouraged after a while.

Mr. Osborne: Please confine your answers to the questions. I may make better progress.

10

Q Was that amount \$15,000 that they had in their minds? A No, they had no definite amount in their minds that they intended to sell for.

Q I didn't ask you that; I asked you whether they had some amount in their minds which would be the maximum price which these buses would probably go to? A These men specifically? I do not know.

Q Men that you were dealing with. A I dealt with a good many men.

20

Q The men on the Springfield Avenue Line who signed this contract that you were dealing with? A I don't know that they had any idea how high the line would go. That was one of the best lines in the city.

Q I understood you to say that the men had something in their minds about the limit of price.

A I spoke of men generally.

Q That did not apply to the Springfield Avenue Line or the men who signed this contract?

30

A Not specifically, no.

Q Did it apply to them at all? A It did not, no.

Q You mean to say that you don't know what they had in their minds?

Mr. McGeehan: I object; I think counsel should say who of the nineteen men, whether these complainants or all of them. Undoubtedly all of them had different ideas.

40

Pearce R. Franklin, cross.

The Court: I will permit the question. If Mr. Franklin doesn't understand the question, he may ask for light. You must bear in mind that Mr. Franklin is a member of the Bar, and I think he can take care of himself.

10 A No, I cannot say definitely what the men had in mind as to price.

Q You understood that they were talking about this contract? A Yes.

Q With these men on the Springfield Avenue Line? A Yes.

Q What did you mean when you said a little while ago that they had something in their minds about the maximum price that would probably be reached? A When I referred to men, I referred to the jitney men generally, when this disturbance first took place.

20 Q Did the Springfield avenue bus men, according to your understanding, have the same matter in their minds, the same thing in their minds, that the men generally had in their minds? A I cannot answer that; I don't know.

Q Did you have any understanding as to the termination of this Exhibit A? A Never.

Q You thought it was to go on forever? A I didn't know how high the prices were going.

30 Q What did you do to bring about the sale of the buses, if anything? A All I have testified to.

Q That is all, is it? A I think it is a great deal, if you say that is all.

Q I asked you if that is all. A That is all.

Q You did nothing after the substitution, did you? A Nothing actively for these particular men, no.

40 Q I am talking about the men of the Springfield Avenue Line. A No.

Pearce R. Franklin, cross.

Q And what was the price buses were selling for at the time of the substitution?

Mr. McGeehan: I object.

The Court: I will permit it for the reason that Judge Osborne, as I understand it, is insisting that that is the price that compensation should be fixed upon. I think that may be, but I will give you an opportunity to correct my error, if I make one. 10

A This contract was discontinued in July, 1925. I do not know—I would say \$17,500.

The Court: I think that is the price fixed by Mr. Lines.

The Witness: From memory, I would say \$17,500. 20

Q Do you know that DeHart sold for that right after the substitution? A I cannot place the time when DeHart sold with reference to the substitution, no.

Q He paid you a commission based on the sales price, did he not? A He did.

Q Do you know what he sold for? A I do not.

Q You have no recollection? A I have none, I dealt with a good many of them. 30

Q He was one of the nineteen men who sold, was he not? A He was one of the nineteen remaining men who sold.

Q Don't you know that he got \$13,000? A I do not.

Q And that is what he paid you a commission on? A I do not.

Q When the twenty-two sold, I think you testified on your direct examination that the price 40

Pearce R. Franklin, cross.

was about \$9,100, is that right? A I think that was the maximum price. I think it hadn't reached that. I think I said seven, eight or nine; that is my memory of it.

Q You know what Bernstein got? A I do not.

10 Q Do you know what Shapiro got? A I do not. I didn't represent any of these men; they went before I got hold of the situation.

Q Do you know what Cohn got? Did you ever hear? A No. Cohn? I don't even know the man.

Q You got your information as to the market price of these buses from general talk in the business? A Yes.

20 Q And the information which you are now giving us is from that source? A From my memory of it.

Q You have no personal knowledge of it? A No.

Q This plan which you finally embodied in this contract between the association and men was the result of their desiring to hold their members together, isn't that right? A Yes.

30 Q And you developed it for that purpose? A I did.

Q Did you tell the men that the plan was not a strong one? A I didn't tell them it was a strong one nor did I tell them that it was a weak one. I told them I thought it could be enforced in the Court of Chancery.

Q Was it on that representation that they signed it? A I don't know whether they signed it on that representation.

40 Q Was it after you told them that you thought it would be enforced, that they signed? A Yes.

Pearce R. Franklin, cross.

Q And was it after you told them that you thought it could be enforced, that they signed the compensation agreement? A Yes.

Q Have you any record in your books that would fix the time which you say was the actual signing of the agreement? You say the date of the agreement is incorrect. 10

Mr. McGeehan: I don't think he said that. I think he said that he thought it was signed on the date it contains.

The Court: He said the original agreement, Exhibit A, was signed on the twenty-fifth of March, and that the compensation agreement was signed on the fifteenth of April.

Mr. McGeehan: Those are the dates of them, I think. 20

Q Now, then, when you told the men that the majority could control, were you discussing this contract? A Yes.

Q Between the association and the men? A Yes.

Q What did you mean that the majority could control and terminate the contract? A Because the corporation was composed of stockholders who were the same men as the individuals who signed the contract, and that they by a majority vote, could vote on their side to discontinue the contract to release any individual or to release them all, to have the contract discontinued; do anything in connection with it, a majority of the stockholders, a majority of those who were incidentally directors of the corporation. 30

Q Did you tell them that before it was signed? A Yes. 40

Pearce R. Franklin, cross.

10 Q When Mr. Lines came to you and asked you for a substitution, what was said? A He asked me for a substitution, I don't recall the conversation that ensued, but I asked him at that time, so that that would be clear with reference to the men, as to my compensation. I didn't want to be considered that I was abandoning the contract, that is all; I didn't want them at some future time to think that I had abandoned the contract.

Q Did he give you any reason for the substitution? A I cannot recall any reason that he gave.

Q Did you ask him for a reason? A If I did, I don't recall it.

20 Q Did you suggest that you be paid for your services up to that time as rendered? A I did not.

Q Did you make a condition upon giving him the substitution, the signing of this paper? A I did not.

Q How did you come to draw the paper? A At the time that I prepared the substitution, I asked him to get these men to sign it, so that there would be no misunderstanding as between the men and myself about my right to compensation at such time as they sold out.

30 Q You did not give him the substitution at that time? A I don't recall whether I did or not.

Q Don't you know you didn't? A I don't know.

Q Don't you know you did not give him the substitution until he came back with the paper signed? A I do not recall that.

Q That is the fact? A I do not recall it.

40 Q Have you anything in your records to show it? A No, I don't keep a record of anything of that nature.

Dea *Re* *Franklin*, *cross*.

Q You say the matter of the sale of the garage men had no part in this original transaction? A It had not.

Q Hadn't the men sold at that time? A I don't know whether they had sold or not, but it wasn't discussed. It wasn't discussed until May when these people wanted to sell their interest in the garage. 10

Q It was the day after the sale that you went up there, wasn't it? A As I recall it, it was the first time I went there.

Q I think that is what you said, wasn't it? A I don't know.

Q Yet you say there was nothing said about the sale or the effect on the company of the sale by the twenty-two operators? A As respects the sale of the garage? 20

Q Yes. A No, absolutely no effect on the company.

Q There were nineteen signers to this agreement? A Yes.

Q And how many of them have sold to the Public Service? A A majority of them.

Q This suit which you brought against these defendants is for \$950 apiece? A Yes.

Q Each? A Yes.

Q What is the total amount which you are asking for under this agreement? A It is \$950 each, \$3,800. 30

Q I mean as to all the men.

Mr. McGeehan: I object. He is not asking anything as to any of the others.

The Court: Objection sustained.

Q You still have the contract as to the rest who have not sold? A I have.

Q What is this \$950 based on; what sale price? A Based on \$30,000. 40

Pearce R. Franklin, cross.

Q What is the market price of buses now; do you know?

Mr. McGeehan: I object to that.

10 The Court: I will permit it. I don't think it makes any difference in the view I take of it.

Mr. Osborne: Unless the Court as a court of equity would look into the conscience of an agreement of this kind—

The Court: I assume that is the reason you are here.

Mr. Osborne: Exactly.

20 Q Do you know what the buses are selling for now, or have sold for? A There haven't been any sales since the Springfield avenue people sold.

Q Do you know what is being offered for buses? A I do not.

The Court: I might say, Judge, since you mentioned that matter so forcibly, however, that if there is any benefit to Mr. Franklin, there is a corresponding benefit to the extent of ninety-five per cent. to the other side.

30 Q I think you testified that you did nothing after the substitution? A I didn't have any conference with the men and had no contact with them, no.

Q You had nothing to do with the sale of the buses or any of those men, did you? A Not these individual men, no.

40 Q I mean the men who are here in court in this case. A I was, however, helping the price along that these men got, incidentally.

Pearce R. Franklin, cross.

Q You remember this bonus that was issued?

A What bonus?

Q Bonus stock. A There was no bonus stock issued that I know of.

Q You know nothing about the issuance of any bonus stock? A I don't recall any bonus stock issued. 10

Q Thirty shares. A The thirty shares was not bonus stock; that was the stock to support the consideration of the contract between the corporation and the men, which was given them at the outset on March 25, when they signed the contract.

Q Wasn't it thirty for the contract and thirty bonus? A No.

Q You are sure about that? A I am positive of it. 20

Q Did you supervise the issuance of the stock? A I don't recall whether I did or not, but I directed that it be done.

Q Perhaps if I show you a copy of the minutes of May 15, it might refresh your recollection.

Mr. McGeehan: I object; I don't see how the witness' recollection can be refreshed by some unauthenticated paper that comes from some other source. 30

The Court: I don't know whether it will or whether it will not.

Mr. Osborne: These minutes purport to be a record of the meeting which he attended.

The Court: The minutes are in evidence.

Mr. Osborne: I want to see if it refreshes his recollection.

The Court: I sustain your offer. 40

Pearce R. Franklin, re-direct—re-cross.

A It is, as I read this, a bonus stock that the men determined upon to equalize the value of the stock, not in connection with the signing of this contract, which had been signed two months prior.

10 Q I asked you whether looking at the minutes refreshed your recollection as to the issue of bonus stock for each share of stock issued? A It does not refresh it in my own memory or recollection, because I was not present at the time that was issued.

Q Were you present at a meeting at which it was discussed? A I was not.

Q And didn't you advise it? A I did not.

Re-direct examination by Mr. McGeehan.

20 Q Did you have any discussion with the corporation or its representative as to a bonus, if you could get the actual possession of the two Lehrhoff buses into the corporation? A Yes; Mr. Lines came into the office and said that the corporation, the Springfield Avenue Bus Corporation, if it could get back the Lehrhoff and Greene buses at the price fixed in the contract, it would be a great benefit to the corporation, and they wanted to give me some bonus in connection
30 with my work to obtain those buses, if I could obtain them for the corporation, and that was the reason of that addenda on the bottom of that letter, and that is the reason, in the minutes of the corporation, that they offer me a bonus of so much money, of \$500, if I can obtain the buses for the corporation.

Q You mean \$500 on each bus? A Yes.

Re-cross examination by Mr. Osborne.

40 Q They offered you that \$500 in addition to your other compensation? A Yes, the Springfield Avenue Bus Company did, and it is mentioned in your minutes there.

Pearce R. Franklin, re-cross.

Q Why did they offer you the \$500? A Because they considered it to be of great value to the corporation if they could get the buses back and that they would obtain them for the physical value and the issuance of the thirty shares of stock.

Q That was part of your agreement anyway, wasn't it? A I considered it to be so, but they wanted to give me the bonus in connection with it.

10

Q You rendered a number of other services in addition to that, did you not? A Yes.

Q In addition to those which you have mentioned here? A Yes.

Q For which you have been paid? A I was, even services not in connection with this, for which I have been paid. I represented a lot of these men; none for the corporation, however, except such as have been mentioned here.

20

DEFENDANT RESTS.

Mr. Osborne: I meant to offer, if your Honor deems it material, not otherwise, because I don't want to encumber the record unnecessarily, the certificate of incorporation and the amended certificate. The minutes, which I handed your Honor a transcript of, and the exhibits that were attached to the bill, are all in evidence, as I understand it.

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The Court: You may offer them if you wish, but I don't see any necessity of it.

You may offer anything that you think is pertinent.

Mr. Osborne: I offer all of these matters that I have mentioned.

I also offer Exhibit A, letter from Mr. Franklin to the Springfield Avenue Bus Company, of November 20, 1924.

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EXHIBIT A FOR COMPLAINANT.

Law Offices
 PEARCE R. FRANKLIN
 National State Bank Building
 810 Broad Street
 Newark, N. J.

10

November 20, 1924.

Springfield Avenue Bus Co.,
 1389 Springfield Avenue,
 Irvington, N. J.

Dear Sirs: *Attention Mr. Samuel D. Lines.*

I desire to inform you that in the case of Max Green the Springfield Avenue Bus Co. has the same right to proceed against him to enforce performance of his contract in the same manner as the corporation proceeded against Marty Lehrhoff and Louis Lehrhoff.

20

The fact is that the Public Service Transportation Company is lawfully entitled to assume ownership of the bus by power of attorney; nevertheless the contract which he has with the Springfield Avenue Bus Co. is prior to and paramount to any agreement which he has with the Public Service Transportation Co., and it is my opinion that specific performance of the contract can be enforced against him as well as against the Messrs. Lehrhoff.

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However, a final decree must be obtained against Mr. Green before the termination of the existing contract between the Springfield Avenue Bus Co. and Max Green.

Yours very truly,

PEARCE R. FRANKLIN

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Exhibit C. 1.

The cost to prosecute the Max Green case to a final decision in the Court of Chancery shall be \$500, and the cost to prosecute the joint case of Marty Lehrhoff and Louis Lehrhoff to a final decision in the Court of Chancery shall be \$500.

EXHIBIT C. 1.

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EXCERPTS FROM THE MINUTES OF
MEETINGS
OF
SPRINGFIELD AVENUE BUS CO. INC.

April 26, 1924

“Motion by E. M. DeHart and seconded that the President and Secretary sign an agreement on behalf of the company for the sale of nineteen individual busses operating on Springfield Avenue route, including their good will, to the Corporation, was duly carried and the above officers were duly authorized to consult with Pearce R. Franklin in the matter.”

20

May 13, 1924

“Mr. J. W. McGeehan, Jr., addressed the meeting and suggested a plan to the men who had not sold their busses that some basis of agreement be reached whereby the garage property need not be sold at present. The matter was discussed at length by both sides and an agreement was reached whereby the nineteen men remaining undertook to purchase the shares of the twenty-two stockholders who had sold their busses, on a basis of \$712.50 per share payable one-half on the fifteen of May, 1924, and the balance within fifteen days thereafter. The question of pool money was left open for final adjustment within the fifteen day period.”

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40

*Exhibit C. 1.**May 15, 1924*

“Pearce Franklin and John W. McGeehan, Jr. were present.

10 “Mr. McGeehan explained at considerable length the proposed contract. Then Mr. Franklin answered questions regarding the contract. The Springfield Avenue bus owners present asked questions and understanding and being entirely satisfied with this contract proceeded to sign it.

20 “Moved and seconded that the proper officers of the corporation (in order to carry out the provisions of the contract entered into with nineteen individual owners whereby these owners agreed to sell their buses on the Springfield Avenue route to the Springfield Avenue Bus Company, Incorporated) issue thirty shares of the common capital stock of the Springfield Avenue Bus Co., Inc., to the owners who signed this contract.

30 “Moved and seconded that fifteen shares of common capital stock of the Springfield Avenue Bus Co., Inc., be issued as a bonus for each share of stock purchased from these men who had previously sold their buses on the Springfield Avenue route; this bonus was given because of the benefits accruing to the Corporation by having all of its common capital stock held by bus owners on the Springfield Avenue route.”

November 20, 1924

40 “The President instructed the Secretary to take a vote as to whether the Association authorize the expenditure of \$500. legal fee to Pearce R. Franklin to proceed with the two Lehrhoff cases to a final decision in Chancery. (This fee to be paid at the discretion of the President). All the stockholders present voted in favor of this motion.

Exhibit C. 1.

“The President instructed the Secretary to take a vote as to whether the Association authorize the expenditure of \$500. legal fee to Pearce R. Franklin to proceed with the Max Greene case to a final decision in Chancery. (This fee to be paid at the discretion of the President). E. M. DeHart did not vote on this motion; Charles Lehrhoff, Wm. Elliott and Harry Jubin voted against the motion and the balance of the stockholders voted for the motion. These two motions contingent upon return of compensation agreement.”

10

November 25, 1924

“Motion by B. Rose, seconded F. J. Noll, that the Corporation guarantee Pearce R. Franklin a bonus of \$1,000. if he succeeds in having the two Lehrhoff buses and permits returned to the Corporation. (This guarantee to be given at the discretion of the President, after conferring with Mr. Franklin.”

20

April 9, 1925

“Motion by C. Mass, seconded B. Rose, to have notices mailed to all bus owners to hold a special meeting on April 16. This meeting to be called for the purpose of having all owners transfer their permits to the Corporation and have the Corporation operate the buses. (In accordance with terms of a contract of May 15, 1924.)

30

“Motion by H. Jubin, seconded I. M. Noll, to authorize the President to get in touch with Mr. Franklin in order to have Mr. Franklin release his legal representation of the Springfield Avenue Bus Company, Incorporated; and to employ other necessary legal counsel.”

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CONCLUSIONS OF VICE-CHANCELLOR.

Filed January 26, 1928.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">GEORGE J. GRIMM, <i>et als.</i>, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">PEARCE R. FRANKLIN, <i>Defendant.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>On Final</i> <i>Hearing.</i></p> <p><i>Conclusions.</i> 63/1.</p>
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Osborne, Cornish & Scheck, for complainants.

John W. McGeehan, Jr., for defendant.

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SYLLABUS.

1. While it is proper for this court to fix the reasonable fees to be paid an attorney by his client where charges of fraudulent or unfair conduct are preferred, when the parties themselves have come to an agreement touching such fees, and it appears that the agreement was arrived at after complete disclosure and full consideration, and that there was no fraudulent or

30 unfair conduct on the part of the attorney, and that, as to the client, the agreement is fair, that agreement ought not to be disturbed by the Court but the parties should be left where they have placed themselves.

2. While, as a general proposition, agreements between attorney and client for contingent fees are not looked upon with favor by the courts, they have been upheld and enforced in this State where fair and reasonable as to the client. The

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Conclusions of Vice-Chancellor.

test is their fairness and reasonableness as applied to the client.

BERRY, V.-C.

This bill seeks an injunction against the prosecution by the defendant of four suits at law against the several complainants, all of which suits are for the recovery of attorney's fees alleged to be due to the defendant from the complainants under the provisions of a certain contract of employment between the members of an association of independent jitney owners of whom complainants were a part, and the defendant. Immediately upon the filing of the bill an order to show cause with restraint was issued and on the return of that order the restraint thereby imposed was continued *pendente lite* by further order consented to by counsel for the defendant.

This controversy grows out of the following facts which I find from the evidence submitted at the hearing: In the early part of 1924 there were forty-odd independent jitney men operating busses on what was known as the Springfield avenue route in the City of Newark. There was a spirited competition between the Public Service Corporation and the independent jitney men for control of the jitney business on this route and the Public Service Corporation was making a determined effort to acquire a sufficient number of the independent busses and their franchises to control the situation. Prior to this time a merry war had progressed between the independents and the Public Service Corporation which had resulted in relief and protection being sought by the independents through the Legislature. The defendant had been a member of the New Jersey Assembly at that time and had interested himself actively on behalf of the in-

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Conclusions of Vice-Chancellor.

dependents and later became counsel for many of the independent lines in Newark and vicinity. He had achieved considerable success in his work and had some reputation for accomplishment on behalf of the independents. The Public Service Corporation at the time referred to, however, had

10 begun to make serious inroads on the ranks of the independents and in the early part of 1924 had succeeded in purchasing at one time twenty-two of the forty-odd auto busses and franchises on the Springfield avenue route. The highest price paid for any one of those busses and franchises up to that time was \$9,000. This had thrown consternation into the ranks of the independent bus men and particularly those engaged on the

20 Springfield avenue route and they feared that they would be forced to sell out to the Public Service Corporation at what they considered inadequate prices and they began to look around for means to restore the morale of the independents and resist the Public Service onslaught, and with this end in view sought the advice of the defendant. The Springfield avenue jitney men had already organized a corporation which had built a large garage for the housing of the busses of the members and operators on the

30 Springfield avenue lines. The president of that corporation, Mr. Lines, representing the remaining jitney men operating on the Springfield avenue route, of whom there were nineteen, was authorized to consult with Mr. Franklin, which he did, and as a result thereof Mr. Franklin attended several meetings of the association. He was told by the jitney men that they desired to effect some sort of agreement among themselves which would prevent any individual member of the association from selling his bus and franchise

40 to the Public Service Corporation without the

Conclusions of Vice-Chancellor.

consent of all. While the garage was owned by the corporation, of which all of the forty-odd jitney men were stockholders, the busses and the franchises were owned by the individuals themselves, the corporation having no interest whatever therein. The defendant advised the remaining nineteen members that the only safe way to accomplish their object was to turn over their busses and franchises to the corporation at an appraised value and take in return therefor stock of the corporation to the amount of the appraised value of each buss and franchise. This the jitney men refused to do because of their lack of trust in one another. As a substitute for this arrangement the defendant prepared an agreement between the corporation, of which these jitney men were stockholders, officers and directors, and themselves individually, in which it was provided that each and all of said jitney men would sell their respective busses, good-will and franchises to the corporation at any time before April 25, 1925, for a certain consideration therein mentioned to be paid in stock and notes of the corporation, said purchase price to be determined by appraisers, and the transfer of the franchises to be conditioned upon the approval of the municipalities concerned and the Public Utility Commission. The corporation agreed to purchase said busses and franchises based on the terms set out in that agreement. The sole purpose of this agreement was to hold the remaining nineteen Springfield avenue jitney men together in an organization to resist the efforts of the Public Service Corporation to purchase individual busses on that line, and with a view to raising the selling price of the remaining busses and franchises to an amount equal to their

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Conclusions of Vice-Chancellor.

real worth. It was a foregone conclusion at that time that eventually the remaining jitney men on this line, or many of them, would be obliged to sell but they did not want to sell at the prevailing prices. At the time of Mr. Franklin's engagement the jitney men were without funds to pay him a fee and asked him to represent them for a contingent fee and after negotiations it was agreed between them and the defendant that Mr. Franklin should receive from each individual jitney man, as compensation for his services, five per cent. of the selling price of the individual busses in excess of the sum of \$11,000 when sold, providing that this commission should not apply to sales to the corporation, but should apply to resales by the corporation to the Public Service or other purchaser. This agreement was in writing and was signed by the defendant and by the remaining nineteen bus men individually. There was a full and complete disclosure and explanation by the defendant of all facts and circumstances pertinent to this arrangement; there was no deception or misrepresentation, the parties dealt at arm's length, and the complainants, on their own testimony, entirely understood the terms and provisions of the agreement and were satisfied therewith. The agreement between the corporation and the jitney men expired by its own limitation on April 25, 1925. Mr. Franklin explained to his clients that the agreement could be cancelled by consent prior to the expiration of that period. He also advised them that in his opinion the agreement of sale could be enforced by the corporation against the individual parties thereto. Following the defendant's employment he was very active in consulting with and advising his clients and appeared on numerous

Conclusions of Vice-Chancellor.

occasions before municipal governing bodies and officers, the Public Utility Commission and in court. He notified the Public Service Corporation and all who had anything to do with the purchase of busses on the Springfield avenue route or who in his opinion might in the future be concerned in the purchase of additional busses, that the contract with the corporation and the individual jitney men had been entered into, serving them with copies of that contract. This was for the purpose of discouraging the Public Service Corporation from prospective attempts to purchase the remaining busses. In the fall of 1924, three of the remaining nineteen bus men, notwithstanding their agreement with the corporation, sold their busses to the Public Service Corporation and immediately upon learning of this fact the defendant filed three separate bills in the Court of Chancery against them, seeking an injunction to prevent the consummation of said sales. Immediately thereafter the defendant filed another bill in this court on behalf of the corporation against all of the remaining bus men, seeking an injunction to prevent their violation of the agreement of sale. The defendant continued to represent the jitney men and to perform such services as were required of him, both generally and in connection with the four suits in this court, until some time in the spring of 1925, when he was asked to consent to the substitution of another solicitor in his stead, which he readily agreed to do. The cases were set down for final hearing in June of that year. The testimony of the complainants is to the effect that the defendant never refused to give them a substitution of solicitors. It appears, however, that when such substitution was given it was

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Conclusions of Vice-Chancellor.

agreed between the defendant and the remaining jitney men that his withdrawal from these suits should not affect his right to compensation under the agreement providing for the payment of a five per cent. commission as hereinabove referred to. That understanding was reduced to writing and signed by all of the jitney men. It was not obtained by any fraud, deception, misrepresentation, breach of trust or unfair methods, and was, in my judgment, entirely proper under the circumstances. At the final hearing on the suits against the three jitney men who had sold their busses in violation of the agreement with the corporation, the bills were dismissed, but for what reason the files do not disclose, as no opinion was filed by the Court. The suit of the corporation against the remaining jitney men was dismissed by consent. It is alleged by the complainants that the three suits first referred to were dismissed because the contract between the corporation and the individual jitney men was illegal; but that is not to be assumed from the dismissal of the bills. It may have been legal and still unenforceable. The decree dismissing these bills was entered on the 25th day of June, 1925. Preliminary restraint had been imposed at the time these suits were instituted and continued until final decree. As already suggested, this contract, the enforcement of which was sought by these bills, expired of its own limitation on April 25, 1925. At the time of the substitution of attorneys the highest price paid by the Public Service Corporation for any of the Springfield avenue busses was \$13,500, this being the price paid, or agreed to be paid, to the three offending jitney men against whom suits were instituted. By this time, however, the morale of the independent jitney

Conclusions of Vice-Chancellor.

men had been restored and they presented a rather determined front against the Public Service Corporation forces. The effectiveness of the organization which the defendant accomplished by means of this agreement is indicated by the fact that the four complainants in this bill subsequently sold their busses to the Public Service Corporation for \$30,000 each, upon which sale the defendant demanded his five per cent. commission under his compensation agreement, which, being refused, the suits at law were instituted. The demanded payment is resisted on the ground that the compensation agreement was unconscionable and that because of the confidential relation between attorney and client it is presumed to have been fraudulent; that it was actually so; that its provisions were unfair and that at most the defendant can claim commission on nothing in excess of the price at which busses were being sold at the time of the substitution of attorneys hereinbefore referred to, viz: \$13,500. This court is asked to fix the reasonable value of the services performed by the defendant, which reasonable value the complainants offer to pay.

The law applicable to this case is not in dispute. It is admitted on the part of the defendant that the burden is upon him to show the reasonableness of his charges and that such an agreement as he obtained was obtained upon full disclosure; that its terms are fair and just and that the complainants had a right to dispense with his services at any time they saw fit. It is also admitted that the charges of an attorney are always subject to scrutiny and review in this court and that this court has a right now to determine the fairness and reasonableness of the

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Conclusions of Vice-Chancellor.

contract, the adequacy and propriety of the compensation therein provided for, and the defendant joins in the request that this be done. That such is the law in this State cannot be doubted. *Weibezahl v. Huber*, 39 N. J. L. 334; 6 *Corpus Juris*, 973; *Brown v. Bulkley*, 14 N. J. Eq. 451; 10 *Schomp v. Schenck*, 40 N. J. L. 195; *Porter v. Bergen*, 54 N. J. Eq. 405; *Kelly v. Schwinghammer*, 78 N. J. Eq. 437; *Raimondi v. Bianchi*, 4 N. J. Adv. Repts. 1868.

On the other hand, it may be said that this court's conscience may as easily be shocked by an attempt to avoid the payment of an honest obligation as by the procuring of an unfair contract.

20 While it is proper for this court to fix the reasonable fees to be paid an attorney by his client where charges of fraudulent or unfair conduct are preferred, when the parties themselves have come to an agreement touching such fees, and it appears that the agreement was arrived at after complete disclosure and full consideration, and that there was no fraudulent or unfair conduct on the part of the attorney, and that, as to the client, the agreement is fair, that 30 agreement ought not be disturbed by the Court but the parties should be left where they have placed themselves.

That the compensation contract here involved was fairly obtained is conceded in complainants' brief; but it is claimed that is unfair "in its operation." Nor is it contended that the defendant was a guarantor of the enforceability of the contract between the jitney men and their corporation. In fact, it is conceded that he was not. In 40 determining the reasonableness of the compensation

Conclusions of Vice-Chancellor.

provided for by the contract between the defendant and his clients, it is proper to consider the results of defendant's services. The restoration of the morale of the jitney men and the boosting of the sales prices of the individual busses and franchises were prime objects of the agreement between the jitney men and their corporation. 10
 In drafting this contract it seems to have been assumed that one of these factors, namely, the restoration of the morale of the jitney men, would have been accomplished by April 25, 1925, as indeed it was, as that contract expired by its own limitation on that date. It cannot be denied, therefore, that the contract prevented individual sales to the Public Service Corporation, except as to the three jitney men who sold in September, 1924, for the full term contemplated by the contract itself, and, as a matter of fact, for two months longer than the contemplated term, as the injunction bills were not dismissed until the latter part of June, 1925; nor can it be denied that defendant's services resulted in the complainants obtaining a substantially higher price for their busses and franchises than they could have obtained at the time of the defendant's employment, as is indicated by the fact that they sold their busses and franchises for 20 \$30,000 each. Of course, the complainants claim that this increased price was due not at all to anything the defendant did, but I am unable to agree with this contention. No other reason for this remarkable price advance has been suggested and I am unable to discover any at all in the evidence. The complainants are not reluctant to accept the benefits of the defendant's labors but they object to the comparatively small benefit which the defendant claims. 30 40

Conclusions of Vice-Chancellor.

10 “There is no yardstick by which the value of an attorney’s services can be measured,” and the fact that defendant’s compensation was contingent upon results obtained—that if unsuccessful he would receive no compensation at all—has some weight in determining the measure of compensation to which the defendant is entitled. *Soper v. Bilder*, 87 N. J. Eq. 564. While, as a general proposition, agreements between attorney and client for contingent fees are not looked upon with favor by the courts, they have been upheld and enforced in this State where fair and reasonable as to the client. *Soper v. Bilder, supra; Hassell v. Van Houten*, 39 N. J. Eq. 105; *Wilson v. Seeber*, 72 N. J. Eq. 523. The test is their fairness and reasonableness as applied to the client. I have found no case, nor has the diligence of counsel referred me to any, where the attorney has not been held bound to the extent that he has not been permitted to charge more for his services than he had agreed to accept.

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30 Counsel for the complainants suggest that the Court ought now to fix the total amount of the reasonable compensation to which the complainant is entitled from all who signed the compensation agreement and then apportion that amount equally among them and assess 1/19th of such amount against each of the complainants. This suggestion, however, completely overlooks the fact that the compensation agreement is several and not joint, and that it is the individual benefit derived from the defendant’s services and the individual compensation required of each of them which is to be here considered. The value of the services to each individual is none the less because all may benefit thereby. The suggestion also presupposes that the jitney men who have

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Conclusions of Vice-Chancellor.

not sold their busses will sell some time in the future, an event which may never occur. In this suit I am required to pass only upon the compensation to be paid the defendant by the individual complainants and I have no difficulty in arriving at the conclusion that the amount claimed by the defendant from each; namely, \$950, is fair and reasonable under all the circumstances. As to the amount of the defendant's compensation from the remaining jitney men who have not sold their busses, that problem will be considered when it arises. The contract here involved is, for the purposes of this suit, to be considered as individual in its application; and its reasonableness as to each individual party thereto determined as occasion may require.

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I will advise a decree in accordance with these conclusions.

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Heard October 31, 1927.

Submitted January 16, 1928.

Decided January 20, 1928.

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DECREE.

Filed May 15, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

GEORGE J. GRIMM, BENJAMIN
ROSE, ISIDOR M. NOLL and
FRANK J. NOLL,

Complainants,

and

PEARCE R. FRANKLIN,
Defendant.

On Bill, etc.

Decree.

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This cause coming on to be heard in the presence of Osborne, Cornish & Scheck, solicitors of the complainants, and John W. McGeehan, Jr., solicitor for the defendant, and the Court having examined the pleadings and having taken proofs orally and in open court, and having heard and considered the argument of counsel thereon;

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And it appearing to the satisfaction of the Court that on or about the 15th day of May, 1924, the complainants entered into a contract in writing whereby they each severally agreed to pay to the said defendant certain compensation for legal services to be rendered by him and that the defendant agreed to render and perform certain legal services for the complainants;

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And it further appearing to the satisfaction of the Court that the defendant thereupon and thereafter performed the obligations of his employment and contract with the complainants, and that said contract was fair and reasonable with

Decree.

respect to said clients and the services performed thereunder, and that the defendant is entitled to the compensation provided for in said contract, namely, nine hundred and fifty dollars (\$950.00) from each of the above complainants, and that said amount is fair and reasonable and is now justly due and owing from each of the complainants to the said defendant, it is, on this 14th day of February, 1928, 10

ORDERED, ADJUDGED and DECREED, that each of the above complainants, George J. Grimm, Benjamin Rose, Isidor M. Noll and Frank J. Noll, shall, within ten days after service upon him or his solicitor of a copy of this decree, and of the taxed bill of costs in this cause, pay to the defendant the said sum of nine hundred and fifty dollars (\$950.00), and the taxed costs of this suit, and that in default thereof, an execution issue therefor, according to the practice of this court, against the goods and chattels, lands, tenements, hereditaments and real estate of the complainants. 20

Ordered that the complainants pay to the defendant the sum of Four Hundred Dollars (\$400.00) as counsel fees in the above cause, to be taxed as a part of the costs herein.

E. R. WALKER. 30
C.

Respectfully advised,
MAJA LEON BERRY,
V.-C.

Consented to as to form only.
OSBORNE, CORNISH & SCHECK,
Solicitors of Complainants.

Due and legal service of a copy of the within decree and copy of the taxed costs in said action is hereby acknowledged this 23rd day of May. 40

OSBORNE, CORNISH & SCHECK,
Solicitors of Complainants.

NOTICE OF APPEAL.

Filed May 1, 1928.

IN CHANCERY OF NEW JERSEY.

Between

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GEORGE J. GRIMM, BENJAMIN
ROSE, ISIDOR M. NOLL and
FRANK J. NOLL,*Complainants,**and*

PEARCE R. FRANKLIN,

*Defendant.**On Bill, etc.**Notice of
Appeal.*

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The complainants, George J. Grimm, Benjamin Rose, Isidor M. Noll and Frank J. Noll, hereby appeal from the final decree made in the above-entitled cause on the 24th day of April, 1928, made on the advice of Vice-Chancellor Maja Leon Berry and from the whole and every part thereof, and more particularly from the finding therein that the defendant performed the obligations of his employment and contract with complainants, and that said contract was fair and reasonable with respect to said clients and the services performed thereunder, and that the defendant is entitled to compensation of \$950.00 from each of said complainants, and that said complainants pay a counsel fee, to the Court of Errors and Appeals in the last resort in all causes.

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Dated

OSBORNE, CORNISH & SCHECK,

Solicitors for and of Counsel with Complainants.

I conceive there is good cause for appeal in the above-entitled cause.

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H. V. OSBORNE,

Of Counsel with Complainants.

PETITION OF APPEAL.

Filed May 21, 1928.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

GEORGE J. GRIMM, BENJAMIN
ROSE, ISIDOR M. NOLL and
FRANK J. NOLL,
Complainants-Appellants,

vs.

PEARCE R. FRANKLIN,
Defendant-Appellee.

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*On Appeal
from the
Court of
Chancery.*

*To the Honorable the Court of Errors and Ap- 20
peals in the last resort in all causes:*

The petition of George J. Grimm, Benjamin Rose, Isidor M. Noll and Frank J. Noll, the appellants in the above-entitled cause, respectfully shows that:

1. The petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the fourteenth day of February, 1928, in a certain cause in said Court of Chancery wherein the said George J. Grimm, Benjamin Rose, Isidor M. Noll and Frank J. Noll were complainants and the said Pearce R. Franklin was defendant, in this respect, to wit, that the said decree adjudges that each of the said George J. Grimm, Benjamin Rose, Isidor M. Noll and Frank J. Noll, appellants, shall, within ten days after service upon him or his solicitor of a copy

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Petition of Appeal.

of said decree, and of the taxed bill of costs in said cause, pay to the defendant the sum of \$950.00 together with the taxed costs of suit.

10 And the petitioners appeal from the said decree and every part thereof, upon the ground that the said decree should have been in favor of the complainants-appellants and against the defendant-appellee and upon the further ground that the same is erroneous, in that the amounts so decreed to be paid were the amounts of compensation specified and fixed by the contract between the appellants and appellee, which contract was lawfully cancelled and terminated by the appellants before the right of the appellee to such amounts of compensation accrued.

20 Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this court shall seem proper.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of counsel with Appellants.

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AFFIDAVIT OF SERVICE.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

GEORGE J. GRIMM, BENJAMIN
ROSE, ISIDOR M. NOLL and
FRANK J. NOLL,

Complainants-Appellants,

vs.

PEARCE R. FRANKLIN,

Defendant-Appellee.

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*Affidavit of
Service.*

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

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GEORGE W. HARRISON, of full age, being duly sworn according to law, on his oath says that on May 19, 1928, a petition of appeal in the above-entitled cause was filed by the solicitors of the complainants-appellants with the Clerk of the above-entitled court; and that on May 21, 1928, the deponent served a true copy of said petition upon John W. McGeehan, the solicitor of the defendant-appellee, by leaving the said copy at the office of said McGeehan, No. 790 Broad street in the City of Newark, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon of said last-mentioned day.

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GEORGE W. HARRISON.

Sworn and subscribed to before me
this 21st day of May, 1928.

M. ETHEL HEDGES,

A Notary Public of New Jersey.

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ANSWER TO PETITION OF APPEAL.

Filed July 8, 1928.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	GEORGE J. GRIMM, BENJAMIN ROSE, ISIDOR M. NOLL and FRANK J. NOLL, <i>Complainants-Appellants,</i> <i>vs.</i> PEARCE R. FRANKLIN, <i>Defendant-Appellee.</i>	<i>On Appeal from the Court of Chancery. Answer to Petition of Appeal.</i>
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20 *The answer of Pearce R. Franklin, the above-named appellee, to the petition of appeal of George J. Grimm, Benjamin Rose, Isidor M. Noll and Frank J. Noll, the above-named appellants:*

30 1. This appellee, not admitting the truth of any or all of the matters in the said petition of appellee contained for answer thereto, nevertheless admits that a decree bearing date of February 14, 1928, made and entered in the Court of Chancery of New Jersey in the above-entitled cause for the purposes set forth in said petition remain as therein set forth, but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

2. This appellee is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

40 JOHN W. MCGEEHAN, JR.,
 Solicitor for and of Counsel with Appellee.

EXHIBIT D. 1.**FIRST PUBLIC OFFERING***of the*

8 per cent. Preferred Shares

of the

SPRINGFIELD AVENUE BUS Co., INC.,

of Newark, New Jersey

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Business

This corporation operates 17 Independent buses on the Springfield Avenue bus route from the Hudson Tube Station in Newark to Forty-third Street, Irvington. It owns in its name a very valuable garage built to accommodate 40 buses; also a three-stores property at the corner of Springfield Avenue and Forty-second Street, Irvington. It owns and operates its own accessory store, battery and tire repair facilities and a profitable gasoline and oil filling station.

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Management

The Springfield Avenue bus line outranks any other Independent bus route in Newark as to its operating facilities and business management. Already half its older buses are to be replaced with \$8,000 Pierce-Arrows as soon as the bodies can be completed—probably before January 1, 1925.

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Assets

The physical assets of the company are ample alone to safeguard this entire issue of stock to its full par value.

Prospects

The company has already purchased one of its member's buses for itself and will soon begin the

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Exhibit D. 1.

operation of that bus as its own. It is proposed to purchase other members' buses on Springfield Avenue and the proceeds of this sale of stock are to be used to that end and the equipment of them with new buses. Independent bus profits were never so great as now, but
10 future profits will undoubtedly far exceed them.

Terms

This company is authorized to issue \$50,000 of Preferred Stock at a par value of \$100 per share. The stock will pay yearly dividends of 8%, semi-annually, on June 1st and December 1st. It will be redeemable at the option of the company at \$115 per share.

The selling price of this initial offer of Preferred Stock is \$100 per share. Payments of
20 amounts of less than \$100 will be received and interest paid on them from time of their receipt.

THE SPRINGFIELD AVENUE BUS CO., Inc.,
1389 Springfield Avenue
Irvington, N. J.

SAMUEL D. LINES, President.

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EXHIBIT D. 2.

THIS AGREEMENT, made this 15th day of April, 1924, by and between the undersigned and each of them as parties of the first part, and PEARCE R. FRANKLIN, as party of the second part; for and in consideration of the mutual promises and agreements herein made and in further consideration of the services to be performed hereunder, do hereby agree to and with each other as follows: 10

The party of the second part agrees for and during the period of the ownership by each of said parties of first part of the jitney busses now owned respectively by each of said parties and operating on the route known as the Springfield Avenue Jitney Route, to perform any and all necessary and proper legal services with respect to the protection of the mutual interests of the parties of the first part in co-ordinating the busses of all of said parties and the control thereof in line with the policy heretofore determined by the parties of the first part and to organize any corporations, prepare and have executed any agreements or other documents and to institute, attend to and defend any litigation for or against said parties to the end that the policy heretofore determined and expressed by the parties of the first part shall be promoted and fostered. 20 30

And the parties of the first part do each severally agree to pay to the party of the second part as compensation in full for such services five (5) percent on any amount received by the party of the first part over and above Eleven Thousand Dollars from and out of the sale price of each bus severally owned by them respectively, at such 40

Exhibit D. 2.

time as said bus shall be sold to any person or corporation except a corporation formed by the parties of the first part to accomplish the purposes above referred to.

10 If the said parties of the first part or any of them shall at any time transfer said busses to such corporation formed by them for the above purpose then the aforesaid sum shall not be due and payable to party of the second part until the sale of such bus or busses, respectively, to a third party, in which event upon such sale to a third party the said parties of the first part each agree to pay five (5) percent on any amount received by the party of the first part over and above Eleven Thousand Dollars from and out of the sale price of each of said busses to the party
20 of the second part.

IN WITNESS WHEREOF, the parties hereto have hereunto interchangeably set their hands and seals the day and year first above written.

PEARCE R. FRANKLIN.

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Exhibit D. 2.

Signed, sealed and delivered
in the presence of:

George J. Grimm, 68	
Samuel D. Lines, 484	
Edward M. Reishett, 75	
Frank J. Noll, 357	10
Antonio Grieco, 278	
Harry Jubin, 525	
William Leo Elliott, 20	
Joseph Ehrhardt, 345	
Marty Lehrhoff, 464	
Benjamin Rose, 333	
Chas. Waechter, 259	
Louis Lehrhoff, Bus 23	
Gus Hagmann, 445	
Max Greene, 351	
Isidor M. Noll, 451	20
Charles Lehrhoff, 140	
A. A. Marsh, 402	
Edwin M. DeHart, 153	
Eugene E. Brown, 463	

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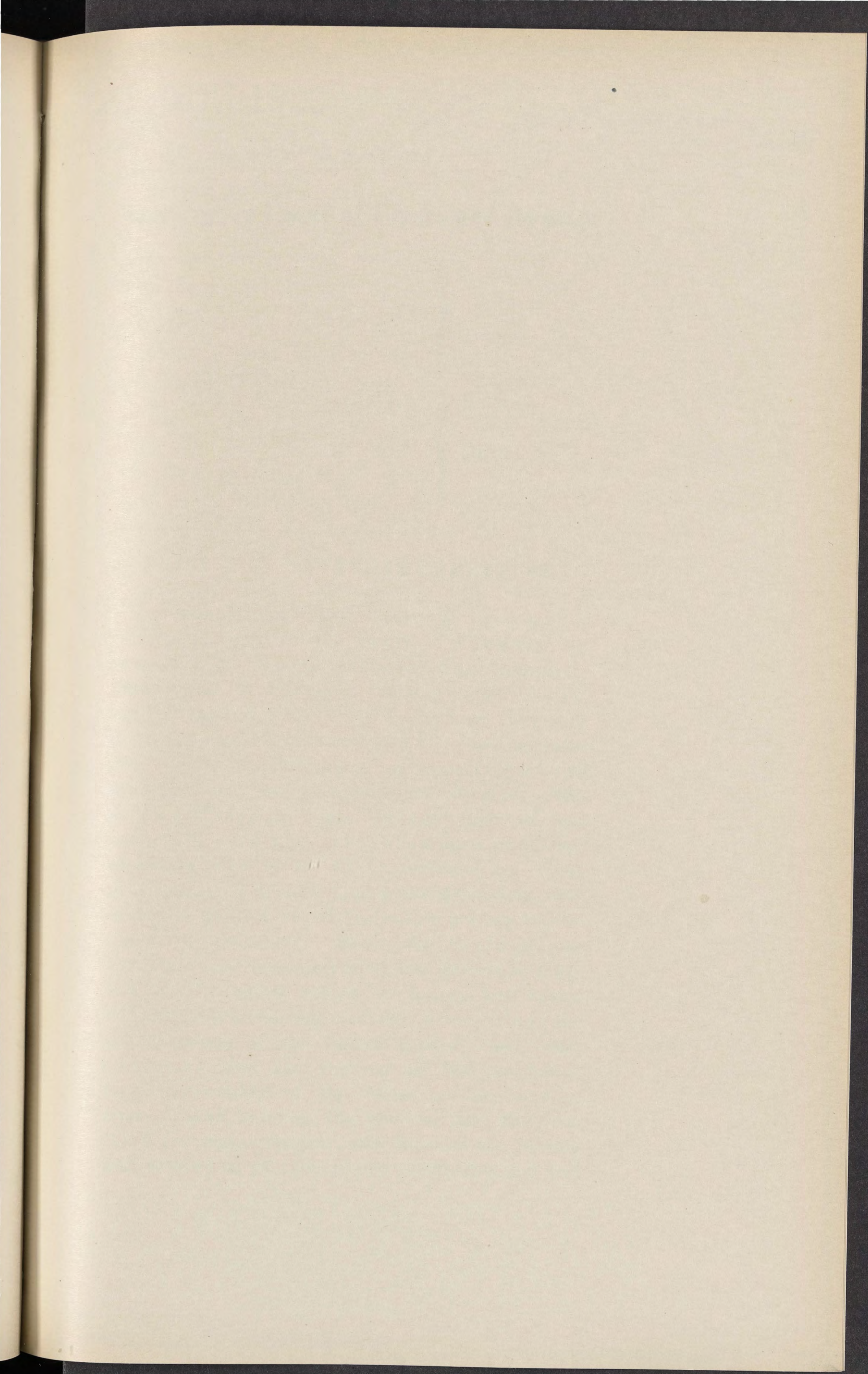
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Amly acknowledged this 26th day of October, 1928.

51 / 51 OCT. 1. 1928

*Arthur W. Cross
Sol. for Complainant-Appellants.*

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

GEORGE J. GRIMM, BENJAMIN
ROSE, ISIDOR M. NOLL and
FRANK J. NOLL,
Complainant-Appellants,

and

PEARCE R. FRANKLIN,
Defendant-Appellee.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

BRIEF FOR DEFENDANT-APPELLEE.

The complainants by this appeal bring up for review a decree of the Court of Chancery adjudging and ordering that each of the complainants pay to the defendant the sum of \$950.00, being the amount found by the Court of Chancery to be due him under a contract for legal services rendered by the defendant for complainants and providing for his compensation therein. The defendant originally had brought suit at law against the complainants, whereupon the complainants filed their bill to restrain him from prosecuting such action, and the defendant consented to the review of the entire matter by the Court of Chancery. After the hearings, the learned Vice-Chancellor filed his conclusions (p. 224, S. C.) which review at length the entire situation involved, and indicate a very thorough consideration of the entire matter, the Court concluding that the services of the defendant were reasonably of the value of the amount agreed upon between the parties, that the contract for compensation was fair to the clients and arrived at after complete disclosure and full

consideration, and that the services rendered by the defendant, both with respect to their extent, the amount of property involved and the proceedings conducted by him and the results obtained for his clients, reasonably warranted the amount of his charges.

The question raised by the appeal of the appellants, as stated in the Petition of Appeal, page 240, is solely that:

“And the petitioners appeal from the said decree and every part thereof, upon the ground that the said decree should have been in favor of complainants-appellants and against the defendant-appellee and upon the further ground that the same is erroneous, in that the amounts so decreed to be paid were the amounts of compensation specified and fixed by the contract between the appellants and appellee, which contract was lawfully cancelled and terminated by the appellants before the right of the appellee to such amounts of compensation accrued.”

Although the foregoing is the only ground stated in the Petition of Appeal, numerous others are asserted in the Brief for Appellants, but as to this ground, an examination of the State of the Case indicates that the contention is unsound, as not only was there never a termination of the contract for compensation between the complainants and defendant, but on the contrary, when he was discharged as the attorney for the complainants, an express stipulation and agreement was signed by the complainants to the effect that the termination of his services was without prejudice to the contract for the attorney's compensation. (See Exhibit D, p. 30.) The matter came before the Court of Chancery with the defendant fully consenting to a complete investigation of his relationship with his clients with respect to both his services rendered and his right to com-

pensation. The defendant consented to the restraining order and at no time has challenged the jurisdiction of the Court to fully investigate and decide all the matters in dispute between the parties, and throughout the hearing and at the present time, concurs with the contentions of the complainants that the Court of Chancery had full power to render such judgment as in equity and justice the facts require, not only by reason of the settled policy of the Court in this regard, but also because the pleadings raise a question of the fairness and good faith of an attorney in his dealings with his clients, and therefore the defendant agreed that the Court should apply to the evidence in the case all of the principles embodied in the numerous opinions concerning attorney's fees and agreements therefore in the adjudicated cases, including the casting of the burden upon the defendant to show the fairness, adequacy and propriety of his dealings with his clients and his claim against them.

It is respectfully submitted, however, that the evidence fully establishes, as the Court of Chancery found, that the contract of compensation entered into by the complainants with the defendant was fair in its terms and provisions, was executed by the complainants after they had ample opportunity to confer with each other, and to negotiate with the attorney as to its terms, which they did; that pursuant to the contract he rendered the services which he agreed to therein, and accomplished the purpose for which they engaged him; as the result of which, directly and indirectly, great benefits accrued to each of the complainants; and that the amount of compensation, measured with respect to its fairness as a contingency agreement, with the work done by the defendant, and

with reference to the benefits accruing to the complainants, and the value of complainants' property involved in the proceedings, and the enhancement thereof, due to the defendant's efforts, makes the amount claimed by him from each of the complainants proper and reasonable under the circumstances.

The complainants' bill is based upon certain allegations which called into question not only the reasonableness and fairness of the claim advanced by the defendant, but alleged various matters including the charges,

“That the said Pearce R. Franklin, in breach of his duties to complainants to advise them according to their best interests, advised them to sign said contract, by the terms of which he would be able to receive compensation not based on or proportionate to the value of his services to complainant; that he improperly and unwisely advised the complainants then and thereafter in respect to the subject matter of the contract (Exhibit 'A') by reason of which advice the complainants were put to great inconvenience, loss and expense, and received no benefit whatsoever; that the contract (Exhibit 'A') was not a binding and enforceable contract, and was not intended so to be by the said Pearce R. Franklin, but was a subterfuge and a sham, by means of which he expected to prevent independent sales by the subscribers to the said Public Service Transportation Co., and, so, obtain whatsoever price for the said busses he desired, upon a sale arranged through him; that the said contract (Exhibit 'A') was ineffective and useless and accomplished no beneficial result whatsoever; that the sales by complainants to the Public Service Transportation Co. were consummated by their own efforts, and not in any particular by the efforts, service, scheme or device performed or concocted by the said Pearce R. Franklin.”

In addition to this, the complainants charged in the complaint that the complainants,

“were men of limited education and experience in business and especially lacking in experience in relation to legal rights, and relied implicitly on the said Pearce R. Franklin, who was then and there the attorney for and advisor of each of the said parties.”

The foregoing allegations are taken from the complaint of the complainants, and constitute the basis upon which they originally sought relief in the Court of Chancery. The evidence, it is respectfully submitted, did not warrant these allegations against the defendant, and did not support them in point of fact. The complainants each took the stand and in addition to their testimony, testimony was given by Samuel D. Lines, who was the president of the Springfield Avenue Bus Co., of which the complainants were stockholders and who acted as their agent and representative in most of the transactions with Mr. Franklin. Their appearance upon the stand, as well as their manner of testifying and the testimony given by them, belied their contention that they

“were men of limited education and experience in business,”

and on the contrary revealed them to be shrewd, intelligent and hard-headed men, having a wealth of experience with relation to all business matters concerning their jitney business, including not only the practical, immediate handling of their business, but all of the practical, legal aspects thereof, with particular reference to legislative action, pending or proposed; the control of the city and state departments over the jitney line, their relative stock interests in the corporate assets of the Springfield Avenue Bus Co., and their own individual busses.

The evidence revealed that at the time of the entering into of the contracts involved in the present proceeding, the four complainants, together with fifteen other bus owners upon the Springfield avenue line, remained after a larger number had sold out to the Public Service Transportation Co. or its subsidiaries for prices which, in the judgment of the remaining owners, were insufficient; that the highest prices obtained upon such sales were around \$10,000 per bus, some of them having been sold for considerably less; that the men were not desirous of selling at the time, but one after the other sold until these nineteen were left, and they felt that they would be obliged to sell and that each of the others might sell unless some measures were taken to bind them together and to assure each one that the others would not dispose of their busses until the majority thought fit to do so, each of them laboring under the apprehension that the other fellow would sell and leave him in the minority or alone as a bus owner and at the mercy of the destructive competition of the majority owner of the other busses. They had legal representation and had tried in various ways to band themselves effectively together, and finally called upon Mr. Franklin to assist them. At their request he appeared several times before meetings of the assembled bus owners, including the defendants, and in long conferences considered and discussed with them various means of accomplishing their object. He proposed plans of incorporation and the conveyance of the busses to the corporation and the issue of stock to the individuals, with voting trustees to prevent the alienation of the stock in such a manner as to give a controlling interest through sale to a rival concern, and other plans which were described in the testimony, but which were rejected because

the men did not trust each other and would not agree to immediately part with title to their respective busses. The various plans were discussed and understood by the complainants and the other owners, and the plan which was later entered into was finally accepted by them, and Mr. Franklin engaged to devote his attention to the inauguration and carrying out of the plan. The purpose that the clients desired to accomplish was to hold themselves together for as long a period as possible, and to prevent each other from disposing of his bus for a definite period of time to any outsider, having particular reference to the Public Service Transportation Co.; to allay the fears entertained by each of the sale by another, and to permit conditions to arise under which the men could exercise, when the majority of them thought fit to do so, their right to bargain for the sale of their busses for a price based upon their actual value, as determined by their considerable income and the partial monopoly arising through the franchise possessed by each. Up to this time many busses had been sold outright for about half of their gross annual income per bus.

The complainants did need legal assistance. They were admittedly on the verge of having to sacrifice their valuable property for much less than they considered it worth. They had received other legal advice and were unable to obtain an arrangement or advice that they desired. When they approached Mr. Franklin it was as the result of their concerted conference and deliberation with each other, and they did not retain him until after several lengthy conferences, during which they had the benefit of each other's advice, of thoughtful deliberation, and when they decided to permit Mr. Franklin to prepare and

have executed the contract proposed, they did so with no misrepresentation on his part as to its effect. There is no dispute in the testimony that Mr. Franklin merely gave his opinion, that the contract which he proposed would be enforceable in the Court of Chancery by injunction and by specific performance proceedings, as well as constituting an obligation on the part of the signers of the contract not to convey their respective busses to an outside, would-be purchaser. They retained Mr. Franklin to draw this contract and to bind himself,

“To perform any and all necessary and proper legal services with respect to the protection of the mutual interests of the parties of the first part in co-ordinating the busses of all of said parties and the control thereof, in line with the policy heretofore determined by the parties of the first part and to organize any corporations, prepare and have executed any agreements or other documents and to institute, attend to and defend, any litigation for or against said parties, to the end that the policy heretofore determined and expressed by the parties of the first part shall be promoted and fostered.”

The complainants thereby obtained the services of the defendant, not merely to do presently necessary work, but he bound himself to each of the signers to perform services over a period of months and possibly years for their benefit, the time during which such services would be continued being solely within the control of the complainants themselves as measured by their majority desire to maintain and operate their busses or to sell them when circumstances were such that they could obtain what they considered themselves a fair price. For this undertaking the attorney naturally and reasonably desired compensation. Both the complainants and the defendant testify that they did not wish to pay

a fee or retainer in advance, nor any fee whatever except upon a contingency basis. While contingency fees are lawful, if fair and reasonable, they sometimes create a possible divergence of interest between attorney and client, but in this case the attorney had no control whatever over the creation of the contingency when he should be paid. That was entirely within the control of the complainants and the other signers. The amount agreed upon and the method of arriving at it was not only mutually satisfactory to the parties, but was arrived at after considerable negotiation and was based upon a fair consideration of the possible benefits to be derived from the attorney's services, the work entailed under his agreement, and the contingency nature of his compensation. The complainants did not sign what the defendant proposed to them. The defendant proposed a contract providing for compensation on any price received above \$9,100, which was the then highest price for which any bus in the city had sold. The complainants and the other signers conferred over a period of several days, and then they stated that offers had been made that they heard of for \$11,000 for a bus either on their line or some other line, and they proposed that the contingent compensation should be based upon an excess over that price, and that the percentage should be 5%. By their negotiations and bargaining upon this proposition, they proved that they were not ready to be rushed into a fee agreement that they considered disproportionate to the expected values of the attorney's services. They dealt as shrewd jitney men upon property that was familiar to them.

They finally agreed with the defendant to pay him 5% on any sum that might be realized over

and above the sum of \$11,000 by the sale of their busses to,

“Any person or corporation except a corporation formed by the parties of the first part to accomplish the purposes above referred to.”

The attorney whose services were thus engaged for an indefinite period was especially familiar with jitney affairs, having assisted in the drafting of legislation, having had considerable experience in the handling of jitney matters for a number of years, both before the Public Utilities Commission, in the Courts of Law and Equity, before the municipal bodies having partial control of jitney busses, and in connection with the propaganda that has been launched against jitney busses by the Public Service Corporation, and all of the elements entering into the situation in which the complainants found themselves. When they executed the contract (Exhibit “B”) they did so admittedly with full knowledge of its provisions, with a full realization of their purposes and the work to be done to accomplish them, and both the contract between themselves and with the attorney represented their will and purpose and were the product only of fair and reasonable dealings between the attorney and his clients, and he thereby became bound to serve them, and they in fairness in equity became bound to compensate him when the contingency arose, according to the tenor and terms of the contract so entered into.

Upon being retained, Mr. Franklin prepared and had executed the contract (Exhibit “A”). He was familiar with the various corporations and persons seeking to force the sales of busses from individual owners, and he prepared and served upon such persons formal notices of the

execution of the contract (Exhibit "A"). He thereupon became the constant consultant of the plaintiffs, individually and through their agent, Mr. Lines, who acted for the nineteen men who signed the contract, and conferences took place, sometimes of long duration, several times each week for many months, this being admitted by the complainants, or at least testified to by their agent, Mr. Lines, as well as Mr. Franklin. The contract was executed in March or April, 1924, and it immediately had the effect which the clients desired, the cessation of individual sales to the Public Service Corporation for a considerable period of time, although a large number of busses had been sold in a short period of time before the execution of the contract. No busses were sold by the signers of the agreement until September, 1924, five or six months after the contract had been signed. The lapse of this period served to calm the panic in the minds of the bus owners, and when the sale of the Lehrhoff busses took place about September 8, 1924, and the Public Service was making efforts to buy busses in violation of the agreement entered into by the men, Mr. Franklin instituted actions in the Court of Chancery against the Lehrhoffs for specific performance, as well as a bill for injunction against the remaining owners of busses in behalf of the line corporation. In the Lehrhoff suit the order to show cause was obtained September 19, 1924, and was returnable September 30, 1924, and after several continuances, the argument on the return of the order to show cause was had in the Court of Chancery on October 21, 1924, the temporary injunction being granted after argument and opposition by the representatives of the Public Service Corporation. In the general injunction suit against the other owners of busses, the order to

show cause was returnable on September 16, 1924, and after argument by the opposing counsel, retained by the Public Service Corporation, a temporary injunction against the sale or disposal of the busses by the owners thereof was granted on September 16, 1924.

Upon obtaining the temporary injunctions against all of the remaining owners, the effect upon the security of the complainants in their continued ownership of their busses was that each owner knew that he and the others were restrained from sale until such time as the final hearing should be held. In view of this fact, the present contention of the complainants that they objected to the delay which they contended was occurring with respect to the final hearing, is quite unworthy of credence, and appears to be but one of the weak explanations that they offer for the discharge of their attorney in April of 1925.

In the Max Greene suit, proceedings were instituted in January, 1925, and an order of restraint obtained. The matters were subsequently referred to Vice-Chancellor Backes and an order of designation made in March, 1925, fixing the date for final hearings as June 3, 1925. This order of designation had been obtained and filed before the substitution of solicitor was asked for and obtained a month or so later, on April 17, 1925. There is no suggestion by the complainants or any of the witnesses that Mr. Franklin failed to perform and properly perform, his contract and his duties as solicitor and attorney of the complainants. The weak reasons given on the stand for his discharge were that the thing dragged along and the men thought it would never come to trial, and as to the other reason, a slight mix-up occurred between the allegations

of the complaint and the testimony on the stand. On the stand they allege that they feared that Mr. Franklin did not wish to compel conveyance to the corporation, because he would not get a fee even if the bus so obtained were later sold by the line corporation to the Public Service. The contract, however, specifically provides for such a contingency and that Mr. Franklin would obtain compensation if a bus were purchased by the line corporation upon its being resold, if at all, to the Public Service Corporation or any outside corporation.

In the complaint they allege, on the contrary, that the reason was,

“Fearing that they were not being properly prosecuted by the said Pearce R. Franklin, and knowing that the said Pearce R. Franklin claimed a commission from the sales by the said Lehrhoffs and the said Greene to the said Public Service Transportation Company, which sales the said actions were intended to void,”

but this was not testified to upon the stand, and as the amount of compensation that Mr. Franklin would have been entitled to on the Lehrhoff sales was approximately \$50.00 on each bus, it hardly seems possible, nor do the complainants suggest that they believed so in their testimony, that the defendant would be unfaithful to his trust by reason of this fact. The defendant, in addition to instituting and attending to said actions and conferring upon the general situation constantly with his clients, made numerous appearances for them before the Public Utilities Commission, and the City departments having charge of jitneys and the routing thereof, and generally acted as their advisor and guide in the maintenance of the policy inaugurated by them through him, with the result that the organization they desired be-

came so solidified, so fully were the ends that they intended to accomplish realized, that the complainants were able to hold their busses until they got ready to sell in October, 1926, at which time these four defendants received thirty thousand dollars (\$30,000) each for their respective busses, or a total of one hundred and twenty thousand dollars (\$120,000), which was approximately eighty thousand dollars (\$80,000) more than the four busses could have been sold for before the agreement was entered into, and if the agreement had not been entered into and if the services of the defendant had not been rendered pursuant to that agreement, the complainants virtually agree that they would have been forced to sell their busses for approximately nine or ten thousand dollars (\$9,000 or \$10,000) each. True, the complainants unjustly and without good cause discharged the defendant before the date of the sale of the busses, and they had a perfect right to do so, without any reason, and no matter how conscientiously and fully and effectively the attorney had performed his duties, but, in view of his labors in their behalf, of the benefits accruing to them therefrom, of the fairness and reasonableness of their agreement to compensate him, they had no right to cancel their obligation to him, if it were a fair one, and they acknowledged that they did not desire to cancel their obligation to him when they obtained the order of substitution from him in April, 1925, more than a year after he had been retained, and they signified their intention to remain bound by their compensation agreement when they executed Exhibit "D," wherein they stated in part,

"We are desirous at this time of substituting other counsel to try the cases above mentioned at the final hearing on June 3rd and without prejudice to a contract which

exists between the owners of busses and yourself, we request that you permit us to substitute an attorney in your place and stead to proceed to the final hearing of these causes."

This was signed by each of the remaining bus owners, including all of the complainants. At this time they had other and independent counsel whom they had consulted, and whose names they had presented in the order of substitution which Mr. Franklin signed. They made no suggestion in any manner that they questioned their obligation to Mr. Franklin or its fairness or reasonableness, nor did they at any time until they received their money when they sold their busses, question the validity, fairness or reasonableness of their contract with or obligation to him. Mr. Franklin demanded no compensation for his services or expenses, even when the substitution was signed, but the agreement continued in his understanding and in the understanding of the complainants, after the substitution and up to the time of sale. The purposes for which they had retained Mr. Franklin had been accomplished. Even the subsequent dismissal of the bills in the Chancery proceedings in June, 1925, had no effect on the solid position that they now found themselves in, for each of the complainants continued to hold his bus, operate it at a profit and sell in unison with the others for a price which they testified they considered a fair one and what they felt entitled to. Of the thirty thousand dollars (\$30,000) obtained for the bus, which is acknowledged to be twenty or twenty-one thousand dollars (\$20,000 or \$21,000) higher than could have been gotten before Mr. Franklin was obtained, and nineteen thousand dollars (\$19,000) more than the highest rumored offer in the city at such time, Mr. Franklin under his agreement claims

from each of the complainants the sum of nine hundred and fifty dollars (\$950), representing approximately 3% of the amount of property involved for each of the complainants, and 5% of the acknowledged accretion in value as the direct or indirect result of his services. The mere fact that the attorney was not present when the money was obtained does not signify that his efforts did not lead to the accomplishment of the fortunate result of his efforts, consisting of the obtaining of a large sale price made possible by the removal of the situation and circumstances that surrounded the jitney situation when he took hold for the complainants, that they had discharged him after their purposes had really been accomplished did not discharge them of their obligation. The efforts of the complainants on the stand to pretend that they did not know what they were signing when they signed Exhibit "D" acknowledging their continued obligation to Mr. Franklin for his fees, were so obviously unvarnished as to hardly require detailed references to the discrepancies in such statements as were revealed by the evidence of these witnesses. They signed Exhibit "D" as they had signed the compensation contract, not in the presence of the attorney, but in the presence of their representative, Mr. Lines, who brought the same to them.

It is respectfully urged that applying all the stringent rules that are and should be applied to attorney's fees and agreements therefor, the defendant is entitled to a decree against each of the complainants for the sum provided for in the compensation agreement. The suggestions that the situation regarding the corporate garage property entered into the contract between the defendant and complainants or their original contract, Exhibit "A," was not borne out by the

testimony, and on the contrary, this appears to have been an entirely separate transaction, having no connection with the subject matter of the agreements in dispute, except that the remaining bus owners as individuals sought to buy out the stock which was in the hands of former bus owners, which they did at a separate meeting, and for a price advanced by the individuals for the stock of their former associates.

The complainants are in error in contending that the preliminary injunctions were gotten ex parte and without argument and on the return of each Rule to Show Cause the granting of the temporary injunction was strenuously opposed by counsel for the various Public Service companies who were engaged in a constant attack to break up and defeat the compact between the men, and the plan of co-operation created by and arising out of the contract (Exhibit "A") and the proceedings thereunder. The statement in the brief of the complainants that Mr. Franklin charged extra for the Greene and Lehrhoff suits is erroneous, the fact being that the line corporation being desirous of actually acquiring the Greene and Lehrhoff busses for the amount stipulated in the contract by reason of the fact that the owners thereof had violated the contract, offered a bonus to Mr. Franklin in the event that the line corporation was successful in actually acquiring the busses at the cheap price provided for in the original contract, and under which the proceedings were taken. This bonus was never paid to the defendant because the busses were not actually recovered. The restraints and the injunction proceedings were pursuant to and in line with his obligations under his contract with the men. The recovery of the busses by specific performance suits, also, was in line with his obliga-

tions thereunder, but the acquisition of the busses by the corporation would have resulted in such a profit to it that it offered a bonus in the event that they did actually acquire the busses. No fees were ever charged by or paid to the defendant for any of the services rendered to the complainants under his contract.

The argument is made in complainant's brief that defendant did not create the fund from which the payment is to be made. The testimony establishes, on the contrary, that the men at the time the services of the defendant were engaged, felt impelled and compelled to sell at the then prevailing price of approximately \$10,000. The services which he rendered throughout the progress of the matter, it is not denied, changed the conditions to such an extent that they were able to do what they wished, that is, to hold their busses until such time as they were free to sell without compulsion for a reasonable amount and for what they considered the value of their busses. The fact that the Lehrhoffs and Greene sold for a price around \$12,000 or \$13,000 has no bearing upon the fact of Mr. Franklin's services up to that time, for the private reasons that may have impelled them to break their contract and sell do not appear in the evidence, but there does appear in the evidence the fact that immediately after such sales the injunctions were gotten against the remaining men, which prevented all further sales until after the final hearing in the cause, which took place almost eight months later, in June, 1925. During that eight month period the men were bound to their contract by the injunction of the court. They had had demonstrated to them the effectiveness of the contract, at least to that extent. They knew that they would not suffer the loss of any other busses

upon the line, and were free to operate and make their profits during this period. During all of this time the patronage of the busses increased, causing greater value to attach to the busses intrinsically, and giving to the men the confidence in their position which they sought. During all of this time the purchase price available and obtainable was increasing, and Mr. Franklin was performing his services for the men, and when the injunction was dissolved in June, 1925, the men were so secure in their position that they continued to hold their busses and finally negotiated the sale of them for \$30,000, each in August, 1926. It is evident that the men had had accomplished for them everything for which they had retained Mr. Franklin, and when they finally disposed of their busses, it was not through the medium of fear, oppression or propaganda, but as the result of the free exercise of their right to hold or sell the busses as they deemed wise, and of their bargaining for a price that was satisfactory to them for the disposal of their respective busses. Under these circumstances the argument of the complainants that the defendant did not contribute to the accretion in price does not seem warranted by the facts. The suggestion of the complainants at the hearing

“whatever amount is found to be fair should be apportioned equally among the nineteen owners and one-nineteenth of it assessed against each of the complainants here,”

would be entirely inequitable and unsound as a basis of allowance. The Lehrhoffs and Greene sold for a price very slightly above the minimum amount upon which defendant was entitled to compensation, and this court would have no power to compel any payment above what they contracted to pay on their part to the defendant. The four complainants in this case each con-

tracted individually with the defendant and the rights of the defendant should be determined with respect to each of the complainants individually. The remaining owners may never sell their busses, in which event the complainant will not be entitled to compensation, and this court would have no authority to assess them for any portion of the services of the defendant. Or the remaining owners may organize their own corporation to operate the remaining independent busses, in which event defendant would not be entitled to compensation unless such corporation should subsequently sell to an outside corporation under the terms of the contract. There therefore is before this court no other interest except the interests of the four complainants, and it is with respect to these that the rights of defendant should be adjudicated. The contingency nature of the agreement should be taken into consideration and the defendant's compensation being fixed upon the amount of the sale price of each individual bus, so that he would suffer by a low priced sale or benefit by a high priced sale, all within the control of the individual bus owners, which should lead to a determination of his compensation with respect to each individual bus owner and not upon a fractional percentage of any gross amount.

In the brief of complainants the argument is made that the court must disregard the terms of the contract between the complainants and the defendant and allow compensation purely upon a *quantum meruit*, and the case of *Soper v. Bilder*, 100 Atl. Rep. 858; 87 N. J. Eq. 564, is quoted from as in support of this contention. A careful examination of that case, however, reveals that the quoted portions of the opinion of Vice-Chan-

cellor Lane are from the dictum in the case and that the decision of the Vice-Chancellor in that case really effectuated and sustained the terms of the contingent agreement previously entered into between the attorney and client. In the Bilder case the attorney had entered into a contract with his client to receive a sum equal to one-third

“of any and all recovery which Mrs. Sisco or her husband should be awarded or receive in the premises, either by suit, settlement, compromise, or otherwise; and that in the event that the deeds of conveyance made by Mary Soper to Mrs. Sisco should not be set aside or declared invalid, then that Bilder & Bilder should receive one-third of the value of the lands conveyed by Mary Soper to Mrs. Sisco, said one-third to be computed upon the value of said land as the same should be at the time of the said determination.”

The bill was filed to set aside a deed to the attorney for an undivided one-third interest in the premises pursuant to the contingencies that arose, upon which the conveyance was made as an intended compliance with the contract. The court investigated the fairness of the contract, the value of the services rendered, the amount of property involved, the success of the efforts and the value of the services to the client. The executed conveyance was questioned not by the original client but by heirs who were not a party to the original transaction, and the court refused to set aside the deed but permitted a framing of the pleadings so as to permit a decree defining the rights of the attorney under the deed so as to make it conform expressly to the agreement itself. In other words, so far as this decision goes, the Court of Chancery sustained the conveyance to the attorney in payment of the fee of the at-

torney under the contingency agreement, and in doing so, the learned Vice-Chancellor stated,

“Mrs. Sisco had the absolute power to do what she did do. Is it to be presumed that, were she alive now, she would repudiate? In the face of the circumstances here existing I would have to find that the amount which the attorney will receive is so far in excess of any reasonable amount which he could demand that it is to be conclusively presumed that, had the client understood the circumstances, she would never have made the contract, that it results in such an overreaching as that she cannot be presumed to have intended it, or that there was some fraud, or that she would not have made it except induced by her precarious condition coupled with her inability to pay cash, or that, had she been able to pay cash, she would have preferred to pay reasonable compensation rather than to enter into such a contract. I do not think I am justified in so finding.”

The fact that the Court, by way of dictum, did state what was quoted in the complainant's brief, standing by itself and not considered with the context of the opinion, might produce an erroneous construction of the learned Vice-Chancellor's opinion in such matters. Among the cases cited by Vice-Chancellor Lane are to be found the following, *Hassell v. Van Houten*, 39 N. J. Eq. 105, wherein the learned Chancellor passed upon a contingent agreement of 50% of the avails of a suit, and found that the brief established by the weight of evidence the fact that an agreement was made to this effect. The court then stated,

“There is no legal objection to the enforcement of the contract in question. It has been held by the Supreme Court that the law of champerty and maintenance does not exist in this state. *Schomp vs. Schenck*, 11 Vr. 195. And I do not see any reason for denying the validity of such an agreement. If such agreements cannot be enforced, there

must be many cases in which the poor will be unable to assert their rights.”

The Chancellor thereafter concluded,

“The complainant in this case has established a valid contract for the payment to him, for his services, of one-half of the sum recovered, besides his costs, and he should be decreed to have a lien accordingly upon the fund in court for so much of his claim as still remains unpaid, besides his costs of this suit.”

In the case of *Wilson v. Soper*, 72 N. J. Eq. 523, 66 Atl. 909, the Court of Chancery, speaking through Advisory Master Pitney, sustained the validity from an equitable standpoint of a contract for one-third of the proceeds of a settlement as between the attorney and client.

In the case of *Lynde v. Lynde*, 64 N. J. Eq., at page 736, 52 Atl. 694, also cited by Vice-Chancellor Lane in the Bilder case, the court considered and decided against the right of an attorney to receive an assignment of or have a lien upon the future alimony of a client and rests upon this point in so far as the attorney's interests were concerned.

In the case of *Brown v. Bulkley*, 14 N. J. Eq., page 451, the complainant filed a bill to set aside a bond for \$750, with warrant of attorney to confess judgment which had been given by the complainant to his attorney, and the court held that in such case,

“The bond or other security will not be set aside as void, but it will be suffered to stand as security for the amount justly due upon it, and the burthen will be thrown upon the attorney of showing its perfect fairness, adequacy and propriety.”

The court nowhere considered the subject of the amount to which the attorney was entitled

for his services, and dismissed the bill upon the inconsistency of the evidence and the case made out by the bill, and the decision is not in any way helpful to a determination of the questions involved in the present proceeding.

In *Crocheron v. Savage*, 75 N. J. Eq. 589, 73 Atl. 33, the bill was filed to set aside a deed made to an attorney, not upon questions of the excessiveness of value of property with respect to the agreement or services, but upon the grounds of fraud or unfairness in obtaining same on the part of the attorney. The Court of Errors and Appeals in reversing the Court of Chancery, which had sustained the transaction, based its action upon the non-disclosure of material facts by the attorney, saying,

“The law looks on transactions of this kind between an attorney and his client with suspicion, and will not permit a conveyance to the attorney to stand unless the attorney demonstrates the entire good faith of the transaction. It requires him to be absolutely frank and open with his client, to disclose every fact of which he has knowledge, and as well any professional opinion he may have formed, which could in any way affect the client in determining whether or not to make the conveyance. The conduct of Mr. Savage does not measure up to this standard of frankness.” (At page 598, 75 N. J. Eq.)

Nothing in this case involved any question of the enforcement of a contingent contract with respect to this amount, if it were fairly entered into, and reasonable with relation to the services engaged, the amount of property involved, the ends sought and obtained, and the contingent nature of the transaction. The case of *Porter v. Bergen*, 54 N. J. Eq. 405, 34 Atl. 1067, is also cited in the opinion in *Soper v. Bilder*. In this case the Court of Errors and Appeals reiterated the

established rule, holding that the burden of proving the fairness of the transaction is upon the lawyer and the security will be suffered to stand only for the amount shown to be justly due upon it. The opinion in the cited case of *Porter v. Bergen* is very short and the facts appear to be that the complainant filed a bill with respect to property that had been conveyed to the defendant, a member of the bar, and the defendant claimed \$1,000 as counsel fee for services rendered by him to the complainant. *There is no clear evidence in the opinion that there was a definite agreement for this amount, although it is possible that such was the fact from the language of the court, later quoted.* The defendant, however, asserted a claim to a lien for \$1,000 for the services he had rendered, and the decree of the Court of Chancery was that the defendant be adjudged to hold the premises in trust for the complainant, subject to any monies due the defendant on settlement of the account between the parties,

“and a reference was ordered to a master to state the account, in which he was directed to allow the defendant \$1,000 as counsel fee for services rendered by him to the complainant.”

It was on the allowance of the \$1,000 fee that the appeal was taken. The Court of Errors and Appeals thereupon went into the question of the reasonableness of the allowance, and said,

“We have searched the case in vain for evidence which would justify so large a fee.” (Different than ours.) “Even if it be conceded that the complainant agreed to the charge, yet a Court of Equity would not sanction it except upon proof of its perfect fairness. *Brown vs. Bulkley*, 1 McCart. 451; *Schomp vs. Schenck*, 11 Vr. 195, 200.

The propriety of applying this doctrine in the present instance is demonstrated by the

defendant's reply to the question, 'Did he (the complainant) make any objection to your charging \$1,000 at that time? No, sir; he would have given me almost anything at that time, I think; he was in a tight place, and he knew it.'

Let this item be reduced to \$250."

The case of *Porter v. Bergen*, therefore, does not arise squarely upon what the Court treats as a definite contract to pay a specific amount, and which it tested as to its fairness and reasonableness under all the circumstances, but rather upon an appeal from an allowance by a master of a lien upon premises held in trust to the extent of what the master calculated was the reasonable value of an attorney's services and which the Court of Errors and Appeals reduced.

In the case of *Wagner v. Phillips*, 78 N. J. Eq. 33, 78 Atl. 806, the Court actually sustained the rights of the attorney McDermit to the full extent of the compensation found to be agreed to be paid to him, and the Court upon other grounds found that he was not equitably entitled to additional amounts upon additional notes, because of the circumstances under which they were procured, and nothing in this case contains any statement to the effect that a contract of an attorney fairly obtained and bearing a reasonable and fair relation to the services rendered and the objects obtained for the client will be disregarded in determining his rights for compensation against the client.

In the case of *Johnston v. Reilly*, 68 N. J. Eq., no support whatever is found for the contention of the complainants or for the theory that the agreement between an attorney and client may be disregarded as to its terms, regardless of the circumstances. All that is said upon the subject and which shows in *Johnston v. Reilly* is

to be found at pages 149 and 150, and shows that Johnston was retained

“by taking a written agreement with Mrs. Throckmorton that he should have compensation for his services, *not exceeding 25%* of the amount recovered.

This agreement he was called upon at the hearing to produce and did produce, and upon an examination of it I came to the conclusion that it was, under the peculiar circumstances of this case, a proper agreement, and one which the court ought to uphold to the extent, at least, of not allowing its existence to influence its action.

I have no doubt about the power of the orphan's court, in the present instance, to confine the amount which Mr. Johnston shall be allowed to retain out of any recovery he may obtain herein to reasonable compensation for his services.”

As the agreement in *Johnston v. Reilly* was for compensation not exceeding a certain percentage, naturally the Court could determine that compensation anywhere within 25% of the amount involved.

The foregoing are all of the cases cited by Vice-Chancellor Lane immediately before his statement in *Soper v. Bilder*, as follows:

“it seems to me, that upon such an agreement being called in question by a client, it will be sustained only to the extent of securing to the attorney reasonable compensation under all the circumstances of the case, which is but another way of saying that the contract under such circumstances will be entirely disregarded. In computing what is reasonable compensation, many elements must be taken into account. There is no yardstick by which the value of legal services can be measured; no rate per diem or percentages can be employed with justice to both parties. The legal ability of the attorney, the amount of work which he does, the

skill with which he does it, and, of much importance, the amount involved, and the success of his efforts. There may also be considered the contingency that, in case he is unsuccessful, he will receive nothing, and the fact, if it be a fact, that the fund was created through the efforts of the attorney.”

It is also respectfully submitted that there should be taken into consideration, with all of the other foregoing elements, the agreement of the parties as to what would constitute a reasonable basis of compensation, and that if the same bear a fair and reasonable relation to the other circumstances, and was fairly obtained without fraud or misrepresentation of facts or opinion, and under circumstances that gave to the clients full opportunity for reflection and consideration, and the amount was determined by negotiations between clients and attorney, by persons who had had long experience in relation to the matters involved, and the services rendered, were not disproportionate in value to the amount agreed upon, that then the contract should be given full force and effect by a Court of Equity, to the full extent of the provisions of the contract, either as a specific enforcement of the contract itself or as a determination that the reasonable value of the services is the amount provided for in the contract. The opinion in the Court of Chancery below is directly founded upon this finding and theory.

The cases of *Hassell v. Van Houten* and *Wilson v. Soper*, cited herein above, are instances in which the Court of Equity gave specific effect to such contracts when found reasonable and proper.

The case of *Weibezahl v. Huber* is cited in the complainants' brief (39 N. J. Law 334), and there are quoted excerpts from Thornton on Attorneys at Law, pages 253, etc. Nothing will be

found in the quoted portions of this textbook contained in complainants' brief except an assertion of the acknowledged right of a client to dismiss an attorney at any time upon payment of reasonable compensation for the services performed down to the time the substitution is allowed. This general statement does not apparently concern itself at all with specific agreements, and even if it did, in the present case, the services actually rendered by the attorney up to the time of his discharge warrant the recovery of the amount claimed by him, for, as a matter of fact, all of the services that were needed to be rendered, had been practically completed and the object of the client effected at the time the substitution was obtained.

The case of *Kelley v. Schwinghammer*, 78 N. E. Eq. 437, arose on a bill for injunction to restrain the prosecution of a suit at law by an attorney upon a promissory note obtained by him for services rendered, and at the hearing at the return of an order to show cause the Court held that it had jurisdiction to inquire into the transaction and enjoined the further prosecution of the action at law until the final hearing of the equity proceeding. The Court merely determined its right to do that which is conceded throughout this entire proceeding, the Court stating that

“In such case the burden is thrown on the attorney of showing its fairness, adequacy and propriety.”

It is respectfully urged that in this case the defendant has sustained the burden of proving the fairness, adequacy and propriety of his contract for compensation, that the amount claimed under and provided for in said contract is fair with relation to the services rendered, the attainment of the object sought by the client, the value

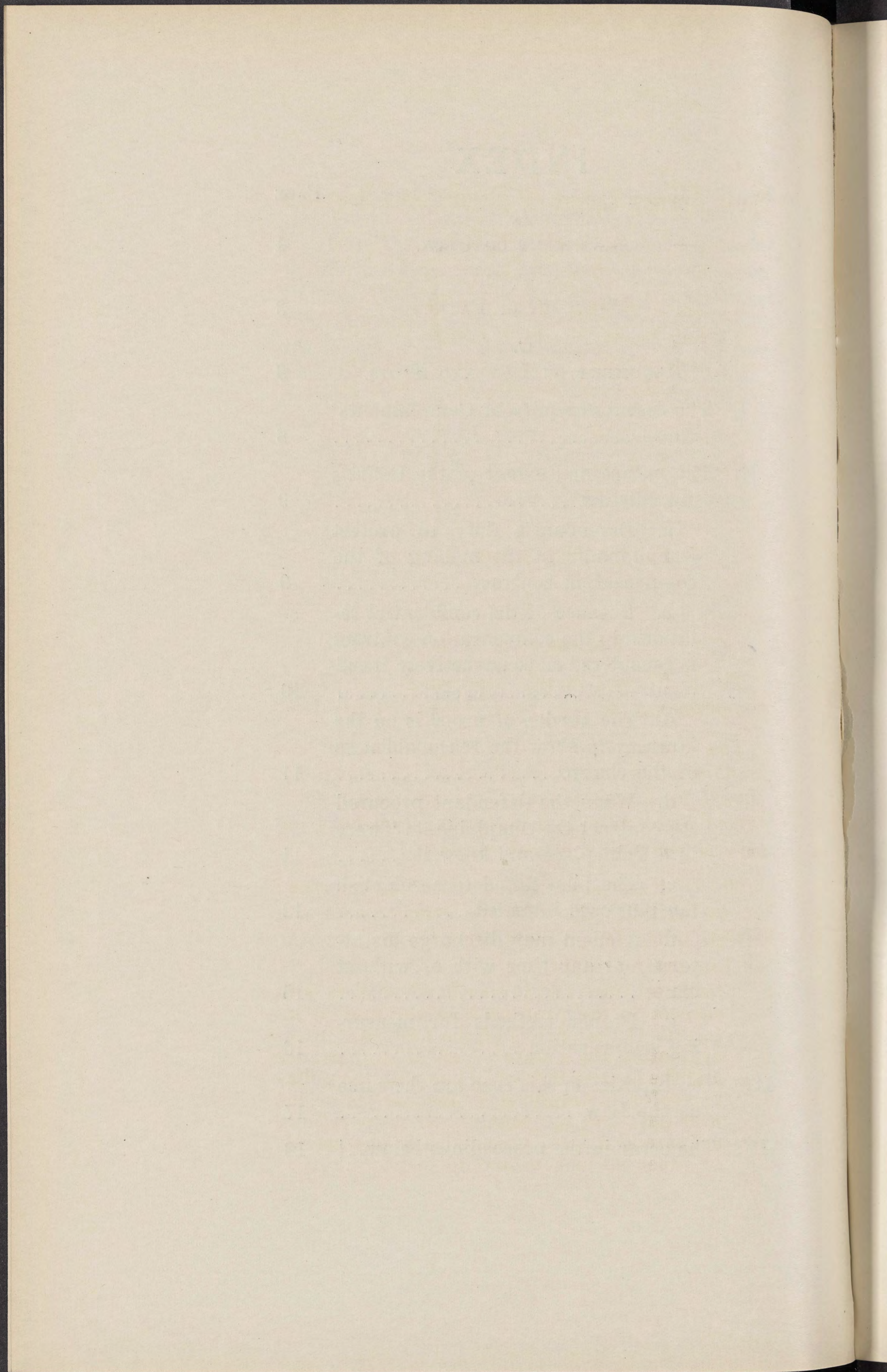
of the property involved, the accretion thereof through the efforts of the attorney, and with respect to the manner and circumstances under which it was entered into, and in view of the findings of fact by the Chancellor to this effect that the decree of the Court of Chancery directing the payment to defendant by each of the complainants of the sum of \$950 should be affirmed.

Respectfully submitted,

JOHN W. MCGEEHAN, JR.,
Solicitor for and of Counsel
with Defendant-Appellee.

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New Jersey Court of Errors and Appeals

Between

GEORGE J. GRIMM, BENJAMIN
ROSE, ISIDOR M. NOLL and
FRANK J. NOLL,

Complainants-Appellants,

and

PEARCE R. FRANKLIN,

Defendant-Appellee.

On Bill, &c.

On Appeal

from the

Court of

Chancery.

BRIEF FOR APPELLANTS.

A.

Statement of Issue.

The defendant in this case sued each of the complainants, at law, upon a contract for fees.

The contract provided that payment for defendant's services (specified in the contract), should be a percentage of the selling price received for certain auto buses then owned by the several complainants and others.

The contract between the parties was embraced in one writing, signed by the complainants and fifteen other bus owners. It provided, on the part of the defendant, for

“all necessary and proper legal services with respect to the protection of the mutual interests of the parties of the first part in coordinating the busses of all of said parties and the control thereof in lien with the policy heretofore determined by the parties of the first part and to organize any corporations, prepare and have executed any agreements or other documents and to institute, attend

to and defend any litigation for or against said parties to the end that the policy heretofore determined and expressed by the parties of the first part shall be prompted and fostered" (State of Case, p. 26, ll. 21 to 33).

The purpose of the employment of defendant was to utilize his experience and ability in devising and carrying out a plan which would hold the subscribers together and prevent them, except as a group, from selling their busses (individually owned and operated) to the Public Service or anyone else (Case, p. 176, ll. 6-10).

The services were to be rendered to the group, but the obligation to pay was individual and based on the price that each received for his bus (5% on any amount over \$11,000), if and when sold, and irrespective of the character, amount or value of the service. The services contracted for required some legal ability and technical skill.

The Court of Chancery had jurisdiction of the subject matter of the cause of action because the defendant purported to act in his professional capacity as an attorney at law.

The complainants contend that the fees claimed, based on the selling price, are unconscionable because the defendant was not the procuring cause of the sale; because the fees are not justified by the services performed; because changed and unforeseen circumstances intervening between the making of the contract and the sale of the busses make the charges according to the contract inequitable; because the failure of the defendant's scheme makes it unjust for him to measure his charges by the price eventually received; because the contract was unfair to the

complainants in that it made no provision for adjusting payment to service in the event of his discharge and because the contract was prepared and obtained by defendant when he was acting as attorney for complainants.

The settled rule of law, under such circumstances, is that the fee shall be fixed by the Court on the basis of the value of the services.

The defendant demands the full contract price.

B.

Summary of Facts

Early in the year 1924, the business of transporting the public over Springfield avenue between Irvington and Newark, in Essex County, New Jersey, was carried on by Public Service Railway Company operating a trolley line; by Public Service Transportation Company operating busses; and by forty-one individuals (of whom the complainants were four) each owning and operating a bus.

Transportation by busses had been initiated some years earlier by individuals, each operating one bus, and had been carried on successfully in competition with the trolley service. The Public Service Railway Company in the course of time formed, or participated in forming, a subsidiary, or related, corporation, Public Service Transportation Company, for the purpose of conducting the business of transporting the public by busses in a co-ordinated system with the trolleys.

The privilege of conducting bus transportation by that time had become vested, practically, in the individual bus operators, so the new company was compelled, or was impelled by practical

reasons, to buy the busses from the individual operators, the privilege or permit passing with the purchase of the bus (Case, p. 179, l. 31; to p. 180, l. 13), thus eliminating competition and acquiring a permit and a bus by one and the same transaction (Case, p. 176, ll. 36-38). The advantage to the Public Service Transportation Company in such a transaction was due to all three of the elements and the price paid was generally far in excess of the value of the bus alone.

A measure of cooperation between the various individual bus owners had come about and in the latter part of the year 1923 had resulted in the formation of a corporation hereinafter referred to as the "garage company," in which they were all equal stockholders, and through which they purchased land and built a garage for their common use. The garage was for the purpose of night storage; for mechanical service; and for parking between trips (the last made necessary because the municipal authorities would not allow the busses to stand in the street).

There were forty-one individual bus owners who became stockholders in this garage company and the building was erected on a scale corresponding to the needs of that number and was financed on the expectation of support from that number. Shortly before the employment of defendant, twenty-two of the forty-one sold their busses and transferred their permits to the Public Service Transportation Company. This sale of the busses did not, however, include the sellers' stock in the garage company.

The remaining nineteen bus owners were thus left in a precarious position in regard to their

garage enterprise—the building not then being completed; the prospective patronage being reduced by more than half; and the majority of the stock being held by parties no longer interested in the garage enterprise and likely to sell at any time to Public Service, an unfriendly competitor (See paragraphs 1 to 6 inclusive, in bill of complaint, Case, pp. 1, 2 and 3, which are admitted by answer, Case, pp. 31, 32).

The nineteen bus owners did not want to sell their buses, at least not for any price offered, up to that time, and conceived it to be in their mutual interest for all to refrain from selling at that time, but they lacked complete confidence in each other and were anxious for some scheme that would insure adherence to the common interests and common plan (Case, p. 46, p. 101, ll. 22 to 30; p. 177, ll. 18 to 30). Various schemes were considered and found impracticable and then it was reported to one of their number, who was their spokesman, that the defendant had devised a contract that would insure the solidarity of their organization so long as needed (Case, p. 46, ll. 2 to 21). Defendant was then consulted by the spokesman and he afterwards attended one or more meetings of the men and convinced them of the utility of his idea or scheme (Case, p. 46, ll. 21 to 33; p. 174, ll. 28 to 40; p. 175, ll. 1 to 10).

This scheme was embodied in a contract providing for the sale of the buses to the garage company. This contract is Exhibit A attached to the bill of complaint (Case, p. 103, ll. 1 to 19).

At approximately the same time, but after his engagement to draw the basic contract he drew, and all of the nineteen men at defendant's solicitation signed the compensation agreement by the

terms of which he was to receive five per cent. on the selling price of each bus (to any one other than the garage company) in excess of \$11,000. This is Exhibit B attached to bill of complaint (Case, pp. 26, 27).

These two contracts executed at approximately the same time, were related to each other and must be considered together. The one provided for a sale to the garage company and was obviously intended to furnish the foundation for restraint *against a sale* to the Public Service by an individual. The other provided for compensation *only in the event of such a sale*. The explanation of the defendant and of the signers who have testified on the point is that they expected to be relieved from the contract of sale to the garage company when a price satisfactory to all was reached, the method being by a unanimous consent to a cancellation of the contract (Case, p. 213, ll. 22 to 40; p. 107, l. 35 to p. 108 to l. 14; p. 149, ll. 29 to 34). According to its intent and in its essence the sale contract was not a contract of sale to the garage company, but a contract to refrain from selling to the Public Service for the purpose of boosting the price (Case, pp. 188, 189, 190).

In September, 1924, three of the signers, notwithstanding the basic contract, sold to the Public Service Transportation Company (Case, p. 67, ll. 33 to 40; p. 186, ll. 1 to 10).

Within a short time after that the defendant brought suits on behalf of the garage company to force a reconveyance of those three buses (Case, p. 186, ll. 7 to 10). He made a charge to the garage company of \$1,000., to be paid for the two cases (Case p. 204, ll. 20 to 40; also Exhibit A for complainants; Case, pp. 220, 221), although

the compensation agreement provided that he would

“attend to and defend any litigation for or against said parties to the end that the policy heretofore determined by the parties of the first part shall be prompted and fostered” (Case, p. 26, ll. 29 to 33).

He also instituted an action, or actions, against the remaining fifteen bus owners, on behalf of the garage company and obtained temporary restraint against all, although there is no evidence that any of the fifteen were contemplating a sale then. In June 1925 defendant was displaced as solicitor in both causes (Case, p. 30, ll. 1 to 11) and from that time on had no further connection with the matter (Case, p. 210, ll. 36 to 39).

The Court denied relief against those who had sold and this ended the matter. The contract was thereafter treated as a nullity by all the parties to it and the suits against the fifteen remaining signers were dismissed by consent (Case, p. 202, ll. 12 to 32; Case, p. 203, ll. 10 to 38).

In October, 1926, without the intervention or aid of the defendant, each of the complainants sold his bus and business to the Public Service for \$30,000. The defendant claimed his percentage (5%) on the excess of the selling price over \$11,000, and brought an action at law to recover \$950. from each complainant (Case, p. 215, ll. 27 to 40).

The complainants then joined in this action against him in the Court of Chancery asking that the suits at law be restrained and that the Court of Chancery determine what fees are just under the circumstance.

C.

ARGUMENT OF LAW AND FACTS.

I.

The Essential Equity of Complainants' Cause.

This lies in the change in the relations after the parties made their agreement and as a result of which the defendant now, by reason of the contract *which he drew*, claims a share, unrelated to any service rendered by him, in the proceeds of the sale of complainants' properties.

The literal enforcement of the contract would be unjust because when it was executed it was in the contemplation of the parties, both complainants and defendant, that the services of defendant should continue during a period culminating in the sale of the buses and that his share in the proceeds of sale would be his reward for his contribution toward the bringing about of an enhancement in the price. But no sale was made during the period of his employment, nor during the period within which the contract that he drew was effective, or was thought to be effective.

The complainants continued to own and to operate their buses long after the restrictions imposed by his contract were known by everybody to be wholly inoperative, and long after the employment of the defendant had been terminated.

The complainants refrained from selling not because of anything that the defendant did or did not do. Long before they sold he had disappeared from the picture. When they did sell it was for prices far in excess of the prices prevailing at the time the contract was known to be without

force; prices enhanced by elements of which he was in no sense the creator.

Under the strict wording of the contract, he has the power to enrich himself at the complainants' expense. We claim that it would be an unjust enrichment. If ten or twenty years had gone by and the price had increased an hundred fold, by the strict interpretation of the contract he would still have been entitled to his five per cent., but it would not be fair for him to demand it.

The contract is unfair in its operation.

II.

The Nature and Extent of the Court's Jurisdiction.

Cases involving analogous circumstances have been before the Courts on several occasions and the rules applicable have been laid down with great exactness and detail.

a.

It was defendant's duty to protect complainants in the making of the compensation contract.

Where the parties, at the time the contract for compensation was made, occupy the relationship of attorney and client, it is a confidential or trust relationship which makes it the duty of the attorney to guard the interests of the client *even as against himself*. He may not claim that the contract was freely entered into on behalf of the client, because his duty compels him to advise the client of the consequences of making the contract.

Vice-Chancellor Leaming expressed this view in *Kelley v. Schwinghammer*, 78 N. J. Eq. 437. On page 438 the opinion is as follows:

“In an agreement between an attorney and his client pending the relation of attorney and client touching the quantity and reasonable value of services performed or being performed by an attorney for his client, the client in my judgment, in the absence of independent counsel, is frequently, if not uniformly almost as dependent upon the attorney as in other matters entrusted to the attorney’s care; although this view does not appear to have received uniform recognition.”

In *Porter v Bergen*, 54 N. J. Eq. 405, Mr. Justice Dixon, speaking for the Court of Errors, said (page 406):

“Even if it be conceded that the complainant agreed to the charge yet a court of equity would not sanction it except upon proof of its perfect fairness.”

b.

Because of the confidential relationship the compensation contract is considered as constructively fraudulent.

In *Kelley v. Schwinghammer*, above referred to, Vice-Chancellor Leaming says (p. 438):

“In this court, however, it has been expressly determined that where, pending the relation of attorney and client, a bond or other security is given by the client to his attorney as compensation for his services the transaction will be regarded as constructively fraudulent in consequence of the confidential relations subsisting and the means of undue influence which the attorney may exert over his client.”

And in *Raimondi v. Bianchi*, 100 N. J. Eq. 448, quoting Weeks on Attorney at Law, it is said (p. 451):

“The rule is on the ground of public policy, not a fraud, and prevails though the attorney may be innocent of any intention to deceive and act in good faith.”

c.

The burden of proof is on the attorney to show the absolute reasonableness of the charge.

To this effect are the cases of

Raimondi v. Bianchi on final hearing, 5 Adv. Rep., page 422 (423);

Porter v. Bergen, 54 Eq. 405;

Brown v. Buckley, 1 McCarter, 451;

Kelley v. Schwinghammer, 78 N. J. Eq. 437;

Schomp v. Shenck, 40 N. J. L. 195 (200);

Lynde v. Lynde, 64 N. J. Eq. 736;

Crocheron v. Savage, 75 N. J. Eq. 589.

In *Porter v. Bergen* is a remark of the Court peculiarly applicable to the circumstances in this case, as follows:

Q “The propriety of applying this doctrine in the present instance is demonstrated by the defendant’s reply to the question, ‘Did he, the complainant, make any objection to your charging \$1,000. at the time?’

A “No, sir. He would have given me almost anything at that time, I think. *He was in a tight place and he knew it.*”

d.

At the time of the making of the contract the complainants were in a tight place and knew it.

They had their capital and living tied up in the buses which they were operating.

They had become involved in a financial transaction of considerable magnitude for them,

namely, a garage to be used as a terminal, by all of the independent operators jointly (Case, pp. 46, 88, ll. 8 to 17).

In this operation they had ventured a great deal of money (Case, pp. 46, 126, 127, 128) and were dependent on it for terminal facilities which were of the utmost importance to the continuance of their operation (Case, pp. 117 ll. 8 to 10, 126, l. 36 to p. 127 l. 11).

More than half of the independents interested in that joint venture, the controlling stockholders in this joint undertaking, sold out to the Public Service (Case, p. 117, ll. 10 to 22).

They considered their situation most serious (Case, p. 46). They had endeavored to prevent further defections from their ranks by option agreements, but this had proved abortive (Case, p. 102, ll. 10 to 18).

They were suspicious of each other; each fearing that the other would not act in the interest of all, but would sell to his own advantage or be persuaded to do so against interest of all.

They were informed that the defendant had a plan which would keep them all together until all wished to sell (Case p. 46).

They were in a tight place and knew it and their willingness to agree to the attorney's terms was unquestionably influenced by their extreme necessity for some measure of relief.

e.

The plan failed to accomplish the purposes intended.

The contract was entered into in March, 1924 (Case, p. 184, ll. 15 to 19). In September three of

the contracting parties (the two Lehrhoffs and Greene) sold their buses to the Public Service Transportation Company, which company thereupon commenced to operate the same (Case p. 186, ll. 1 to 10). Thereupon suits were instituted for specific performance against the Lehrhoffs and Greene and other suits against the other operators. The suits against the Lehrhoffs and Greene accomplished nothing, either as to preliminary or final relief. The Public Service had possession of and operated the buses during all of the time the case was pending (Case, p. 83, l. 40 to p. 84, ll. 2 and 3; p. 93, ll. 32 to 40) and the cause was dismissed on final hearing.

In the suits by the Springfield Avenue Bus Co., against the other operators restraining orders were issued, but this is without significance because there is no intimation that any of those defendants intended or wanted to sell.

In May, 1925, the relationship between the defendant and the complainants and the other bus operators was terminated by the act of the operators. No reflection on the defendant is to be implied from this occurrence nor from any other act of his in the matter except his present demand and his failure to provide in the contract of compensation for such contingency as at present exists. From that time on he had no connection whatever with any of the parties (Case, p. 116, ll. 6 to 12).

The contract having been shown to be unenforceable, there was no occasion, of course, to keep any suit for its enforcement in being. From that time on the parties knew that they were not bound by the contract and their refraining from selling was in no sense induced by anything that the defendant had ever done.

He claims that he contributed to the enhancement of price, at least prior to that time, because the parties thought the contract was good. It is doubtful if this is so, because the Lehrhoff's and Greene sold within six months after the contract was made. They certainly did not think it was good. The other parties did not sell for a long time after the contract was held to be unenforceable.

He claims that he contributed to the enhancement of price by obtaining the injunctive orders. It is doubtful if this is so, because the Lehrhoffs sold and the Public Service took and operated the buses while the injunction was in effect (Case, p. 93, ll. 30 to 40).

Nobody else attempted to sell or wished to sell so far as the evidence shows.

That the contract was not a bona fide contract of purchase between the Springfield Avenue Bus Co. and the individual operators is indicated by all of the circumstances and by none more strongly than that the defendant based his whole compensation on a sale to some one other than the Garage Company. The purpose of the plan, was to hold the men together until they got their price (Case, p. 189, ll. 23 to 40).

The confirmatory compensation contract (Exhibit D. 1) is without significance. We do not know what was in the defendant's mind when he asked to have this contract signed by all the men at the time he was asked for a substitution. It is certain that they understood he demanded it as a condition to his giving the substitution of attorney (Case, p. 164, ll. 20 to 28; p. 165, ll. 20 to 21). That was certainly a reasonable inference for the men to draw. He denies (Case,

p. 191, ll 9 to 18) that such was his intention, but why did he ask for it under those circumstances.

In any event, it is no stronger than the original contract for compensation. If it can be said to be in his favor at all, it merely keeps the matter of compensation in status quo. The amount of his compensation is still subject to the discretion of this Court.

f.

A client may discharge his attorney at any time with or without cause.

This rule has been frequently declared by the Courts here and elsewhere.

In *Weibezahl v. Huber*, 39 N. J. L. J. 334, Judge Adams of the Circuit Court wrote an illuminating opinion on this subject and quoted extensively from cases and other authorities.

The philosophy of the matter is set forth in a quotation which he makes from 1 Thornton on Attorneys at Law, pages 253, etc., to the following effect (italics ours):

“It has been deemed essential to the preservation of those confidential relations which ought to prevail between counsel and client that the client should have the right, under all reasonable conditions, to select and change his attorney at will. Every attorney enters into the service of his client subject to the rule that his client may so dismiss or supersede him, and if he makes a contract for future services to his client, *it is necessarily subject to such rule* and made with full knowledge that he may never perform such service for the reason that his client may not keep him and, in that event, *that he will not be paid therefor, but will be entitled to compensation only for the service he has actually rendered.*”

And further, quoting from 2 Thornton, page 796,

“While the right of a client to discharge his attorney at any time and also to substitute another in his stead, it is not doubted, nevertheless, in such cases the counsel originally engaged will be protected in the matter of compensation *to the extent of the reasonable value of the services performed down to the time the substitution is allowed.*”

g.

Proper method for measuring compensation.

In the *Weibezahl* case, Judge Adams concludes his opinion as follows:

“If the question as to the amount of an attorney’s compensation is submitted to the Court, the practice suggested by Vice-Chancellor Pitney in 44 Atl. Rep. 639” (not reported in State reports) “will be followed.”

The case referred to was *Hudson Trust & Savings Institution v. Carr-Curran Paper Mills*, where Vice-Chancellor Pitney said (italics ours):

“Some discussion has been had as to the value of Mr. Nutzhorn’s services and the proper mode of ascertaining their value and the parties seem inclined to submit that question to me. *The proper material therefore has not been furnished to the Court. Mr. Nutzhorn must make out a detailed schedule of his services and disbursements and serve it upon the other side; and then if they cannot agree it may be either referred to a Master or determined by the Court itself in a summary manner upon hearing the parties.*”

The elements to be considered are commented upon by Vice-Chancellor Lane in *Soper v. Bilder*, 100 Atl. Rep. 858; 87 N. J. Eq. 564, in the following language (p. 860):

“In computing what is a reasonable compensation, many elements must be taken into account. There is no yardstick by which the value of legal services can be measured;

no rate per diem or percentages can be employed with justice to both parties. The legal ability of the attorney, the amount of work which he does, the skill with which he does it, and, of much more importance, the amount involved, and the success of his efforts. There may also be considered the contingency that, in case he is unsuccessful, he will receive nothing, and the fact, if it be a fact, that the fund was created through the efforts of the attorney."

III.

The Equities in this Case are the Same as the Law.

The defendant did not create a fund from which the payment is to be made. The property sold consisted of the buses and the attached business—the business being enhanced in value by reason of the fact that no additional permits were being granted by the public authorities (Case p. 179, ll. 33 to 40; p. 180, ll. 1 to 14). The business, or the right to do business, was more valuable than the bus (p. 176, ll. 18 to 32). The defendant was bound to receive payment for his services in any event. The only possibility of his never receiving payment would be that the buses were never sold either by the individuals or by the Springfield Avenue Bus Co., and, apparently, it was never contemplated by the parties that the buses would not at some time be sold.

We have already commented on the ineffectiveness of the services rendered by the defendant to accomplish the result. The nineteen bus owners were held together from March until September of 1924 for some reason and perhaps the then belief of the individuals that the contract was good contributed to this result.

Then the Lehrhoffs and Greene sold. The price at that time seems to have been about \$15,000 (Case, p. 94, ll. 15 to 30). The defendant then procured an injunction on behalf of the Springfield Avenue Bus Co. against the remaining bus owners *on an ex parte application* and no further sales took place until after his discharge in May, 1925.

In June, 1925, the final hearing was held in the Lehrhoffs and the Greene cases, with a decision adverse to the contract. From that time until the sale by the complainants in August, 1926, they refrained from selling, but not because of anything in connection with the services of the defendant.

In the meantime, the price of buses was steadily advancing. He did not contribute in any way to the increase in price which took place between May, 1925 and August, 1926, and there is no equity in his demanding that this compensation be figured on any increase after June, 1925.

IV.

The Error in the Proceedings Below.

In the opinion below the Court recognized and accepted as basic principles:

1. That the burden is on the defendant to show (a) the reasonableness of his charges;
(b) That such agreement as he obtained was obtained upon full disclosure;
(c) That its terms are fair and just.
2. That the complainants had a right to dis-pense with his services at any time;
3. That the charges of an attorney are always subject to scrutiny and review in the Court of Chancery.

4. That the Court has a right to determine, now, fairness and reasonableness of the contract and the adequacy and propriety of the compensation therein provided for (Case p. 231, ll. 30 to 40; p. 232, l. 47).

But these principles were not correctly applied to the facts in this case.

The complainants were four of nineteen individuals, each having property of value—the value of which to him was threatened by the methods of the Public Service Transportation. Each was also interested in the garage enterprise, so that the unity of the group in resisting depletion from their ranks by sale to the Public Service was of the greatest importance.

It is emphasized by both sides here and it is perfectly apparent that the men considered themselves in a precarious financial situation. They applied to this attorney, the defendant, as a man of superior intelligence and experience in situations similar to theirs. No court needs any proof that these men had no technical knowledge in respect to the legal situation in which they were involved. They engaged the defendant to supply that technical knowledge. At the same time, or soon after, they agreed with him as to the manner of his compensation. It was assumed by them, and no doubt by him, that his services would continue until the time when his compensation became due; that is, until the sale of the buses, but this was, in fact, by no means a certainty. We claim that he should have pointed out to them, at the time of the signing of the contract, this important element affecting it, namely, that the event which would entitle him to compensation might be deferred for a long period of time and that, during that period

of time, perhaps long after his services had ended, the value of the business and buses might appreciate greatly. He probably did not think far enough ahead to have this possibility occur to him. That he did not do so was neglect on his part. An independent attorney, acting for them in their dealings with him, would have pointed out this possibility.

We are not disposed to be too critical of the steps which he took to bring about the results desired, but after all is said and done it amounted to nothing more than self delusion. The contract between the Garage Company and the individuals for the sale of the buses to the Garage Company was a pretense. It was never intended to be carried out. Both the men and the attorney understood this and it is recognized by the Court below in these words:

“The sole purpose of this agreement was to hold the remaining nineteen Springfield avenue jitney men together in an organization to resist the efforts of the Public Service Corporation to purchase individual buses on that line and with a view of raising the selling price of the remaining buses and franchises to an amount equal to their real worth. It was a foregone conclusion at that time that eventually the remaining jitney men on this line, or many of them, would be obliged to sell, but they did not want to sell at the prevailing prices.” (Case, p. 227, ll. 34 to 40; p. 228, l. 48.)

The contract in its essence was entirely different from the contract in its form. In its form it was an agreement to sell to the Garage Company. *In its essence it was an agreement to refrain from selling to the Public Service.*

Whether the contract had any effect or not in holding the men together during the time intervening between April and September is not

shown by the evidence, although the Vice Chancellor assumes that such is the case.

At any rate, in September of the same year, three of the subscribers sold their buses; possession was immediately given and the Public Service operated the buses from that time.

The suit which was brought against them did not result in any relief, temporary or permanent. The suit which was brought by the Garage Company against the other nineteen bus owners was a mere gesture. Nobody contested it, and there is not anything disclosed by the testimony nor anything that may be reasonably inferred from which to assume that the complainants refrained from selling to the Public Service from any other motive than their inability to bring the Public Service up to their price.

The self deception which may have existed prior to the determination of the suit in June, 1925, certainly did not exist after that time and the defendant played no part in any enhancement in price which occurred subsequent to June, 1925. The testimony as to such enhancement is meager, but it seems fair to say, from the testimony which was given, that the price had advanced from something like \$15,000 to \$30,000 during that time.

We have discussed this phase of the matter for the reason that in calculating the value of attorney's fees it is fair to take into account, among other things, the result obtained. But there are other elements which enter into such determination and the first step in determining the amount is a statement of the services and this should be given in such detail as will enable the client and the court to examine the items in their relation to the various elements

involved in a determination of the value of the services, i. e.: (1) The fact of the services; (2) the time spent; (3) its relation to the whole matter; (4) the skill required; (5) the importance to the client; and (6) the result obtained. We contend that in this respect the defendant, upon whom the burden of proving the value of his services rests, has utterly failed to furnish a bill of such services in such detail that it can be checked and valued.

The work of drawing the contract between the Garage Company and the men, with the several preliminary conferences, is admitted and a fair estimate can be made as to the time and skill involved. The defendant mentions also activities on his part between the signing of the contract and before he brought the suits (Case, pp. 84 and 85). These are sending notices to the Public Service and its agents; conferences with the men; appearances at the City Hall; appearances before the Public Utility Commission. The effort is to make these generalities appear as a vast amount of work. Because of the generality of these statements, complainants have no way of testing the extent or value, or whether they were rendered for the individuals or the group.

In September, 1924, defendant drew bills of complaint and affidavits in three suits—two against the persons who had already sold and another against the people who had not sold. These suits were carried on until May or June of the following year, at which time those against the three who had sold were ready for trial. The defendant tries to create the impression that a vast amount of work was involved in hearings and conferences, but the fact is that in the suits against the persons who had sold there was no preliminary order and that the

suit against those who had not sold was uncontested and common experience of the bench and bar is enough to indicate that such was not the case.

It is quite within the power of the defendants to prove the major items and so to give the Court an opportunity to test the value and complainants an opportunity to contest the fact of the service claimed to have been rendered.

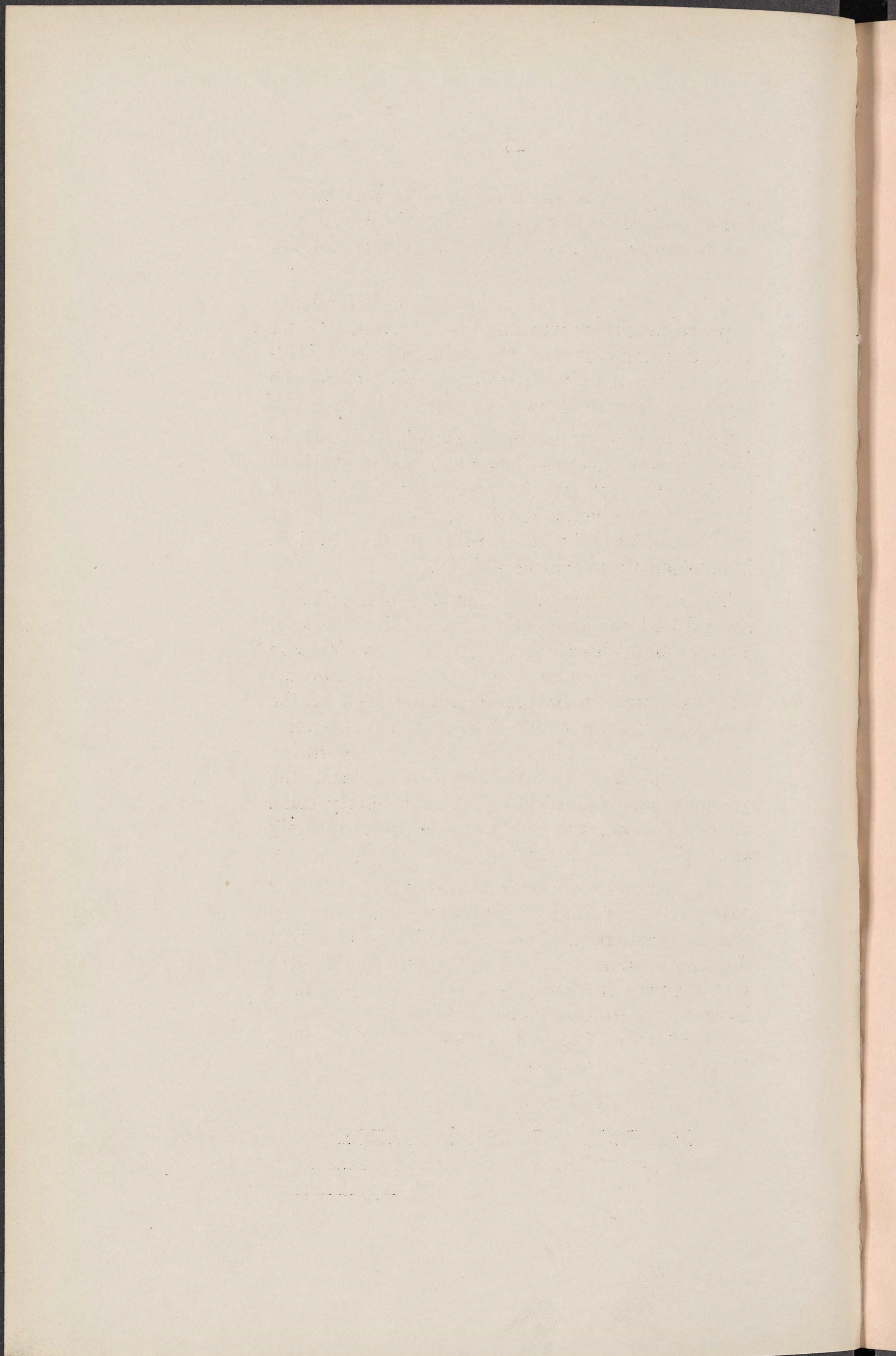
The court below has been satisfied with these broad generalities and has put a value on these services to each of the complainants of \$950. If that is the value of the services to each of the defendants, the total value of the services is nineteen times that or \$18,050.

The court below says that the obligation is several and not joint (Case, p. 234, ll. 32 to 34). This is undoubtedly true, *but the service was joint and not several* and in fixing the amount which is owed to the defendant by each of the complainants the court should, after determining the value of the service, give consideration to the amounts received and owing and the amounts paid for services which properly came under the contract but were billed separately and paid.

We therefore contend that the court below has erred in failing to apply the rules of law which it has recognized as applicable and that the decree should be set aside and the matter sent back for further proceedings along the lines indicated in *Hudson Trust & Savings Institution v. Carr-Curran Paper Mills*, 44 Atl. 639 (not reported in state reports).

Respectfully submitted,

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel
with Appellants.



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