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New Jersey Court of Errors and Appeals

GRACE GILLARD, *Plaintiff-Respondent,* vs. THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA, *Defendant-Appellant.*	*Action at Law.*
CHARLES GILLARD, *Plaintiff-Respondent,* vs. SAME, *Defendant-Appellant.*	*Notice of Appeal and Reasons.*
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TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgments recovered in the above stated causes in the Orange District Court, and which judgments were subsequently affirmed and entered by the New Jersey Supreme Court.

The following are the grounds of appeal:

First. Because the Supreme Court upheld the judgments of the Orange District Court in favor of the plaintiffs and against the defendant.

Second. Because the Court held that the injured persons' rights in the policy of insurance are original and primary and not derivative and secondary.

Third. Because the Court held that there is no constitutional infirmity in the title of the statute entitled "An Act concerning auto busses, commonly called jitneys, and their operation in cities" (P. L. 1916, page 283).

Fourth. Because the Court held that the statute does not require that the plaintiffs should serve process upon the chief fiscal officer of the City of Newark in the original suit between the plaintiff and Andrew Wanzyke, the auto bus owner.

Fifth. Because the Supreme Court held that the contract of insurance covered damages to personal property as well as damages on account of bodily injury or death.

Sixth. Because the Supreme Court upheld the judgment of the Trial Court in favor of the plaintiffs when the said judgments should have been reversed.

Dated: November 22, 1918.

JACOB L. NEWMAN,
Attorney for Defendant-Appellant.

To ARTHUR B. SEYMOUR,
Attorney of Plaintiff-Respondent.

Rule Affirming Judgment.

Entered September 17, 1918.

New Jersey Supreme Court

GRACE GILLARD, *Plaintiff-Respondent,* *vs.* THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA, *Defendant-Appellant.*	*On Appeal from Orange District Court.* *Rule Affirming Judgment.*

The above entitled cause on appeal from the judgment of the District Court of the City of Orange, coming on to be heard in the June term of the New Jersey Supreme Court in the presence of Arthur B. Seymour, Esquire, of counsel with plaintiff-respondent, and of Jacob L. Newman, Esquire, of counsel with the defendant-appellant, and the cause having been duly argued and briefs having been submitted and the Court having considered the same,

It is on this 17th day of September, 1918, ordered, that the judgment of the District Court of the City of Orange be and the same is hereby affirmed, with costs.

Entered September 17, 1918,

On motion of

ARTHUR B. SEYMOUR,
Attorney of Plaintiff-Respondent.

Opinion of Supreme Court.

Filed September 12, 1918.

NEW JERSEY SUPREME COURT.

GRACE GILLARD, *Plaintiff-Respondent,* *vs.* THE MANUFACTURERS CASUALTY INSURANCE COMPANY, *Defendant-Appellant.*	*Appeal from Judgment of Orange District Court.*

BLACK, *J.*

The plaintiff in this case on June 28, 1917, was injured in a collision between an automobile which she was driving and a jitney bus driven by John Bono, a chauffeur, for Andrew Wanzyke. She sued Andrew Wanzyke on the 13th day of September, 1917, recovered in the Orange District Court a judgment against him, for her injuries, for the sum of one hundred dollars and costs. This judgment was entered by default and has not been paid. At the time of the accident Andrew Wanzyke was operating a jitney bus under a license or consent granted by the proper authorities of the City of Newark, along Elizabeth avenue, a public street in Newark, where the accident occurred. The license or consent was granted under an act of the Legislature entitled "An Act concerning auto buses, commonly called jitneys, and their operation in cities." P. L. 1916, p. 283. Andrew Wanzyke filed with the Chief Fiscal Officer of the City of Newark, in accordance with the provisions of the act, a policy of insurance, issued by the defendant company, in the sum of $5,000. The plaintiff then sued the defendant, the insurance company, upon the policy of insurance, to recover payment of her judgment. Judgment was given for the plaintiff. The legality of that judgment is attacked in this appeal. The record does not show the testimony, but no point is made of that fact, on which the judgment is recovered by Grace Gillard, the plaintiff, against Andrew Wanzyke, rendering him liable for negligence, although the record of the suit in the Orange District Court was put in evidence and the state of demand states a cause of action based upon negligence in driving defendant's automobile. The appellant files six reasons or specifications why it is dissatisfied in point of law, with the determination of the District Court. But they are argued in the appellant's brief, under three heads. The first ground of attack is: the rights of the plaintiff are derivative and can be no more extensive than the rights of the insured.

This is a false assumption; its answer is, on the contrary, the rights of the plaintiff are original and primary given by the statute, which

provides, P. L. 1916, p. 283, Sec. 2, there must be a consent of the board or body having control of public streets, for the operation of an auto bus; no consent shall become effective and no such operation shall be permitted, until the owner of such auto bus in any city shall file with the Chief Fiscal Officer of the city, in which the auto bus shall be licensed and operated, an insurance policy in $5,000 "against loss from liability imposed by law upon the auto bus owner for damages on account of bodily injury or death suffered by any person or persons as a result of an accident occurring by reason of the ownership, maintenance or use of such auto bus upon the public streets of such city, and such consent shall continue effective and such operation be permitted only so long as such insurance shall remain in force; such insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and use of such auto bus or any fault in respect thereto and shall be for the benefit of every person suffering loss, damage or injury as aforesaid"; then follows a provision for a power of attorney to be executed by the owner and to be delivered to the fiscal officer of the city, for the purpose of acknowledging service of process of a court of competent jurisdiction, to be served against the insured by virtue of the indemnity granted under the insurance policy filed.

By virtue of this provision in the statute the plaintiff alone can sue, under the policy required to be filed. This is an essential distinguishing feature, from that class of cases, where there is no right of action, because the parties to the suit are not parties to the agreement sued on, as in Hall *v.* Passaic Water Co., 83 N. J. L. 771; Baum *v.* Somerville Water Co., 84 *ib.* 611; Standard Gas Power Corp. *v.* New England Casualty Co., 90 *ib.* 570. The auto bus owner cannot sue on the statutory policy of insurance. It is true, that under the policy filed, the auto bus owner has certain defined rights. But a special policy is required to be filed by the statute, against loss from the liability imposed by law, upon the auto bus owner for damages, on account of bodily injury, &c.

The insurance policy cannot contain any provisions except those authorized by the statute so as to affect any person suffering loss, as provided therein. Whatever, other provisions, the filed policy contains may be good as between the insurer and the insured auto bus owner, and may impose upon the latter certain duties and obligations toward the owner, for breach of which, the insurer can maintain an action, but such provisions cannot deprive an injured person of the remedy given by the statute, nor can they in any way abridge the rights granted by the statute to such injured person. The policy of insurance is filed only for the benefit of persons who might suffer injury. It is not filed for the benefit of the city. The city is under no liability which the policy indemnifies it against. The statute was passed only for the benefit of the injured person. The sole beneficiary of the statute is the person injured. The injured person is the only one who can sue under the policy, and cite the statute in support of

the action. The injured person's rights in the policy of insurance are original and primary, not derivative and secondary. The first ground of attack, therefore, fails because the premise on which the argument is based is not true in point of fact.

It is next argued that the P. L. 1916, p. 283, is unconstitutional, because the title which is in these words, "An Act concerning auto buses, commonly called jitneys, and their operation in cities" offends against Art. 4, Sec. 7, Par. 4 of the State Constitution, which provides every law shall embrace but one object and that shall be expressed in the title, the argument made is, if the act is intended to affect the contract of insurance, it cannot answer the test, that the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law, citing Sawter *v.* Shoenthal, 83 N. J. L. 499, 502, but in that case it was said the validity of the title is not to be determined by mere distinction of etymology or definition of words, but by the facts of the case and the history of the legislation. Language which at one time may be quite inadequate to warn the public of the object of the legislation, may at another, owing to custom or usage, be entirely sufficient. The title of the act is concerned with the operation of auto buses, commonly called jitneys. This is the object of the law, the conditions prescribed such as filing an insurance policy for the benefit of an injured person is germain to the subject of its operation. That is its product, as has been happily expressed by Mr. Justice Garrison, with quaint terseness. "The object of every law, by force of the Constitution, must be single and be expressed in the title of the law; the product may be as diverse as the object requires and finds its expression in the terms of the enactment only. In fine, the title of an act is a label, not an index. Moore *v.* Burdett, 62 N. J. L. 163."

There are many cases in our courts illustrating the application of this provision to legislation. It would be profitless to go over them in detail.

In Newark *v.* Mount Pleasant Cemetery Co., 58 N. J. L. 168, 171, it was said, the evil intended to be guarded against was not the inclusion of one act of more than a single matter, but the inclusion therein of matters not properly related among themselves; see Stockton *v.* Central R. R. Co., 50 N. J. Eq. 52, 70; Allen *v.* Board of Education, 81 N. J. L. 135, 141, in which many cases are cited.

We think there is no constitutional infirmity in the title of this statute and therefore this ground of attack must fail.

It is next urged, that process should have been served in the Chief Fiscal Officer of the City of Newark in the suit between this plaintiff, Grace Gillard, and Andrew Wanzyke, the auto bus owner, that the statute requires it and such failure was fatal to the plaintiff, under the statute. The answer to this is, the appellant misconstrues the provision of the statute, on which reliance is placed. The statute pro-

vides, that a power of attorney shall be delivered to the fiscal officer concurrently with the filing of the policy wherein the auto bus owner shall nominate and appoint the fiscal officer his true and lawful attorney, for the purpose of acknowledging service of any process out of a court of competent jurisdiction, to be served against the *insured* by virtue of the indemnity granted under the insurance policy filed.

Process to be served against the *insured,* does not mean process to be served against the *insurer.* This also is for the benefit of the person injured, so that, the auto bus owner cannot escape the process of the courts. Nowhere in the statute is there any provision providing for service of process on the Chief Fiscal Officer of the city in the original action against the auto bus owner, the insured. This point is without legal merit. The judgment of the Orange District Court is affirmed with costs.

Supplemental Opinion of Supreme Court.

Filed September 27, 1918.

NEW JERSEY SUPREME COURT.

CHARLES GILLARD, *Plaintiff-Respondent,* *vs.* THE MANUFACTURERS CASUALTY INSURANCE COMPANY, *Defendant-Appellant.*	*On Appeal from Judgment of Orange District Court.*

BLACK, *J.*

The facts of this case are fully set out in the case of Grace Gillard against the same defendant, in an opinion filed the present term. In this case, however, there is an additional point, not involved in that case, viz: whether the policy of insurance filed by the defendant company covers damages to personal property. We think the contract of insurance is not limited to personal injuries. The words used by the insurance company to express its contract are as follows: Suits, "on account of injuries sustained by any person or persons"; "including suits alleging such injuries and demanding damages therefor"; "resulting in injuries or death sustained by any person or persons"; "shall be for the benefit of every person suffering loss, damage or injury as described in this contract or as described in the terms of the act" P. L. 1916, p. 283, Chap. 136.

There is nothing to suggest, that by the use of the words "injuries," "damages," "loss," personal injuries, damages or loss were only intended; nor do these words in their definition exclude injuries or damage to property. These words mean destruction or impairment of value, injury or harm. Injury means any wrong done or suffered; thus, we speak of an injury or damage to the person, to character or to reputation, as well as to property.

2 Words & Phrases, P. 1812; 4 *ib.*, p. 3613; 5 *ib.*, p. 4232.

Sometimes the word damage is used to denote a partial destruction, while loss is more properly used to denote absolute or total destruction.

It is quite true, the contract speaks of limiting the liability for one person injured to $5,000, and the statute, P. L. 1916, p. 283, Chap. 136, Sec. 2, speaks of "damages on account of bodily injury or death suffered." If these were the only words used in the contract or statute descriptive of the liability covered by the insurance, there might be some force in the contention, that the policy covered only injuries to the person or death suffered.

We think the contract is broad enough to cover damages to personal property. The judgment is, therefore, affirmed, with costs.

Stipulation.

Filed November 23, 1918.

New Jersey Court of Errors and Appeals

GRACE GILLARD,
Plaintiff-Respondent,
vs.
THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA,
Defendant-Appellant.

Action at Law.

CHARLES GILLARD,
Plaintiff-Respondent,
vs.
SAME,
Defendant-Appellant.

BESSIE LAMKEN,
Plaintiff-Respondent,
vs.
SAME,
Defendant-Appellant.

CATHARINE JONES,
Plaintiff-Respondent,
vs.
SAME,
Defendant-Appellant.

ANNIE MCHENRY,
Plaintiff-Respondent,
vs.
SAME,
Defendant-Appellant.

HATTIE MERKLIN,
Plaintiff-Respondent,
vs.
SAME,
Defendant-Appellant.

It is hereby stipulated and agreed by and between the attorney for the various plaintiffs in the above entitled causes and the attorney for the defendant that the testimony taken in the case wherein Grace Gillard is plaintiff and The Manufacturers Casualty

Stipulation.

Insurance Company of Philadelphia, Pennsylvania, is defendant, be used as testimony in all of said causes and that only one state of the case need be printed, but in the case entitled Charles Gillard against The Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, this additional fact shall be regarded as in evidence as if the same were in the printed state of the case, namely that Charles Gillard's judgment was recovered for property damages and not for personal injuries.

It is further stipulated and agreed that the same rule of affirmance or reversal, as the case may be, may be entered in the cases of Bessie Lamken, Catharine Jones, Annie McHenry and Hattie Merklin against the Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, as shall be entered in the case of Grace Gillard against the same defendant when the latter case is decided by the New Jersey Court of Errors and Appeals.

JACOB L. NEWMAN,
Attorney for Defendant.

ARTHUR B. SEYMOUR,
Attorney for Plaintiffs.

Testimony.

ORANGE DISTRICT COURT.

GRACE GILLARD, *Plaintiff,* *vs.* THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA, *Defendant.*	*Before Hon. Daniel A. Dugan.*

Upon application of the defendant, William E. Davenport was appointed stenographer and was duly sworn by Daniel A. Dugan, Judge of the Orange District Court, and ordered and directed to take testimony in the above entitled matter.

Transcript of testimony taken in the above entitled matter on the Sixth day of March, Nineteen hundred and eighteen, before his Honor, Daniel A. Dugan, Judge of the above mentioned Court, at the Court Room, Orange, New Jersey.

Appearances:

Arthur B. Seymour, Esq., Attorney for Plaintiff.

Pomerehne & Laible, Esqs., (by Jacob L. Newman, Esq.), Attorneys for Defendant.

JOSEPH CRAWFORD, being duly sworn according to law, on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Seymour.

Q Mr. Crawford, what is your position or office in the City of Newark? A Traffic supervisor.

Q And as traffic supervisor have you anything to do with the licensing or operating of jitney buses in the City of Newark? A Yes, sir.

Q What? A Applications are made to me for consent to operate jitney buses; when they are approved by me they are then submitted to the director of streets and public improvements at the present time and he grants them.

Q Do you know whether a person named Andrew Wanczyk was licensed by the City of Newark or any particular department to operate an auto bus in the city? A Yes, sir.

Q Where was he licensed to operate that bus? A I will have to take it from the records.

Q You have the record there? A Yes.

Mr. Newman. Use it.

Q What was his route to which he was licensed? A Consent was given to him to operate from the Hudson and Manhattan tubes at Park Place to Lyons Farms by way of Broad street, Clinton avenue, Elizabeth avenue and return.

Q (*By Mr. Newman.*) On what date? A On the twenty-second day of September, nineteen hundred and sixteen.

Q For how long a period? A There are no periods to this.

Q Was that consent in operation or effective on June twenty-eighth, nineteen hundred and seventeen? A Yes, sir.

Q And are all those streets public streets in the City of Newark? A Yes, sir.

Q And was the consent for the operation of an auto bus? A Yes, sir.

Q In connection with that consent, was there an insurance policy filed by him? A Yes, sir.

Q Have you the policy with you? A Yes, sir.

Mr. Seymour. I offer in evidence an insurance policy number A-1066, the Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, insuring Andrew Wanczyk. It says the policy period shall be from June twentieth, nineteen hundred and seventeen, to September twenty, nineteen hundred and seventeen; also two slips of paper which are part of the policy.

(Policy received in evidence and marked Exhibit P. 1.)

Mr. Newman. We agree to use a copy of the policy for the purposes of this case.

No Cross Examination.

GRACE GILLARD, petitioner, being duly sworn according to law, testified as follows:

Direct examination by Mr. Seymour.

Q Mrs. Gillard, you are the plaintiff in this case? A I am.

Q Where do you live? A 88 Welland avenue, Irvington.

Q On June twenty-eighth, nineteen hundred and seventeen, did you meet with an accident? A I did.

Q And as the result of that accident did you bring an action in the Orange District Court for damages? A Yes.

Q And did you recover a judgment? A I did.

Q Did you meet with injuries on the day of the accident? A I did.

Q Are the injuries to your person or property? A Both.

Q Your property? A My husband's machine.

Q What was the nature of your injuries, personal or property injury? A Personal.

Q For injury to your person? A Yes.

Q How much was the judgment for? A One hundred dollars.

Q Has the judgment been paid? A No.

Q Any part of it? A No.

Mr. Seymour. I offer docket number 30 of the Orange District Court records, page 14078, showing the record of the suit of Grace Gillard, plaintiff, against Andrew Wanczyk, defendant, before the Court and Jury, by which it appears from this record that the Jury brought in a verdict for one hundred dollars for the plaintiff, damages, besides costs, and I also desire to offer in evidence the files in this same suit, including the summons and state of demand and the demand for a Jury, for the purposes of showing that the injuries suffered were for bodily injuries (received in evidence and marked Exhibits P. 2 and P. 3 respectively).

Q Mrs. Gillard, when you met with this accident, it was on June twenty-eighth, nineteen hundred and seventeen? A Yes, sir.

Q What did you do with relation to notifying anybody you had been injured in this accident? A Why, after I had returned from the hospital in the care of the officer with one of the ladies who was seriously injured—

Q When was that? A That same morning.

Q June twenty-eighth, nineteen hundred and seventeen? A Yes, sir; I was given this slip of paper by a gentleman who came to our assistance, with this name and address on it, telling me where I could communicate with the man who carried the insurance on the jitney. The next morning, which was on the following day, the twenty-ninth, I went to the Sixth Precinct and appeared against this driver.

Mr. Newman. I object to this; I do not see how that is relevant at all.

Q That paper indicated— A Indicated where I was to go to notify—

Mr. Newman. She has testified to that.

Q Where did you go as a result of the information you got on that paper? A To the Essex Building.

Q To whose place? A Huegel and Clark, they are supposed to be.

Mr. Newman. I object to what they are supposed to be.

The Court. Yes, strike that out.

Q *(By Mr. Newman.)* Tell us what you did. A I went into this office and asked for either one of these gentlemen to a young lady in the office, and she said neither one was in at the present time and said, "Will you wait"? I said, "Yes." I waited fifteen or twenty minutes when a gentleman appeared and he said to me, "Do you wish to see me?" and he said, "I am Mr. Clark."

Q Would you recognize Mr. Clark? A I would.

Mr. Seymour. Is Mr. Clark in Court; if so, stand up.

Q Is that the gentleman? A That's the gentleman; I asked Mr. Clark if he carried insurance in his company for a man by the name

of Andrew Wanczyk and he said, "Yes," and I said, "Have you been notified of an accident that occurred on Elizabeth avenue?" And he said, "I have," and as I stood alongside of the gentleman on his desk was a pink paper with this man's name on it. He put his hand on the paper and I said, "Has this man made a statement?" And he said, "Yes; he said you tried to cut him off," and I said, "Let it go at that;" and he said, "I would like a statement from you," and I said, "My lawyer will take care of this case." Then he said, "If that is the way it is going, we have no money lying around loose." I said, "Do you know any of the addresses of the ladies injured?" And he said, "No, I didn't get them; I will get them;" I said, "Will you look into this?" And he said, "Yes, in a day or two."

Q Did he ask you your story of the accident, how it happened? A He simply asked me for a statement, and I said I refused to make one, that my lawyer would take care of the case.

Q Did you convey to him the fact that you were or were not injured? A Yes.

Q What did you say? A I asked him if he had heard anything about the accident and who were injured and he said, "Yes," and I said, "All have been pretty badly hurt," and I said, "One of the ladies had to be taken to the hospital."

Q Is that all you said? A Yes, and walked out.

Cross examination by Mr. Newman.

Q You have told us all you said on that occasion, have you? A To my memory, yes.

Q That's what I mean, you have told us all you said on that occasion, and you stated this to Mr. Clark, did you? A I did.

Q There is no mistake about that, is there? A No, I recognized the gentleman when he appeared here the first time he was in Court.

Q To assist you in recognizing him didn't you ask Mr. Crawford to point him out to you? A No, I did not.

Q Did you ask anyone to point him out to you? A No.

Q Isn't it a fact the last time this case was on you went to Mr. Crawford or the gentleman that was with him and said, "Point out Mr. Clark to me?" A I did not.

Q Did you do anything like that? A I did.

Q What did you do? A When Mr. Clark appeared in this room one of the ladies in the case I said to, "I recognize that gentleman." And she said, "Yes," and I said, "He's the man I notified the insurance company," and my lawyer, Mr. Seymour, came down, and I said, "Mr. Clark is there," and he said, "I think he is, I don't know him," and I said, "He is sitting right behind me, talking to Mr. Crawford," and I said, "Don't look now." When my counsel called me into the ante-room to postpone the case Mr. Crawford was there and I turned to him and said, "That's Mr. Clark, that was talking to you." Those were the words I used.

Q In any event you are quite sure you called on Mr. Clark? A Positive.

John Bono, direct.

Q And you told us all that occurred at the interview with Mr. Clark as near as you can recollect? A Yes, sir.

Q And you gave no written statement? A No, he asked me for one, though.

Q But you made no written statement? A No.

Q You put nothing in writing? A No.

Q The only thing you did was to state this matter verbally as you have told us here this morning? A Yes.

Q That's all.

JOHN BONO, being duly sworn according to law on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Seymour.

Q What is your name? A John Bono.

Q Where do you live? A 325 Clinton place, Newark.

Q On June twenty-eighth, nineteen hundred and seventeen, for whom were you working? A I was working for Andrew Wanczyk.

Q Were you the driver of the auto bus that had a collision with Mrs. Gillard's machine? A I was.

Q On Elizabeth avenue? A I was.

Q What did you do with relation to that accident as to notifying Huegel and Clark of the occurrence of the accident? A I went in to see him the following morning, I believe, I don't know whether it was that same afternoon or the following morning that we went down and notified the insurance people about it.

Q Whom did you go to see? A We went to Mr. Huegel and Clark's office down in the Essex Building.

Q Do you know who you saw there? A A young lady, I believe, the stenographer that was working there.

Q Did you see any man there? A No, sir, there was none of them in. When we got there we asked if Mr. Clark was in or any of the gentlemen and the young lady told us there was nobody in and we told her we wanted to report an accident and she told us she could take it as well as anybody else, so we made a statement to her and she took it down—wrote it down on the question card.

Q What color was the paper? A Red.

Q Did she write it in handwriting or on the typewriter? A No, wrote it out in pen, I believe.

Q Who was with you? A Andrew Wanczyk.

Q Did you sign the paper? A Yes, sir.

Q Did Wanczyk sign? A Yes, sir.

Q What became of the paper, did you take it away or leave it there? A No, left in that office with the young lady.

Q What did you say to the young lady as she wrote it down? A Stated where the accident happened and where it was at and some of the parties that was in the car were hurt as far as I could see; I didn't know whether they were hurt bad or not.

Q Did you give the names of the people claiming injury? A I didn't have no names, I couldn't get any.

Alfred Clark, direct.

Q Do you know Mr. Clark? A I certainly do.
Q Did you see him there that day at all? A No, sir.
Q And have you seen him since? A Yes, sir.
Q Where? A Down at his office and down at the City Hall.
Q How soon after the first visit to Clark's office did you see him again? A I guess about five or six months or more.

Cross examination by Mr. Newman.

Q You made this statement to some young lady in the office? A Yes, sir.
Q You didn't sign anything? A I did.
Q You signed a paper? A I did.
Q And you think it was a red paper? A I don't think, I am positive.
Q And Wanczyk signed the paper, too? A Yes, sir.
Q That was the same day as the accident happened? A I am not sure whether it was the same day or the following morning.
Q Where is Mr. Wanczyk? A I don't know.
Q He isn't in the City of Newark? A I don't know where he is.
Q You don't know whether he is or not? A I do not.
Q Don't you know he isn't here? A He's not in Court.
Q Don't you know he is not in this part of the world? A I don't know that.
Q When was the last time you saw him? A I judge about eight or nine months ago.
Q And you never have heard or seen anything of him since, have you? A No, sir.

ALFRED CLARK, being duly sworn according to law, on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Seymour.

Q Mr. Clark, what is your business? A Real estate and insurance.
Q What was your business on June twenty-eighth, nineteen hundred and seventeen? A The same, in the real estate and insurance business.
Q And were you in partnership with a man named Huegel? A Yes, sir.
Q And where was your office? A In the Essex Building, tenth floor.
Q Did you write this policy for Andrew Wanczyk? A Yes, I wrote a policy for an Andrew Wanczyk.
Q This copy of the policy number A-1066 expiring September twenty, nineteen hundred and seventeen; so far as the endorsement shows I think it was issued June the twentieth, nineteen hundred and seventeen, did you write that policy? A Yes, we wrote a policy for three months as I recollect from June twenty.
Q What company did you write it for?

Mr. Newman. I object to that, the policy speaks for itself; there is no question about that.

Q Well, did you write this policy as agent for the Manufacturers Casualty Insurance Company of Philadelphia?

Mr. Newman. I object to that because whatever his relations are with the Manufacturers Casualty Insurance Company and with his agency depends upon his agreement between him and the company and not upon the policy and there may be a written or verbal agreement, and I think we ought to have the written agreement first.

The Court. Is it important in view of the admission of the policy?

Mr. Seymour. I deem it prudent to put in some testimony about it; this case is going to be very thoroughly digested and argued and the proof ought to be thorough as well.

The Court. I don't think it is relevant; I sustain the objection.

Q I ask you this question; at the time this policy was written on June twenty-eighth and June twenty-ninth, nineteen hundred and seventeen, were Huegel and Clark the agents of Newark for the Manufacturers Casualty Insurance Company of Philadelphia?

Mr. Newman. I object to that on the same ground; the policy is issued and is a binding contract and I cannot see what difference it would make whether he was or was not the agent.

The Court. Objection sustained.

Mr. Seymour. I stated my reason for asking this second question and that is that Mr. Newman while raising that point is objecting to apparently what is proper proof of the agency —the question of notice of this accident under the policy. We rest.

Mr. Newman. If your Honor please, I move for a non-suit on the following grounds:

1. It does not appear that the process in the suit under which Grace Gillard recovered her judgment against Andrew Wanczyk was served upon the fiscal officer of the City of Newark, but on the contrary it appears that such process was served personally upon the defendant, Andrew Wanczyk.

2. Because there is no privity between the plaintiff and defendant, nor is there any contract existing between them.

3. No consideration has passed between the plaintiff and defendant upon which a contract could be based and therefore there is no liability upon the defendant.

4. The right of the plaintiff to recover if such a right exists, is a derivative one and depends upon the contract made by the Manufacturers Casualty Insurance Company and the assured Andrew Wanczyk and the failure of an allegation or

proof that the assured complied with the terms of the contract prevents any recovery by the plaintiff from the insurance company.

5. It appears the assured Grace Gillard has failed to comply with the terms of the contract of insurance, therefore there can be no recovery by the plaintiff.

6. The plaintiff has not a beneficial interest in the contract and the statutory enactment, Chap. 136 of the Laws of 1916, known as the Jitney Act, approved March 17th, 1916, is unconstitutional in so far as it attempts to give to third persons any rights under the contract.

7. It does not appear that the judgment upon which suit is instituted has been paid by the assured, unless said judgment has been paid by the assured, she is not damaged and no recovery could be had unless the assured has paid the judgment in full, and the assured would be the only party who could institute a suit against the Manufacturers Casualty Insurance Company because he is the only party that has any contractual relations with the Manufacturers Casualty Insurance Company.

It appears that the assured violated the terms of the contract and the right of the plaintiff cannot be greater or more extensive in scope than the right of the insured. There is nothing in the contract of insurance which obligates the Manufacturers Casualty Insurance Company to pay a judgment recovered by any person on account of the ownership, maintenance and use of automobiles described therein, unless and until the assured has paid the judgment and seeks to reimburse himself under the terms of said policy of insurance.

It is stipulated and agreed by and between the attorney for the plaintiff and the attorney for the defendant that the testimony taken in the above entitled cause shall be considered as the testimony to be used on the trial or appeal of the following cases:

Catharine Jones,
Bessie Lamken,
Hattie Merklin,
Annie McHenry.

It is also stipulated that the judgments that appear of record in the Orange District Court in which Catharine Jones, Bessie Lamken, Hattie Merklin and Annie McHenry, are plaintiffs, and Andrew Wanczyk is defendant, are unpaid and unsatisfied of record, and that no part thereof has been paid; that said judgments were recovered for personal injuries to Catharine Jones, Bessie Lamken, Hattie Merklin and Annie McHenry, and that the judgment of Charles Gillard against Andrew Wanczyk embraces a claim for property damage, which the defendant claims, in addition to the reasons herein set forth, why plaintiff should not recover, that the policy of insurance does not indemnify Andrew Wanczyk for property

damage, and therefore there can be no recovery by the plaintiff for property damage.

The testimony in the case of Grace Gillard against the Manufacturers Casualty Insurance Company of Philadelphia shall also be taken to be the testimony in the case of Charles Gillard against the same defendant, and that the judgment which was for property damage remains unpaid.

The Court. As to the constitutionality of the act I do not consider this court competent to decide on that. I take it that whenever the Legislature makes the law, approved by the Governor, until the higher court rules, we should take the law as we find it. The question of constitutionality should be decided by the court having jurisdiction. I do not think I have any jurisdiction in turning down an action on my own personal opinion, or of the opinion of counsel, that an act is unconstitutional; I think that is a matter that should be passed upon by the higher courts; I think the lower courts should sustain the law as it stands. So on that point I would not grant the motion for a non-suit.

The point that concerns me most is whether there is any privity between the plaintiff and defendant. In the absence of the statute I am rather inclined to the opinion that the plaintiff had no action against the defendant, for the reason that the contract was made between the defendant and another party, and the plaintiff not being a party to the contract, in the absence of any special arrangement between the assured and the defendant, the plaintiff would not have acquired any rights to enforce an action of this kind. But in this case it would appear that the statute steps in and says that where certain things are done that they shall be for the benefit of certain persons. What concerns me, does the statute confer upon this plaintiff the right to bring an action to recover the amount of damages she has recovered in her action against the defendant in the former action? Now that is the point that I am somewhat in doubt about, as to whether the statute does cover that particular situation. The question might be considered this way: Does the statute leave the contractural relations of the parties to the contract as they were, and place the responsibility for suit upon the third person against the assured? That is the question that comes to my mind; as to whether under the contract and under the law, while the policy may be for the benefit of the assured and may be extended for the benefit of third persons, whether an action can be brought directly against the company for money which the company might be liable for against the assured? We have to consider the situation as the statute might place in view, and that is a person insured shall file a policy with the city officials for the benefit of third persons, persons who may be injured by the jitney bus or automobile, and the purpose of that is to give the world notice that in case this party does

injure anybody, has made provision whereby he will be able to pay damages in consideration of what he has done to protect third parties, then a license is issued to him and he is allowed to operate his machine on the public streets.

Now the question is whether that operates in such a way as to create a contract under the law directly to third persons, so that third persons can sue the company directly on that policy which has been filed. Now does the statute create a situation of that kind? That is really the point at issue.

Wanczyk under this policy could sue the company for an amount of damages which were recovered against him by the plaintiff in his action. It does not hold the company as far as the third person is concerned. The only thing that we have in connection with that is the contract itself—this rider—whether that established the right of third persons legally to bring the action direct. Who is the party that enforces the payment, Wanczyk or the third person? Can this party—the third party—compel them to pay out without first proceeding against Wanczyk, if Wanczyk has failed in his duty to bring action against the company? Can the third person force him to do it? Suppose he is gone? The agreement comes nearest to the point of establishing the right of the plaintiff to bring this action in the way it has been brought. The question is, does the contract of this company say to all the world, "We not only contract with this assured, but we contract with everybody to pay them any damage or judgment that may be recovered against them—this will be for anybody's judgment." If this is the case, can such a contract be enforced?

I am so uncertain about it, before finally deciding, I will ask counsel to submit briefs.

I, Daniel A. Dugan, Judge of the District Court of the City of Orange, do hereby certify the foregoing transcript of the stenographer's notes of the proceedings at the trial, to be used on appeal.

DANIEL A. DUGAN,
Judge.

A motion for non-suit having been made by the defendant, the court required the filing of briefs and after due consideration the motion to non-suit was denied and judgment was rendered for the plaintiff against the defendant for $112.90 damages and $9.57 costs and a like judgment was rendered in the following cases upon the same testimony:

14572 Catharine Jones vs. Manufacturers Cas. Ins. Co.
14573 Bessie Lamken vs. Manufacturers Cas. Ins. Co.
14574 Hattie Merklin vs. Manufacturers Cas. Ins. Co.
14575 Annie McHenry vs. Manufacturers Cas. Ins. Co.
14570 Charles Gillard vs. Manufacturers Cas. Ins. Co.

Exhibit P. 1.

Exhibit P. 1.

No. A-1066 Premium $55.00

MANUFACTURERS' CASUALTY INSURANCE CO.
of Philadelphia, Pa.

AUTOMOBILE POLICY.

WHEREAS, Andrew Wanczyk
hereinafter called the INSURED, has paid to the Manufacturers' Casualty Insurance Company, hereinafter called the COMPANY, the advance cash premium herein provided, the Company hereby agrees:

INDEMNITY.

I. To indemnify the Insured against loss by reason of the liability imposed upon him by law for damages on account of injuries sustained by any person or persons.

DEFENSE.

II. To defend in the name and on behalf of the Insured any suits which may at any time be brought against him or her on account of such injuries, including suits alleging such injuries and demanding damages therefor although such suits, allegations or demands are wholly groundless, false or fraudulent.

EXPENSE.

III. To pay all costs taxed against the Insured in any legal proceedings defended by the Company, all interests accruing after entry of judgment upon such part thereof as shall not be in excess of the limits of the Company's liability as hereinafter expressed, all expenses incurred by the Company for investigation, negotiation or defense, and the expense incurred by the Insured for such immediate surgical relief as shall be imperative at the time of any such injury.

OPERATIONS COVERED.

IV. This agreement shall apply to such injuries as sustained by reason of the ownership or maintenance of any of the automobiles enumerated and described in said declarations and the use of such automobiles for the purposes specified in Article 3 thereof. If such specified use is for private or pleasure purposes, it shall include ordinary business purposes, except the carriage of passengers for a consideration, expressed or implied, or demonstrating or testing, or the transportation or delivery of material or merchandise. If such specified use is a commercial vehicle (meaning thereby an automobile used for transportation and delivery of material or merchandise) it shall include the loading and unloading of goods carried on any such automobile. This agreement shall not apply while any such automobile is driven or manipulated in any race or competitive speed test, or by any person under the age fixed by law or under the age of 16 years in any event.

Exhibit P. 1.

LOCATION COVERED.

V. This agreement shall apply to such injuries so sustained while within the limits of United States of America or the Dominion of Canada.

LIMIT OF INDEMNITY.

VI. The Company's Liability for accident resulting in injuries or death sustained by any person or persons is limited to the amounts as expressed in Item 4 of said declarations, which limits shall apply to each automobile covered hereby.

THIS AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

PREMIUM COMPUTATION.

A. The Premium includes a charge for each automobile dependent upon its description and the purpose for which it is used.

CANCELLATION.

B. This Policy may be cancelled at any time by either of the parties upon written notice to the other party, stating when thereafter cancellation shall be effective and the date of cancellation shall be the end of the Policy period. If such cancellation is at the Company's request the earned premium shall be computed pro rata. If such cancellation is at the request of the Insured, the earned premium shall be computed and adjusted at short rates in accordance with the table printed hereon. Notice of cancellation mailed to the address of the Insured herein given, shall be sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

NOTICE.

C. The Insured, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He should give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit is brought against the Insured, he shall immediately forward to the Company every summons or other process served upon him. The Insured, when requested by the Company, shall aid in effecting settlements, securing evidence, the attendance of witnesses and in prosecuting appeals. The Insured shall not voluntarily assume any liability, settle any claim or incur any expense, except at his own cost, or interfere in any negotiation for settlement or legal proceeding without the consent of the Company previously given in writing.

Exhibit P. 1.

RECOVERY.

D. No action shall lie against the Company to recover for any loss under Paragraph 1 foregoing, unless it shall be brought by the Insured for loss actually sustained and paid by him, in money in satisfaction of the judgment after trial of the issue, and so such action shall lie to recover any other agreement of the Company herein contained, unless brought by the Insured to recover money actually expended. In no event shall any such action lie unless brought within ninety (90) days after the right of action accrues as herein provided.

SPECIAL STATUTES.

E. If the limitation of time for notice of accident or any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto in force in the state in which the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

CO-INSURANCE.

F. If the Insured carries a Policy of any other insurance covering concurrently a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of such concurrent insurance.

SUBROGATION.

The Company shall be subrogated in case of any payment under this Policy, to the extent of such payment, to all the Insured's rights of recovery therefor against persons, corporations or estates.

CHANGES.

No condition or provision of this Policy shall be waived or altered, except by endorsement attached hereto and signed by the Manager of the Company. Changes in the written portion of the declarations forming a part hereof (except Items 2, 3 and 4) may be made by a duly authorized representative of the Company, such changes to bind the Company when initialed by such representative. The personal pronoun herein used to refer to the Insured shall apply regardless of number or gender.

DECLARATION.

The statements in Items numbered 1 to 7 inclusive, in the Declaration hereinafter contained, are warranted by the Insured to be true, except such as are declared to be matters of estimate only. This Policy is issued in consideration of such warranties, the provisions of the Policy respecting its premium, and the payment of the premium in such Declaration expressed.

Exhibit P. 1.

ASSIGNMENT.

No assignment of interests under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

DECLARATIONS.

ITEM 1.

Name of Insured Andrew Wanczyk
Address 535 So. 19th St., Newark, N. J.
(Street, Town and State)
Insured's occupation is Bus Owner.
Individual, co-partnership, corporation or estate? Individual.

ITEM 2.

The Policy Period shall be from June 20, 1917, to Sept. 20, 1917, at 12 o'clock noon, standard time, at Insured's address, as to each of said dates.

ITEM 3.

Descriptive Trade Name	Factory No.	Year Built	Model or Type
Commerce	13596	1916	Bus

N

No. of Cylinders	Kind of Power	Advertised H. P.	Rate Class	Premium
B	Gas	26	A. J.	55.00
Advance premium				55.00

The purpose for which the above described automobiles are to be used are Jitney, 13 passengers, seating 13, standing 0.

None of these automobiles will be rented to others or used to carry passengers for a consideration except as herein stated: No exceptions that would prejudice this policy.

ITEM 4.

The Company's Limit of Liability for one person injured shall be Five thousand dollars ($5,000), and subject to that limit for each person the Company's total liability on account of any one accident injuring more than one person shall be limited to Five thousand dollars ($5,000).

ITEM 5.

My stabling or garage arrangements for the above described automobiles are in the town named in Item 1—except as herein stated: No exceptions that would prejudice this policy.

ITEM 6.

No personal injury has ever been caused by any automobile driven by or for me—except as herein stated: No exceptions that would prejudice this policy.

Exhibit P. 1.

ITEM 7.

No similar insurance has been declined or cancelled by any company during the past three years—except as herein stated: No exceptions that would prejudice this policy.

RIDERS IN POLICY.

Notwithstanding anything herein contained to the contrary, this Company will pay any final judgment within the limits of this Policy as stipulated in Item 4, recovered by any person or persons on account of the ownership, maintenance and use of the automobiles described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described in this contract or as described in the terms of an Act entitled "An Act concerning auto busses common called 'Jitneys' and their operation in cities," approved March 17, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey.

Notice of occurrence of an accident, claim or injury or legal suit when served upon the Company by the Fiscal Officer of the City of Newark, State of New Jersey, shall be deemed and taken as a notice as required to be given by the assured under the terms of Condition C of this contract.

For the Company to cancel this contract prior to date of expiration, it will be necessary to notify the Fiscal Officer of the City of Newark, and the assured, at least five (5) days before said cancellation is to become effective.

It is understood and agreed that Fifty dollars ($50.00) shall be considered the minimum premium under this Policy.

Nothing herein contained shall vary, alter, waive or extend any provision or condition of this policy other than as above stated.

Attached to and forming a part of Policy No. A. J. 1066, of the

MANUFACTURERS' CASUALTY INSURANCE COMPANY, OF PHILADELPHIA, PENNSYLVANIA.

(Signed) F. H. MARSHALL,
Manager.

Philadelphia, Pa., June 20, 1917.

IT IS HEREBY AGREED AND UNDERSTOOD that this policy does not cover any obligation assumed by or imposed upon the Insured by any Workmen's Compensation agreement, plan or law.

Attached to Policy No. 1066 of the Manufacturers' Casualty Insurance Company.

(Signed) F. H. MARSHALL,
Manager.

Exhibit P. 1.

Endorsement No. 1066, effective June 20th, 1917, attached to and forming part of Policy No. 1066, issued June 20, 1917, to September 20, 1917.

ENDORSEMENT "A."

Notwithstanding anything to the contrary in this policy contained, the statements contained in the Declaration on page 3 thereof, shall not be construed as warranties, so as to relieve the Company from the payment of any judgment or award of any court of competent jurisdiction in favor of any person for injuries sustained, as in Section 2 of Chapter 136 of the Laws of 1916, set forth.

MANUFACTURERS' CASUALTY INSURANCE COMPANY,
(Signed) J. K. ALLEN,
Secretary.

Endorsement No. 1066, effective June 20, 1917, attached to and forming part of Policy No. 1066, issued June 20, 1917, to September 20, 1917.

It is hereby understood and agreed that this Policy does not cover accidents occurring to employees of the assured while engaged in operating or caring for automobiles covered hereby, except to the extent that such obligation shall arise from the liability imposed by law upon the assured for damages on account of bodily injury or death suffered by any person or persons, as the result of an accident occurring by reason of the ownership, maintenance or use of said automobile bus upon the public streets of the city.

MANUFACTURERS' CASUALTY INSURANCE CO.
(Signed) J. K. ALLEN,
Secretary.

For value received the interest of the Insured in this Policy is hereby assigned to _____ subject to the consent of the MANUFACTURERS' CASUALTY INSURANCE COMPANY.

_____
(Signature of the Insured.)

THE MANUFACTURERS' CASUALTY INSURANCE COMPANY hereby consents that the interest of the Insured in this Policy be assigned to _____ of _____

_____
Secretary.

(These spaces are all in blank, no signatures above secretary.)

Exhibit P. 1.

SHORT RATE

CANCELLATION TABLE

	Per Cent. of Annual Prem.			Per Cent. of Annual Prem.
1 day	2	55 "		29
2 days	4	60 "		30
3 "	6	65 "		33
4 "	6	70 "		36
5 "	7	75 "		37
6 "	8	80 "		38
7 "	9	85 "		39
8 "	9	90 "	or 3 months	40
9 "	10	105 "		45
10 "	10	120 "	or 4 months	50
11 "	11	135 "		55
12 "	12	150 "	or 5 months	60
13 "	13	165 "		65
14 "	13	180 "	or 6 months	70
15 "	14	195 "		73
16 "	14	210 "	or 7 months	75
17 "	15	225 "		78
18 "	16	240 "	or 8 months	80
19 "	16	255 "		83
20 "	17	270 "	or 9 months	85
25 "	19	285 "		88
30 "	20	300 "	or 10 months	90
35 "	23	315 "		93
40 "	26	330 "	or 11 months	95
45 "	27	360 "	or 12 months	100
50 "	28			

Exhibit P. 2.

Exhibit P. 2.

ORANGE DISTRICT COURT.

GRACE GILLARD, *Plaintiff,*

vs.

ANDREW WANCZYK, *Defendant.*

On Contract.
Demand $500.

Sum's is'd July 18, 1917.
Ret'ble July 25, 1917.
Demand filed July 25, 1917.
A. B. Seymour, Pltff's Att'y.

Summons returned as follows

I served this summons 191 by reading the same to the defendant and delivering to

a copy thereof.

Sergeant-at-Arms.
Constable.

Plaintiff's Costs.

Summons	$2.10
Mileage	.32
Listing Fee	1.50
Attorney's Fee	5.00
Total Costs	$8.92

The said defendant not being found, I served this summons July 19, 1917, by leaving a copy thereof at his place of abode in presence of his wife, a person of the family of the age of fourteen years who was informed of the contents thereof.

JOHN E. GALLAGHER,
Sergeant-at-Arms
Constable.

I served the within summons, 191 ,
on
he being the of
said Corporation, by reading the same to him, and delivering to him a copy thereof.

Sergeant-at-Arms
Constable.

Demands for jury filed August 11, 1917, and Sept. 10, 1917. Sept. 12—Trial had. No defense offered. Following jury sworn and served:

Michael Fahy
James Shannon
Hugh McGartney
James McDonough
Adam Kaiser
Michael Murphy
Herman Ball
F. W. Welch
Thomas J. Quinn
Patrick Higgins
John Hooper
Michael Kearns

Exhibit P. 3.

Joseph Crawford sworn and testified. Register in evidence marked Exhibit P. 1. Dr. Frederick A. Sutton, Louis Holsworth, Bruno Stettinger, Grace Gillard and Catharine A. Jones all sworn and testified. Plaintiff rests.

The jury thereupon brought in a verdict for One hundred dollars and judgment was thereupon rendered for the plaintiff and against the defendant for One hundred dollars damages and Eight dollars ninety-two cents costs.

True copy.

HAROLD J. TRABOLD,
Clerk.

Exhibit P. 3.

14078—

535 S. 19th Street,
Newark.

DISTRICT COURT
CITY OF ORANGE

Summons in an action in Tort

GRACE GILLARD, *Plaintiff,*

vs.

ANDREW WANZYKE, *Defendant.*

Demand $500.

	COSTS.
Summons	$2.10
Mileage	.32
Listing Fee	1.50
Attorney's Fee	

Returnable July 25, 1917

A. B. SEYMOUR,
252 Main St., Orange,
Att'y for Pl'ff.

True Copy.

HAROLD J. TRABOLD,
Clerk.

Exhibit P. 3.

The said defendant not being found, I Served this Summons July 19, 1917, by leaving a copy thereof at his place of abode in the presence of his wife, a person of the family of the age of fourteen years, who was informed of the contents thereof.

JOHN E. GALLAGHER,
Sergeant-at-Arms or Constable.

ORANGE DISTRICT COURT.

GRACE GILLARD, *Plaintiff,*
vs.
ANDREW WANCZYK, *Defendant.*
In Tort.
State of Demand.

The plaintiff demands of the defendant Five hundred dollars for that:

1. On June 28, 1917, plaintiff was riding in an automobile on Elizabeth avenue, a public street in the City of Newark, in a south-westerly direction.

2. Defendant by his servants or agents operated and drove his automobile on said avenue in the same direction and so negligently, carelessly and improperly that by reason thereof the defendant's automobile was driven into the automobile in which plaintiff was riding and as a result of the collision plaintiff was thrown out upon the road. Plaintiff was greatly injured and bruised about the head, arms and legs and body and suffered great pain and agony and was confined to her house for a long space of time and was unable to perform her household duties and was compelled to pay out and expend large sums of money for physicians' services, and medicines and for the employment of persons to perform her household duties to her damage Five hundred dollars.

ARTHUR B. SEYMOUR,
Attorney of Plaintiff.

Exhibit P. 3.

ORANGE DISTRICT COURT.

GRACE GILLARD,
Plaintiff,
vs.
ANDREW WANCZYK,
Defendant.

In Tort.
Demand for Jury.

To the Clerk of the Orange District Court.

Take notice that a trial by jury of the above entitled cause is hereby demanded for August 14, 1917.

ARTHUR B. SEYMOUR,
B.,
Attorney for Plaintiff.

True copy.

HAROLD J. TRABOLD,
Clerk.

State of Demand.

ORANGE DISTRICT COURT.

GRACE GILLARD,
Plaintiff,
vs.
THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA,
Defendant.

On Contract.
State of Demand.

The plaintiff demands of the defendant Five hundred dollars for that:

1. On June 28, 1917, one Andrew Wanczyk operated an auto bus along Elizabeth avenue, a public street in the City of Newark, with the consent of the board or body having control of the public streets in said city for the operation of such auto bus and the use of said street.

2. As required by the statute, said Andrew Wanczyk, the owner of the said auto bus, filed with the Chief Fiscal Officer of the City of Newark, an insurance policy issued by the defendant, a copy of which is hereto attached and made a part hereof against loss from the liability imposed by law upon said Andrew Wanczyk for damages on account of bodily injury or death suffered by any person or persons

Exhibit P. 3.

as a result of an accident occurring by reason of the ownership, maintenance or use of said auto bus upon the public streets of said city by said Andrew Wanczyk.

3. The plaintiff on September 13, 1917, recovered a judgment against said Andrew Wanczyk in the Orange District Court for bodily injuries suffered by her as a result of an accident occurring by reason of the ownership, maintenance and use of said auto bus upon Elizabeth avenue, in said city by said Andrew Wanczyk.

4. Said judgment was for the sum of One hundred fourteen dollars and sixty-seven cents and no part thereof has been paid.

5. Under the terms of the policy of insurance of the defendant filed as aforesaid, a copy of which is hereto attached, the defendant is indebted to plaintiff in the sum of One hundred fourteen dollars and sixty-seven cents being the amount due upon said judgment but upon demand has refused and still does refuse to pay plaintiff the said sum of One hundred fourteen dollars and sixty-seven cents.

Judgment will be claimed for the sum of One hundred fourteen dollars and sixty-seven cents besides interest and costs of suit.

ARTHUR B. SEYMOUR,
Attorney for Plaintiff.

Docket Entries.

ORANGE DISTRICT COURT.

GRACE GILLARD, *Plaintiff,* vs. THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA, *Defendant.*	*Contract.* *Demand $500.*

Sum. is'd Dec. 3, 1917.
Retble Dec. 12, 1917.
Demand filed Dec. 12, 1917.
A. B. Seymour, Plaintiff's Attorney.
Pomerehne & Laible, Defendant's Attorneys.

SUMMONS RETURNED AS FOLLOWS:

I served this summons 191 by reading the same to the defendant and delivering to a copy thereof.

Sergeant-at-Arms.
Constable.

Plaintiff's Costs.

Summons	$2.10
Mileage	.32
Listing Fee	1.50
Witness Fee	
Venire	
Attorney's Fee	5.65
Total Cost	$9.57
Execution	
Appeal	1.00
Mileage	
Statement	

The said defendant not being found, I served this Summons 191 by leaving a copy thereof at place of abode in presence of a person of the family of the age of fourteen years who was informed of the contents thereof.

Sergeant-at-Arms.
Constable.

I served the within Summons 191 he being the of said Corporation by reading the same to him and delivering to him a copy thereof.

Sergeant-at-Arms.
Constable.

Service of within Summons accepted Dec. 5, 1917, by A. Archibald, Commissioner of Revenue & Finance, Newark, N. J.

JOHN E. GALLAGHER,
Constable.

Amended demand filed Feb. 4, 1918.

Mar. 6, 1918. Trial had. William E. Davenport sworn as stenographer. Joseph Crawford sworn and testified. Policy in evidence marked Ex. P. 1. Docket page #14078 and files #14078 in evidence and marked Ex. P. 2 and P. 3 respectively. John Bono and John Clark sworn and testified. Plaintiff rests. Motion for non-suit being made by defendant, the court required filing of briefs. Stipulation

as to evidence entered into by counsel. April 10, 1918—After consideration of briefs submitted, defendant's motion for non-suit denied. There being no testimony offered by the defendant, judgment was rendered for the plaintiff and against the defendant for One hundred twelve dollars ninety cents debt and nine dollars fifty-seven cents cost.

April 12, 1918—Notice of Appeal.
April 19, 1918—Bond on Appeal filed.

The above judgment was rendered in favor of the plaintiffs and against the defendant in the following cases, respectively, Catharine Jones, Bessie Lamken, Hattie Merklin, Annie McHenry and Charles Gillard.

Stipulation.

NEW JERSEY SUPREME COURT.

GRACE GILLARD,
Plaintiff-Appellee,
vs.
THE MANUFACTURERS CASUALTY INSURANCE COMGANY OF PHILADELPHIA, PENNSYLVANIA,
Defendant-Appellant.

Action at Law.
Stipulation.

CHARLES GILLARD,
Plaintiff-Appellee,
vs.
SAME,
Defendant-Appellant.

BESSIE LAMKEN,
Plaintiff-Appellee,
vs.
SAME,
Defendant-Appellant.

CATHARINE JONES,
Plaintiff-Appellee,
vs.
SAME,
Defendant-Appellant.

ANNIE MCHENRY,
Plaintiff-Appellee,
vs.
SAME,
Defendant-Appellant.

HATTIE MERKLIN,
Plaintiff-Appellee,
vs.
SAME,
Defendant-Appellant,

It is hereby stipulated and agreed by and between the attorney for the various plaintiffs in the above entitled causes and the attorney for the defendant that the testimony taken in the case wherein Grace Gillard is plaintiff and The Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, is defendant, be used as testimony in all of said causes and that only one state of the case need be printed, but in the case entitled Charles Gillard against The Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, this additional fact shall be regarded as in evidence as

if the same were in the printed state of the case, namely that Charles Gillard's judgment was recovered for property damages and not for personal injuries.

ARTHUR B. SEYMOUR,

Attorney for Plaintiffs in all above causes; Grace Gillard, Charles Gillard, Bessie Lamken, Catharine Jones, Annie McHenry, Hattie Merklin.

POMEREHNE & LAIBLE,

Attorneys for Defendant, The Manufacturers Casualty Insurance Company of Philadelphia, Pa.

Notice of Appeal.

Filed April 12, 1918.

DISTRICT COURT OF THE CITY OF ORANGE.

GRACE GILLARD, *Plaintiff,* *vs.* THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA, *Defendant.*	*Action at Law.* *Notice of Appeal.*

TAKE NOTICE that the defendant, the Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, appeals to the New Jersey Supreme Court from the judgment of the Orange District Court rendered in the above stated action on the tenth day of April, nineteen hundred and eighteen.

April 12, 1918.

POMEREHNE & LAIBLE,

Attorneys for The Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, Defendant.

JACOB L. NEWMAN,
Of Counsel.

Reasons.

Filed.

NEW JERSEY SUPREME COURT.

GRACE GILLARD, *Plaintiff-Appellee,* *vs.* THE MANUFACTURERS CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA, *Defendant-Appellant.*	*Action at Law.* *Reasons.*

The following is a specification of the determination of the Orange District Court with which the appellant is dissatisfied in point of law. At the close of the plaintiff's case, appellant had made a motion for non-suit on the following grounds:

1. That there is a failure of allegation or proof that the said plaintiff or the insured Andrew Wanczyk complied with the terms of the contract of insurance between the Manufacturers Casualty Insurance Company and the insured Andrew Wanczyk.

2. That the right of the plaintiff to recover, if such right exists, is a derivative right and the failure of the plaintiff to show that all the terms of the contract of insurance had been complied with was a condition precedent to the right of recovery.

3. The plaintiff has no beneficial interest in the contract and the statutory enactment entitled "an act concerning auto buses commonly called jitneys, their operation in cities," approved March 17, 1916, Chap. 136 of the laws of 1916, is unconstitutional insofar as the attempts to give to third persons greater rights under the contract of insurance than those which existed between the original parties.

4. The proof shows that the process in the proceedings under which Grace Gillard recovered a judgment against Andrew Wanczyk was not served upon the Chief Fiscal Officer of the City of Newark as required by the aforesaid enactment.

5. There is no consideration between the plaintiff and defendant upon which a contract can be based and therefore there is no liability upon the defendant.

6. There is no privity between the plaintiff and the defendant nor is there any contract existing between them.

The court denied the motion and the appellant asked for an exception and same was granted. The court erred in this determination and appellant is dissatisfied with same in point of law.

POMEREHNE & LAIBLE,
Attorneys for The Manufacturers Casualty Insurance Company of Philadelphia, Pennsylvania, Defendant.

April 16, 1918.

New Jersey Court of Errors and Appeals

GRACE GILLARD,
Plaintiff-Appellee,

VS.

MANUFACTURERS INSURANCE COMPANY, OF PHILADELPHIA, PA.,
Defendant-Appellant.

On Appeal from Supreme Court.
Brief of Plaintiff-Appellee

FACTS

On June 28, 1917, the plaintiff was injured about her body as the result of a collision between an automobile which she was driving and a jitney bus driven by John Bono, a chauffuer for Andrew Wanzyke.

She sued Andrew Wanzyke in the Orange District Court and on September 13, 1917, recovered a judgment against him for her injuries for one hundred dollars and costs. This judgment has not been paid.

At the time of the accident Andrew Wanzyke was operating a jitney bus under a license or consent granted by the proper authorities of the City of Newark along Elizabeth Avenue, a public street in said City, where the accident occurred and this license or consent having been granted under an act entitled, "An Act concerning auto busses, commonly called jitneys, and their operation in cities," P. L. 1916, page 283, he filed with the Chief Fiscal Officer of the City of Newark in accordance with the provisions of the act a policy of insurance issued by defendant company in the sum of five thousand dollars.

Plaintiff now sues the defendant, the insurance company, upon the policy to recover payment of her judgment against Andrew Wanzyke.

Judgment was given for the plaintiff-appellee and defendant appealed to the Supreme Court. The Supreme Court affirmed the judgment of the District Court (see Case pp. 4-8). The reasons are mentioned in defendant's specification of determination, etc., but are argued in his brief under three heads.

POINT 1.

The rights of the plaintiff are derivative and can be no more extensive than the rights of the insured. On the contrary, the rights of the plaintiff are original rights given by the statute. The plaintiff alone can sue under the policy required to be filed by the statute. The jitney bus owner cannot sue on the statutory policy. It is true that under the policy as filed, the jitney bus owner has certain rights, it being the ordinary liability policy. But a special policy is required to be filed by the statute against loss from the liability imposed by law upon the auto bus owner for damages on account of bodily injury or death suffered by any person as a result of an accident occurring by reason of the ownership, maintenance or use of the auto bus upon the public streets and it is required that the policy shall provide for the payment of any final judgment obtained by and shall be for the benefit of every person suffering loss, damage or injury as aforesaid.

The insurance policy cannot contain any provisions except those authorized by the statute so as to affect any person suffering loss as provided therein. Whatever other provisions the policy on file contains may be good as between the insurer and the insured jitney bus owner and may impose upon the latter certain duties and obligations towards the insurer for breach of which the insurer can maintain an action, but such provisions cannot deprive an injured party of the remedy given to him by the statute nor can they in any way abridge the rights granted by the statute to him. The policy of insurance is filed only for the benefit of persons who might suffer in-

jury. It is not filed for the benefit of the city. The city is under no liability which the policy indemnifies it against.

The statute was passed only for the benefit of the injured persons. It did not authorize the issue of the license; that power existed before and is nowhere given in the act. The sole beneficiary of the statute is the person injured and he is the only one who can sue under the policy and cite the statute in support of his action.

POINT II.

The act entitled, "An act concerning auto busses commonly called jitneys and their operation in cities," approved March 17, 1916, and known as chapter 136 of the laws of 1916, is unconstitutional.

The statute regulates the granting of licenses to operate jitney busses in the public streets of cities and it provides that licenses may only be issued upon certain conditions; that is the filing of an insurance policy for the benefit of injured persons and upon the making of monthly re orts of receipts and the payment of certain taxes by way of license fees for the privilege of operating. It is concerned with the operation of jitney busses and the conditions prescribed are germane to the subject of the operation of jitney busses.

It is said that it violates the constitutional provision that "every law shall embrace but one object, and that shall be expressed in the title." In Moore vs. Burdett, 62 N. J. L. 163-164, the Supreme Court (Justice Garrison) says: "In the interpretation of this constitutional provision the 'object' of a law must not be confused with its product. Every law is an exhibition of legislative activity directed to a particular end. This purposive direction implies the kind of activity put forth and the choice of the field for its display, but not the particulars of the purpose or the means selected for its accomplishment. The former is the object of the law, the latter

is its product. The object of every law, by force of the constitution, must be single and be expressed in the title of the law; the product may be as diverse as the object requires and finds its expression in the terms of the enactment only. In fine, the title of an act is a label, not an index."

In Allen vs. Board of Education, 81 N. J. L. 135, a supplement to a school act creating a teachers retirement fund and authorizing a deduction of part of a teacher's salary was held not to violate this provision of the constitution. The syllabus of the opinion reads as follows:

"The title of 'An act to establish a thorough and efficient system of free schools, and to provide for the maintenance, support and management thereof,' approved October 19th, 1903, expresses a single object, and the creation thereby of the 'board of trustees of teachers' retirement fund' is germane to and one of the products of the act.

"A statute which deals with various matters will satisfy the provisions of article 4, section 7, paragraph 4 of the constitution, if it has one general object and the matters enacted tend to effectuate that object and are properly related to each other.

"Under the title of the 'Act to authorize the incorporation of rural cemetery associations and regulate cemeteries,' approved April 9th, 1875, legislation looking to the exemption from public burdens of the property of cemetery corporations, incorporated under special laws, may be enacted."

Newark v. Mount Pleasant Cemetery Co., 58 N. J. L. 168. On page 171 in opinion of this case it is said:

"The constitution itself discloses the reason for the restriction on legislation contained in the provision in question. It is because of the influences which might result from the inclusion in one act of matters not properly related to each other, that it requires every law to embrace but one object.

"The evil intended to be guarded against was not

the inclusion in one act of more than a single matter, but the inclusion therein of matters not properly related among themselves. So by its obvious construction this constitutional provision justifies and permits legislation by one statute, looking toward a single general object, although it contains and enacts various and multiform matters, if those matters are properly related to each other and tend to effectuate the general object."

See also Easton and Amboy Railroad Company vs. Central Railroad Company, 52 N. J. L. 267.

The act is entitled "An act concerning auto busses and their operation in cities." The object of the act is to regulate the operation of busses in cities. It being regulatory the mind naturally turns, after reading the title, to the question what regulations are made in the act concerning the operation of jitney busses. The regulations are: one, for the protection of pedestrians in public streets, and two, for the protection of the municipality so far as the payment of the expenses of regulating them and so far as raising revenue for the purpose of repairing probable damage to the public streets by their operations is concerned.

POINT III.

The point is made that process should have been served on the fiscal officer in the suit between this plaintiff and Andrew Wanzyke, the jitney bus owner, and that the statute require it.

The statute provides that a power of attorney shall be filed with the fiscal officer wherein the jitney bus owner shall nominate the fiscal officer his attorney "for the purpose of acknowledging service of any process out of a court of competent jurisdiction to be served against insured (the jitney owner) by virtue of the indemnity granted under the insurance policy filed."

Process to be served against the insured does not

mean process to be served against the insurer and evidently this provision only means that if the insured should fly beyond the jurisdiction of the courts of this state, as in case of a death, he very reasonably might be expected to, the person injured or damaged by the operation of the bus could to enforce the remedy given by the statute (and that remedy only which is limited to the payment of $5000 damages, however great the number killed, injured or damaged) serve his process on the fiscal officer in a suit against the insured.

The statute while granting special relief nowhere changes the processes or remedies of the common law and nowhere provides for service of process on the insurer. It leaves the insurer in policies required by the statute in the same legal position it occupies in policies covering automobiles which are not licensed as jitney busses. The jitney bus owner is still left in the same position as other automobile owners with relation to their insurers

Only the position of parties injured is changed. In the case of the ordinary automobile owner the injured party cannot sue on the policy of insurance.

In the case of the jitney bus owner the injured party may sue on the policy. And the reason for this change of position is apparent. Jitney busses are vehicles using the public streets for the carrying of passengers for hire. It is notorious enough to attract judicial notice that before the statute was passed they were so numerous as to be dangerous to pedestrians, so dilapidated and structurally weak as to be perilous to passengers and were operated by irresponsible and incompetent owners and drivers. Hence, this statute to protect the public.

The decision in this suit is also binding upon the defendant-appellant in cases of Catherine Jones, Bessie Lamken, Hattie Merklin, Annie McHenry and Charles Gillard.

In the case of Charles Gillard against the same defendant, the Supreme Court in its opinion says,

"there is an additional point, viz: whether the policy of insurance filed by the defendant company covers damages to personal property. We think the contract of insurance is not limited to personal injuries. The words used by the insurance company to express its contract are as follows: Suits, "on account of injuries sustained by any person or persons": "including suits alleging such injuries and demanding damages therefore": "resulting in injuries or death sustained by any person or persons": "shall be for the benefit of every person suffering loss, damage or injury as described in this contract or as described in the terms of the act" P. L. 1916, p. 283, Chap 136.

There is nothing to suggest, that by the use of the words "injuries," "damages," "loss," personal injuries, damages or loss were only intended; nor do these words in their definition exclude injuries or damage to property. These words mean destruction or impairment of value, injury or harm. Injury means any wrong done or suffered: thus, we speak of any injury or damage to the person, to character or to reputation, as well as to property.

2 Words & Phrases, P. 1812: 4 ib., p. 3613; 5 ib., p. 4232.

Sometimes the word damage is used to denote a partial destruction, while loss is more properly used to denote absolute or total destruction.

It is quite true, the contract speaks of limiting the liability for one person injured to $5,000, and the statute, P. L. 1916, p. 283, Chap. 136, Sec. 2, speaks of "damages on account of bodily injury or death suffered." If these were the only words used in the contract or statute descriptive of the liability covered by the insurance, there might be some force in the contention, that the policy covered only injuries to the person or death suffered.

We think the contract is broad enough to cover damages to personal property.

It is respectfully submitted that the judgments of the Supreme Court below should be affirmed.

ARTHUR B. SEYMOUR,

Attorney for and of Counsel with Plaintiff-Appellee.

New Jersey Court of Errors and Appeals

GRACE GILLARD, *Plaintiff-Respondent,* *vs.* MANUFACTURERS' CASUALTY INSURANCE COMPANY of Philadelphia, Pennsylvania, *Defendant-Appellant.*	*Action at Law.*

Brief for Defendant Manufacturers' Casualty Insurance Company of Philadelphia, Pennsylvania.

FACTS.

The plaintiff in this case, Grace Gillard, instituted an action in the Orange District Court before Daniel A. Dugan, upon a policy of insurance (see State of Case, page 26, Exhibit P. 1), issued by the Manufacturers' Casualty Insurance Company of Philadelphia, Pennsylvania, to Andrew Wanczyk, to recover the sum of one hundred and fourteen dollars and sixty-seven cents ($114.67), the amount recovered by the said Grace Gillard in the said Orange District Court on a judgment entered in said Court on the thirteenth day of September, 1917, in favor of the said Grace Gillard against the said Andrew Wanczyk, which judgment was entered by default (see State of Case, p. 39, Exhibit P. 2) for bodily injuries sustained by her (see State of Case, p. 42, Exhibit P. 3) as a result of an accident occurring by reason of the ownership, maintenance and use of an auto bus by the said Andrew Wanczyk on Elizabeth avenue in said City of Newark.

The facts in the case show that the plaintiff recovered the said judgment in the Orange District Court by default on the thirteenth day of September, 1917, and that upon a verdict rendered by a jury for bodily injuries sustained by her in which action no defense was interposed by the said Andrew Wanczyk. The evidence further shows that the said Andrew Wanczyk, the owner of the auto bus, filed with the chief fiscal officer of the City of Newark an insurance policy issued by the defendant company, a copy of which insurance policy upon which said action is based is attached to and made part of the State of

Demand filed herein and that in said action, upon which the judgment was recovered, the summons was served upon the said Andrew Wanczyk by leaving a copy at his place of abode with his wife (see State of Case, p. 41, Exhibit P. 3) and that the chief fiscal officer of the City of Newark was not served with process as required by an act entitled "An act concerning auto busses commonly called 'Jitneys,' their operation in cities," approved March 17, 1916, and known as Chapter 136 of the Laws of 1916, which statute as far as pertinent to the inquiry reads as follows:

> "Such insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and use of such auto bus or any fault in respect thereto, and shall be for the benefit of every person suffering loss, damage or injury as aforesaid; and provided, further, that a power of attorney shall be executed and delivered to such fiscal officer concurrently with the filing of a policy hereinbefore referred to, wherein and whereby the said owner shall nominate, constitute and appoint such fiscal officer his true and lawful attorney for the purpose of acknowledging service of any process out of a court of competent jurisdiction to be served against insured by virtue of the indemnity granted under the insurance policy filed."

It further appeared that there was no allegation or proof that the terms, stipulations and conditions of the policy of insurance which was issued by the defendant company to the said Andrew Wanczyk upon which said action was based were complied with, nor was there any proof of a waiver of the terms and conditions of the policy, nor did it appear that any written notice of the occurrence of the accident was given with the fullest information obtainable, nor was there given any like notice with full particulars of any claim made on account of said accident, nor was the summons issued in this cause, sent to the Manufacturers' Casualty Insurance Company of Philadelphia, Pennsylvania, or its agents, as required by the terms of the policy of insurance, dated the twentieth day of June, 1917, issued by the Manufacturers' Casualty Insurance Company of Philadelphia, Pennsylvania, to the said Andrew Wanczyk, the assured, which provides as follows in section C (see State of Case, p. 29, Exhibit P. 1).

> "C. The Insured, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He should

> give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit is brought against the Insured, he shall immediately forward to the Company every summons or other process served upon him. The Insured, when requested by the Company, shall aid in effecting settlements, securing evidence, the attendance of witnesses and in prosecuting appeals. The Insured shall not voluntarily assume any liability, settle any claim or incur any expense, except at his own cost, or interfere in any negotiation for settlement or legal proceeding without the consent of the Company previously given in writing."

The entire case of the plaintiff seems to be predicated upon the fact that a judgment was recovered against Andrew Wanczyk which is unpaid, and that by virtue of the act entitled "An act concerning auto busses commonly called 'Jitneys,' their operation in cities," approved March 17, 1916, and known as chapter 136 of the Laws of 1916, concerning which act there is no allegation in the State of Demand and because of said contract of insuranec between the defendant and Andrew Wanczyk there is a right of action for the plaintiff to recover from the Manufacturers' Casualty Insurance Company of Philadelphia, Pennsylvania, the amount of said judgment.

The judgment recovered in the District Court of Orange was affirmed by the New Jersey Supreme Court in an opinion by Black, *J.* (see State of Case, pp. 4-8).

POINT I.

The rights of the plaintiff are derivative and can be no more extensive than the rights of the insured.

The contract of insurance (see State of Case, p. 26, Exhibit P. 1) was a contract between Andrew Wanczyk, the insured, and the Manufacturers' Casualty Insurance Company of Philadelephia, Pennsylvania, the insurer, and it contained various provisions, one of which, clause "C," reads:

> "C. The Insured, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He should give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit is brought against the Insured, he shall immediately forward to the Company every summons or other process served upon him. The Insured, when requested by the

> Company, shall aid in effecting settlements, securing evidence, the attendance of witnesses and in prosecuting appeals. The Insured shall not voluntarily assume any liability, settle any claim or incur any expense, except at his own cost, or interfere in any negotiation for settlement or legal proceeding without the consent of the Company previously given in writing."

The proof shows that the insured did not, in accordance with this provision, give written notice of the occurrence of the accident to the company with the fullest information obtainable; that he did not give notice with full particulars of any claim on account of such accident; that even after suit had been brought against him, he did not forward to the company the summons served upon him, but, on the contrary, that he did not defend the suit; that he allowed a judgment to be entered against him by default, without giving the insurance company any notice, formal or informal, of such legal proceedings, and that there was therefore no opportunity to defend on the part of the insurer.

There was also an utter absence of any proof or allegation that any of the conditions or terms of the policy had been complied with, or that there had been a waiver of any of the terms and conditions. The failure to prove or allege a waiver of the terms and conditions of the policy should have resulted in a non-suit.

It was a condition precedent to the right of recovery that the parties should allege and prove either a performance of the conditions of the contract of insurance or such facts that the jury might reasonably infer a waiver. There is no such proof in the case, and the proof is utterly lacking of any compliance with the terms and conditions of the policy; and therefore there could have been no recovery had this suit been instituted by Andrew Wanczyk, the insured, against the Manufacturers' Casualty Insurance Company of Philadelphia, Pennsylvania, the insurer.

If the contract of insurance may be considered a contract for the benefit of a third person not a party to it, the third person's right is not an absolute and inflexible one. Her right, if any, is derivative and depends upon whether or not the original contracting parties have fully performed their agreement in accordance with existing terms and conditions, and if it appears that the conditions were not complied with, and were actually ignored, the plaintiff in this case should not recover. This qual-

ification upon the right of a third party is very aptly stated in *No. 6 Ruling Case Law on Law of Contracts,* p. 886, section 276, in the following language:

> "Even in jurisdictions which recognize the right of a beneficiary to enforce the contract, the agreement between the promisor and promisee must possess the necessary elements to make it a binding obligation—in other words, it must be a valid contract between the parties to enable a third person, for whose benefit the promise is made, to sue upon it. A mere naked promise from one to another for the benefit of a third will not sustain an action. Necessarily the rights of a party for whose benefit a promise is made must be measured by the terms of the agreement between the principal parties, and the right to recover from the promisor is not absolute in all cases. The beneficiary is in fact asserting a derivative right. Therefore, among other limitations, the party to be benefited takes subject to all inherent equities arising out of the contract, as affecting the principal parties."

Under the subject "Contract for the benefit of third persons," 13 *Corpus Juris,* 699 (section 799), the rule is thus enunciated:

> "One who seeks to take advantage of a contract made for his benefit by another must take it subject to all legal defenses and inherent equities arising out of the contract, such as the fraud of the party procuring it, *the non-performance of conditions,* or the right to a set-off, unless the element of estoppel has entered. It is not a defense to an action on a contract made for the benefit of another that such other still retains his original remedy against one of the parties."

Originally where there is a contract between A and B for the benefit of C, C can only recover on such contract if the original agreement between parties is fully performed. If there is any breach of the contract going to its essence, there can be no recovery by the third party. The plaintiff's rights being derived from the insured, she can enforce them—if she can enforce them at all—if the insured has performed the conditions of the contract. There is nothing in the act hereinafter referred to which conflicts with the rule relative to the rights of third parties on contracts made for their benefit. The conferring of such a right claimed by the plaintiff, if it exists, is based solely upon the following words of the act:

> "Such insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and use of such auto bus or any fault in respect thereto and shall be for the benefit of every person suffering loss, damage or injury."

If the intention of the Legislature was to substitute the injured party in the place of the insured, for the purpose of holding the insurance company liable, provided such an act would be valid and constitutional, no greater rights than that of the insured can be conferred upon third persons than those acquired by the insured. To pursue to its logical conclusion the contention that the third person has superior rights to the insured will lead to the absurd and manifestly unjust result that the insurance company might have to pay judgments of thousands of dollars, even though the insured may not have paid his premium and has not carried out the conditions of the contract of insurance and has violated its every provision. The act does not so state, even inferentially, and therefore, no such legislative intent can be read into it.

The proof clearly shows that the insured disregarded conditions "C" of the policy. Such a violation constituted a complete bar to a recovery by the insured, should he have sued the insurer. This principle is so well established that reference to citations is unnecessary. Therefore, if the party through whom the plaintiff derives her rights cannot recover, the plaintiff is in no better position, and the motion to non-suit should have prevailed.

POINT II.

An act entitled, "An act concerning auto busses commonly called 'jitneys' and their operation in cities," approved March 17, 1916, and known as Chapter 136 of the Laws of 1916, is unconstitutional.

This is so if said act is intended to confer greater contractual obligations upon the defendant for the benefit of a third person, who is not a party to the contract of insurance or to alter or vary the terms of said contract between the said Andrew Wanczyk and the Manufacturers' Casualty Insurance Company, of Philadelphia, Pennsylvania.

The above entitled act violates article 4, section 7, paragraph 4, of the New Jersey Constitution.

> "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

In the case of *Sawter* v. *Shoenthal,* 83 N. J. Law 499, the Court of Appeals, speaking through Mr. Justice Swayze, says:

> "The true rule is that the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law."

Applying this rule to the case in hand demonstrates that if said act is intended to affect the contract of insurance or is intended to confer superior rights upon a third person than that of the contracting party, the statute would be unconstitutional, as it would be violative of the provisions of the State Constitution and would not answer the test that the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law.

The fact that the title to the act in no way or manner relates to insurance companies, insurance contracts or the rights of third parties in an insurance contract made for the benefit of such parties, is clearly indicative of the intent that such an act was not designed to effect any such person, contract or rights, and that the Legislature did not intend to confer any superior rights upon third persons than that set forth in the contract of insurance between the original parties.

If a correct construction of the act did warrant a recovery in this case, its effect would be to hold the defendant to a liability it had never contracted, as to which it was given no notice and in regard to which no hearing was afforded to it and no opportunity to dispute its liability. The mere statement of such a liability discloses that its enforcement would be a clear and flagrant violation of a right guaranteed by the Constitution of the United States to every person not to be deprived of his property without due process of law.

And therefore the motion to non-suit should have been granted upon the application of the plaintiff.

POINT III.

Assuming but not admitting that said act is constitutional in so far as it relates to the rights of persons for whose benefit the contract of insurance was made, then and in that case the statutory method of procedure must be strictly followed in order to entitle the plaintiff to recover.

This act of the Legislature, assuming it is a valid enactment, is a statute in derogation of the common law and must be strictly construed.

Curley v. *Liberty Hat Co.*, 79 N. J. Law, 316.
Black v. *Freeholders of Atlantic*, 81 N. J. Law, 447.
Knight v. *Cape May Sand Co.*, 82 N. J. Law, 16.

The statute entitled "An act concerning auto busses commonly called 'Jitneys' and their operation in cities," approved March 17, 1916, and known as chapter 136 of the Laws of 1916, provided among other things that:—

> "That a power of attorney shall be executed and delivered to such fiscal officer concurrently with the filing of a policy hereinbefore referred to, wherein and whereby the said owner shall nominate, *constitute and appoint such fiscal officer his true and lawful attorney for the purpose of acknowledging service of any process out of a court of competent jurisdiction to be served against insured by virtue of the indemnity granted under the insurance policy filed.*"

The plaintiff therefore is barred from recovery in this action because she has failed to comply with the condition which the statute and contract make precedent to her right of recovery. The Legislature clearly indicates its intention that if an injured party intended to hold the insurance company liable on the theory that the policy was a contract for her benefit *she must serve the process out of a court of competent jurisdiction on the Chief Fiscal Officer of the City, who is constituted an attorney for the purpose.*

This provision was inserted for the purpose of protecting the interest of the insurance companies and giving them due notice of any legal proceedings which might by virtue of said policy of insurance impose a liability upon them. The fiscal officer of the city in the discharge of his duty would have notified the insurance company and so afforded it an opportunity to defend the suit. The plaintiff did not serve process on the fiscal officer of the City of Newark, and she therefore cannot assert her right

under this statute, having failed to comply with the procedure outlined in the statute.

This clause was inserted in the statute unquestionably for the protection of the insurance company as service on the fiscal officer of the municipality would give the insurance company notice of the suit and an opportunity to defend. The failure to serve process upon the Chief Fiscal Officer of the City of Newark was absolutely fatal to the rights of the plaintiff under said statute. And therefore the motion to non-suit upon this ground should have been granted.

POINT IV.

The policy of insurance filed by the defendant with the chief fiscal officer of the City of Newark, having been accepted by that officer though it did not comply in all respects with the terms of the statute under which licenses to operate busses are issued, could not in law or in equity impress a burden on this defendant not contemplated by the parties to it, and the filing thereof was notice to the world of the conditions under which this defendant would assume liability and no greater contractual obligations can be forced upon this defendant by virtue of the statutory enactment.

It is urged with great vigor that the construction by the Supreme Court of the policy and statute here involved is erroneous. The effect of Justice Black's decision would be to create a contract of insurance by virtue of the statute entirely distinct and at variance with the written policy of insurance. Its effect would be to give the public absolute rights regardless of the conditions of the policy. Justice Black, on page 5 of the printed book, says:

> "It is true that under the policy filed the auto bus owner has certain defined rights. But a special policy is required to be filed by the statute, against loss from the liability imposed by law, upon the auto bus owner for damages, on account of bodily injury, etc."

The opinion also states that before the bus owner may operate his bus he shall file

> "An insurance policy against loss from liability imposed by law upon the auto bus owner for damages."

The statutory enactment does by its terms seek to create a contract of insurance which would be binding upon the insurance company, even though the insured may violate the terms

of the contract against an express prohibition for his so doing. If the law was enacted for that purpose a policy so issued would defeat the very purpose of the enactment. First, *because no insurer could be found who would insure the public under such conditions;* Second, *it is doubtful if the Legislature could pass an act which could compel the insurance companies to issue an unconditional contract.*

If the statutory enactment was intended to provide that an unconditional policy for the benefit of the public be issued then the policy filed with the Chief Fiscal Officer of the City of Newark in Exhibit P. 1 is not such a policy as is contemplated by the act. In other words, the Insurance Company issued a policy which was valid and binding only if certain conditions precedent were carried out by the insured. This policy having been filed was notice to the public that it might be rendered nugatory by reason of the failure of the insured to carry out the conditions precedent therein mentioned. It is intimated in the opinion of Justice Black that the effect of the rider in a policy by the broadness of its terms militates against this view, but a careful reading of the rider (see Exhibit P. 1, page 25, line 23), which reads as follows:

> "Notice of occurrence of an accident, claim or injury or legal suit, when served upon the Company by the Fiscal Officer of the City of Newark, State of New Jersey, shall be deemed and taken as a notice as required to be given by the assured under the terms of Condition C. of this contract."

indicates by express language that in order that the public may claim the benefit of the insurance policy as an unconditional liability that notice be served upon the Fiscal Officer, and the Fiscal Officer shall give such notice of the occurrence of an accident, claim, injury or legal suit by serving the same upon the Company. The reason and purpose is clear and unmistakable, namely, if the injured or insured should fail to give due and timely notice of the accident, the policy would be vitiated. *Therefore, the failure to give such notice to the Company by service of a notice or summons upon the Fiscal Officer was fatal and the plaintiff cannot recover because of such failure on the part of the insured, and therefore the Chief Fiscal Officer of the City of Newark was unable to give the Insurance Company notice of the suit so that it might appear and defend the same.* The effect of such failure was to deprive the company of its property without due process of law, and therefore is invalid.

The argument is valid and effectual notwithstanding the rider contained in the policy. (Exhibit P. 1, page 25, lines 10 to 20, states: *"Notwithstanding anything herein contained to the contrary, this company will pay a final judgment, etc. * * *."*) This generalization means that a judgment will be paid notwithstanding there may have been misstatements in the declarations or so-called warranties of the insured, and provided the company receives such notice of an action as will permit it to safeguard and defend its rights, and means that the conditions precedent mentioned in the policy are to be carried out. The failure to carry out the condition precedent is absolutely fatal to a right of recovery.

The decision in this suit is also binding upon the defendant in the following cases, in each of which the plaintiff obtained a judgment by default against the defendant, Andrew Wanczyk, by reason of the Stipulation filed herein (see State of Case, pp. 44-45).

GRACE GILLARD, *Plaintiff,* *vs.* MANUFACTURERS' CASUALTY INSURANCE COMPANY OF PHILADELPHIA, PENNSYLVANIA, *Defendant.*	$114.67
CATHARINE JONES, *Plaintiff,* *vs.* SAME, *Defendant.*	$114.67
BESSIE LAMKEN, *Plaintiff,* *vs.* SAME, *Defendant.*	$114.67
HATTIE MERKLIN, *Plaintiff,* *vs.* SAME, *Defendant.*	$114.67
ANNIE MCHENRY, *Plaintiff,* *vs.* SAME, *Defendant.*	$114.67
CHARLES GILLARD, *Plaintiff,* *vs.* SAME, *Defendant.*	$114.67

In the latter case of Charles Gillard against the Manufacturers' Casualty Insurance Company of Philadelphia, Pennsylvania, there could be no liability under any circumstances, as the policy of insurance does not provide for property damage (see State of Case, p. 45, ll. 20 to 28).

This suit involves an important principle of law and will saddle upon this defendant a liability very extensive in its character, and also has no legal basis, and it would be a wide departure from well settled legal principles to impose a liability upon this defendant on each of said judgments recovered in the above entitled cases to which this defendant neither had notice, opportunity to defend, or was a party thereto, nor was the Chief Fiscal Officer of the municipality served with process, and where it clearly appears there was no proof either of the performance of the conditions precedent mentioned in the contract of insurance by the insured or any facts from which the Court or jury could reasonably infer a waiver of such conditions precedent.

It is therefore urged that not only should the motion for nonsuit prevail, but this Court in the exercise of its plain duty under the statute should reverse the judgments of the lower Courts and enter judgment for the defendant in each of said cases.

Respectfully submitted,

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Of Counsel.