New Jersey Court of Errors and Appeals

C. Coulter Charlton and Lucy C. Charlton, Plaintiffs-Respondents, vs. Jersey Mutual Casualty Insurance Company, Defendant-Appellant.	On Appeal.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT.

Statement of the Case.

This appeal is from the judgment rendered before Judge W. Frank Sooy at the Atlantic County Circuit Court, which trial was held on the 6th day of November, 1929. A judgment was rendered in favor of the Appellees herein as set forth on the postea on Page 14 in the State of Case.

The cause of action arose out of the following set of facts:

On June 16th, 1927 a policy of insurance known as an auto cab liability policy was issued to Conrad Brathwaite of Atlantic City, N. J. in accordance with the requirements of the State statutes regarding auto cabs or taxis. The original policy, a copy of which is attached to the Complaint (see Page 6, State of Case) contained a provision that referred to Chapter 231 Laws of N. J. 1926, the

original taxi or auto cab law. The policy also contained a clause with reference to cancellation of the said policy as shown on page 8, line 31, State of Case.

The cancellation herein mentioned was a procedure to comply with the requirement under Chapter 231 Laws of N. J. 1926 wherein it was necessary to file the original policy with the Commissioner of Motor Vehicles before the Municipal authorities could consent to the operation of taxicabs. This requirement of the said Act is as follows: Chapter 231 Laws of 1926; An Act concerning auto cabs, commonly called taxis, and their operation in the State. "(2) No auto cab as defined herein shall be operated wholly or partly along any street in any municipality until the owner or owners thereof shall obtain the consent of the board or body having control of public streets in such municipality for the operation of such auto cab and the use of any street or streets of said municipality; and no such consent shall become effective and *no such operation shall be permitted until the owner of such auto cab in any municipality shall have filed with the Commissioner of Motor Vehicles an insurance policy of a company duly licensed* to transact business under the insurance laws of the State of New Jersey in the sum of Five Thousand Dollars ($5000.00) etc."

On March 27th, 1927, prior to the time of the issuance of the said policy to Conrad Brathwaite an amendment had been passed to Chapter 231 Laws of N. J. 1926 whereby it changed the requirement as to the filing of the policy of insurance, so that the policy was to be filed with the Clerk of the Municipality in which the auto cab operated before a consent to operate could be granted. This amendment changed the require-

ment as set forth in Chapter 231 Laws of N. J. 1926 so as to read as follows: Chapter 215 Laws of 1927; An Act to amend an act entitled "An act concerning auto cabs, commonly called taxis, and their operation in the State," approved March twenty-ninth, one thousand nine hundred and twenty-six. "(1) Section two of the act of which this act is amendatory, be and the same is hereby amended so that the same shall read as follows: (2) No auto cab, as herein defined, shall be operated wholly or partly along any street in any municipality until the owner or owners thereof shall obtain the consent of the board or body having control of public streets in such municipality for the operation of such auto cabs and the use of any street or streets of said municipality; and no such consent shall become effective and no such operation shall be permitted until the owner of such auto cab in any municipality shall have filed with the Clerk of the municipality in which such operation is permitted an insurance policy of a company duly licensed to transact business under the insurance laws of the State of New Jersey in the sum of Five Thousand Dollars ($5000.00) etc."

With this state of conditions the Appellant Company, attached an endorsement to the original policy of Conrad Brathwaite so as to conform with the change in statutory methods of filing and set forth that the cancellation of the policy shall be by giving notice to the Clerk of Atlantic City the municipality in which the cab was operated. The endorsement mentioned and consented to by the Honorable Judge Sooy on Line 30, Page 37 of the State of Case is as follows:

"It is understood and agreed that this policy is issued and designed to comply with the provisions of Chapter 231 of Laws of N. J. 1926 and the Acts

amendatory thereof and supplementary thereto in the sum of Five Thousand Dollars ($5000.00).

Loss 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 a result of an accident occuring by reason of the ownership, maintenance or use of the auto cab, commonly called taxi, upon any public street, road or highway; and provides for the payment of any final judgment recovered by any person on account of the ownership, maintenance and use of such auto cab, commonly called taxi, or any fault in respect thereto, and shall be for the benefit of every person suffering loss, damage or injury. *If anything contained in the policy conflicts with this endorsement, then this endorsement shall prevail.*

It is also understood and agreed that no cancellation of this policy shall become effective until twenty days notice of such proposed cancellation has been forwarded to the Clerk of Atlantic City.

Notwithstanding anything in said policy contained, to the contrary this Company will pay any final judgment within the limits of this policy recovered by any person or persons on account of this ownership, maintenance and use of the taxi described therein or any fault in respect thereto in accordance with the liability as described in this policy; and it is further understood that this policy shall be for the benefit of every person suffering loss, damage or injury as described in this policy or as described in the terms of the act above referred to.

Attached to Policy No. 2178 June 16th, 1926.

This endorsement was attached to the policy that was placed on file with the Clerk of Atlantic City in compliance with the law and amendments thereto in existence at time policy was in effect.

On March 10th, 1928 the said Conrad Brathwaite had an accident and a Judgment was recovered against him by the Appellees herein. The said Judgment was not paid and in conformance with the Statutes of this State and amendments thereto the said Appellees herein brought suit against the Insurance Company, which Company is the Appellant herein.

In the pleadings of said action at law the Counsel for the Plaintiff attached the policy upon which they are suing, to the Complaint and held out that copy of the policy to be the policy covering the auto cab of Conrad Brathwaite. By inadvertance the Defendant in its Answer admitted that the said copy was of the policy in question when in fact the copy of the policy did not contain the attached endorsement which was also on file.

As a part of the Defendant's Answer, that is the First Separate Defense thereto (See Line 33, Page 13 of State of Case) the Defendant avers that the said policy was not in force or effect on the 10th day of March, 1928 which was the day of the accident above mentioned. The defendant's contention was that the policy had been cancelled and that the cancellation was in conformance with the existing law.

At the trial of the cause before the Honorable Judge Sooy on November 6th, 1929, the Plaintiffs counsel proceeded by proving that a Judgment was obtained against Conrad Brathwaite, who was the assured under the policy set out in the Complaint and rested his case.

The defendant then proceeded with the defense by attempting to prove that the policy mentioned had been cancelled and was no longer in force or effect at the time the accident occurred. Every attempt to put evidence in to prove its case was ob-

jected to and the objections were sustained by the Honorable Judge Sooy, who had the fixed idea that this was a Contract suit and that the only method of cancellation was in accordance with the terms and provisions of the contract or policy of insurance on file.

During the course of trial (see line 31, page 32 of State of Case) it became known that the copy of the endorsement was not included in the copy of the policy attached to the complaint and after a discussion of the same the Court consented to the endorsement being included as a part of the policy (see line 29, page 37 of the State of Case) and then contended that the endorsement did not change the requirements under the original policy and before the policy could be shown as cancelled, the proof must be directed to the provision of the original policy regarding cancellation (see line 31, page 8 of the State of Case).

The Defendant tried to convince the Court that its acts were in accordance with the then existing laws of the state, that is with Chapter 231 Laws of 1926 and its amendment Chapter 215 Laws of N. J. 1927 but such proof was of no avail and was not admitted by the Court.

The Defendant then asked for a continuance of the trial in order to prove that the cancellation was also filed at the office of the Commissioner of Motor Vehicles (line 30, page 40 of the State of Case) but the motion was denied by the Court.

The Plaintiffs then moved for a direction of verdict in favor of the Plaintiffs, and the Defendant asked for the same (line 34, page 45 to line 20 page 46 of State of Case). The Court then directed the Jury to bring a verdict in favor of the Plaintiff, Mrs. C. Coulter Charlton in the sum of Two Thousand Ninety-Five Dollars ($2095) and

in favor of the Plaintiff, C. Coulter Charlton in the sum of Two Hundred and Sixty-One Dollars and Eighty-Seven Cents ($261.87) and a third count in favor of both in the sum of Seventy Dollars and Forty-One Cents ($70.41) costs (line 10, page 46 of State of Case).

The Jury found as so directed.

ARGUMENT.

POINT I.

Statutory Insurance differs from an ordinary contract as between the Insurance Company and the beneficiary.

The Appellants herein contend that the Trial Judge erred in his construction of the relationship between the beneficiary or injured person under a compulsory statutory auto cab insurance policy, and the Insurance Company. That the parties privy to the Contract of insurance are the insured, or auto cab owner, and the Insurance Company. That between the parties privy to the contract each and every term and provision of the policy must be complied with. This is not so when the relationships of the Insurance Company and the beneficiary are considered. As between them there is a legal status that is established by Acts of the Legislature. This status makes the Insurance Company liable after a policy is issued, for all the terms of the policy that are in compliance with the Statutes that are in existence during the life of the policy, and also for terms not in the policy but which are required under the Laws of New Jer-

sey. By the same token as between the Insurance Company and the injured party this status does not make the Insurance Company liable to do acts that are set forth to be done in the policy but which are not in conformance with the Laws of the State during the life of the policy.

To support this contention and to show that there is such a status in existence I cite the case of Gillard vs. Manufacturers Casualty Insurance Company, 92 Law 141 at Page 143 wherein Justice Black explains relative to statutory Insurance as follows: "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 effect 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."

Now to apply this principle to the case at bar and to prove that the court erred in refusing to hear evidence as to compliance with the Laws of New Jersey, and that the Court erred in holding the Defendant strictly to prove of a procedural act recited in the policy of insurance issued to Conrad Brathwaite, I show the following:

At the time the policy of insurance was issued to Conrad Brathwaite, the said Chapter 215 Laws of N. J. 1927 had already been passed, and by this act the said Chapter 231 Laws of N. J. 1926 was amended so as to require the owner of the auto cab to file the insurance policy with the Clerk of the municipality in which he operated before he could obtain consent to operate; instead of filing the same with the Commissioner of Motor Vehicles.

This being true it was necessary to change the procedural method of cancelling the said policy so as to conform with the new statute in effect. To change the procedural method would be to give the notice of cancellation at the place where the policy was on file.

The policy No. 2178 as mentioned in the Complaint on (Page 7 of the State of the Case) a copy of which is on (Page 6 of the State of the Case) was made up in accordance with the old law and referred to Chapter 231, Laws of N. J. 1926 without its amendments. Also in the provision as to cancellation it required the notice of cancellation to be given in accordance with the old law at the place where the policy was filed. That is at the Commissioner of Motor Vehicles (line 35, page 8 of the State of Case).

To correct these provisions of the policy and to have the methods of procedure conform with the laws in existence, the Appellant Company attached an endorsement, containing the procedure that conformed with the law. The said endorsement was attached to the policy and filed with the policy at the Clerk's office in the municipality where Brathwaite operated.

At a later date, but prior to the accident the policy was cancelled at the office of the Municipal Clerk's Office in conformance to the procedure of

the endorsement and according to the method passed by the Legislature of the State.

With this in mind the Appellant now contends that in conformance with the words of the Honorable Justice Black, the injured party, whose rights are established by law, could not be bound by any provision of a statutory insurance policy that does not conform strictly to the Statute. That if the policy at bar was filed with the Clerk of the Municipality where the auto cab operated, which was in accord with the existing law, a cancellation of that policy in an illegal manner, that is, at the office of the Commissioner of Motor Vehicles as set forth in the policy itself, would not be binding upon the injured party. It would not be binding because the public is only bound by Statutory Acts. The injured parties relationship to the policy is only by the existing status. All provisions in the policy not in accord with that status, not in accord with the existing laws are mere surplusage insofar as the injured party is concerned. Provisions in the policy not in accord with the statute might be good as between the insurer and the insured who are privy to the contract but not between the insurer and the injured party.

For this reason and because of the mutual rights of the parties to this status that the State creates, the insurance company should not be held to conform to an illegal procedure that is a surplusage, if it can show that it conformed to the Laws by which that status is established.

Should the insurance Company be penalized for doing a legal act in a legal way, because it did not conform to an illegal procedural act that is no longer practical?

The injured party could not be bound by an illegal act, neither should the insurance company be

held to perform an illegal act. Illegal provisions of a policy are not binding on the beneficiary under statutory insurance, and likewise they are not binding on the insurance company.

Statutory insurance under the taxi act and jitney act are for the benefit of the public. They are to benefit by all the laws of this State, from all the procedure required in the establishment of that beneficial status, but not from illegal provision of contract outside of that status, when such provisions are not prejudicial to them.

For all of the reasons given above, showing that the clause in the original policy in the case at bar, relative to cancellation was no longer effective, being out of conformance with the law, the Appellant now contends that they should have been permitted to proceed at the trial of this cause, without the Courts objection, to the proof that the policy was cancelled in the manner that was legal. They should have been permitted to prove that the policy was cancelled at the office of the Municipal Clerk and should not have been compelled to prove a compliance with a statute that was amended and no longer in effect.

POINT II.

Grounds for Appeal: (Page 16, line 21 of State of Case)

To the witness Dr. C. Coulter Charlton: "Following the accident did Mr. Brathwaite come to see you?"

"Did you have any conversation with Mr. Brathwaite after the accident?"

To the witness Conrad Brathwaite: "When you had the accident did you know whether or not you were insured?"

To the witness Alexander T. Morelli: "Did you cause a notice of cancellation of that policy to be sent to Mr. Conrad Brathwaite?"

"Do you of your own knowledge know whether or not a notice of cancellation was forwarded to the Motor Vehicle Commissioner?"

"Did you forward a notice of cancellation to the City Clerk"?

"Do you know why this taxi endorsement was attached to the policy?"

To the witness Anna Delany: "Did you receive a letter from the Jersey Mutual Casualty Insurance Co. dated October 14th, 1927 notifying you that this policy had been cancelled and cancellation was to take effect as of November 2nd?"

"Miss Delany, when you receive these policies do you notify the Commissioner of Motor Vehicles?"

"Did you cause a notice to be sent to Mr. Brathwaite that his insurance policy had been cancelled?"

"Miss Delany, when public documents are filed with your office, do they go outside your office?"

"Miss Delany, do you remember Mr. Brown at any time coming to your office and asking you to let him see the policy involved?"

All of the questions herein contained were for the purpose of showing that the Appellant acted in conformance with the laws in existence at the time of the life of the policy. That the proper notice was given to the Clerk of the municipality wherein the policy was filed so that the cancellation of the policy could be legally done. All of these were overruled and the Defendant-Appellant was deprived of his legal remedy. The first point in the Appellant's argument shows why they should have been admitted.

POINT III.

The learned trial Judge erred in construing the Taxi Acts of 1926 and 1927 in accordance with decisions under the Kates Act of 1916. Although the trial Judge was correct in stating that the Jitney Act and the Taxi Acts are analogous in respect to the injured persons rights under the provisions of the Statute. The court, however, erred in applying this rule to the case at bar for in the case at bar the learned Judge Sooy was granting to the injured party privileges under an illegal provision in the insurance policy. This was never intended by the Legislature. The discussion under Point I of this Brief sets forth the reasons why the learned Judge should never have used the decision under the Jitney Act to apply to the facts of the case at bar.

POINT IV.

The learned Trial Judge erred in refusing to permit a continuance of the matter in order to afford the Defendant an opportunity to produce witnesses from the Department of Motor Vehicles in order to show that the policy involved had been cancelled prior to the date of the accident. For the same reasons as set forth in the Argument under Point I of this Brief, the learned Court erred in not permitting the Defendant to submit its evidence to show that the Defendant conformed with the Statute of this State in reference to cancelling the policy of insurance involved in this case.

POINT V.

The learned Court erred in refusing the Defendant's motion for a direction of a verdict at the close of the case. The learned Court erred in this matter in not directing a verdict for the Defendant for the reason that although the Plaintiffs had proved the recovery of a Judgment against the taxi owner in that the policy attached to the Complaint was the same Policy covering the auto cab of Conrad Brathwaite. The Plaintiff did not prove that the policy was in existence at the time of the accident.

POINT VI.

The learned Trial Court erred in granting the Plaintiffs motion for a direction of a verdict at the close of the case for the reasons covered in the First Point of this Brief. The Court did not give the Defendant sufficient opportunity to prove the defense in this case. The learned Court did not permit them to prove that the policy in question was no longer in existence at the time that the accident occurred by the auto cab of the said Conrad Brathwaite, and for the reasons set forth in Point V, that the Plaintiffs had not sufficiently proved that the policy was in existence at the time of the accident, a direction of a verdict should have been granted for the Defendant and not for the Plaintiffs.

Respectfully submitted,

GEORGE F. SEYMOUR, JR.,
Attorney for Defendant-Appellant.

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Filed April 6, 1929.

New Jersey Supreme Court.

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. JERSEY MUTUAL CASUALTY INSURANCE COMPANY, a corporation, Defendant.	Transcript of Pleadings for Trial.

WM. ELMER BROWN, JR.,
Attorney for Plaintiffs.
GEORGE F. SEYMOUR JR.,
Attorney for Defendant.

Summons issued March 26, 1929.

Complaint.

Plaintiffs, C. Coulter Charlton and Lucy C. Charlton, residing in the City of Absecon, Atlantic County, New Jersey, say that:

FIRST COUNT.

1. On June 16, 1927, defendant was, and still is, a corporation duly incorporated under the laws of the State of New Jersey with power to contract to indemnify against loss from the liability imposed by law growing out of the operation of moto:

vehicles and duly registered and authorized to transact business in the State of New Jersey.

2. On that day it executed to one Conrad Brathwaite its policy or contract of indemnity numbered 2178 thereby agreement to indemnify him for a term of 12 months from said date, against loss arising from the liability imposed by law upon said Conrad Brathwaite for damages on account of bodily injuries or death suffered by any person or persons as a result of an accident occurring, while said policy was in force, by reason of the ownership, maintenance, or use of the auto-cab described therein, it being stipulated in said agreement that the indemnity therein granted should be in strict accordance with the provisions of Chapter 231, Laws of New Jersey, 1926. A copy of said policy is annexed hereto and, by this reference thereto, is made a part hereof.

3. On that day said Conrad Brathwaite owned, maintained and used a certain motor vehicle commonly called an "auto cab" or "Taxi" and described in said policy.

4. On March 10, 1928, while said policy still remained in full force and effect, plaintiff Lucy C. Charlton, suffered bodily injury caused by said auto cab or taxi so described, owned, maintained and used as aforesaid and thereafter on January 21, 1929, recovered against said Conrad Brathwaite by the final judgment of the New Jersey Supreme Court as damages on account thereof the sum of $2,000.00.

5. It was part of said agreement on the part of defendant that: "The liability of the Company for loss from any one judgment resulting in bodily

injuries to or in the death of any one person is limited to Five Thousand Dollars ($5,000.00) and there shall be a continuing liability of the Com pany for such amount under this policy, notwithstanding any recovery thereunder.

6. Said final judgment is within the limits of said policy and has not been paid.

7. Plaintiff avers that by the terms of said act of the legislature and the stipulations of said policy said contract was for her benefit and an action has accrued to her to sue for and recover from said defendant the amount of said judgment.

Plaintiff, Lucy C. Charlton, demands as damages on this count the sum of $2,000.00 with lawful interest thereon from January 21, 1929, besides the costs of this suit.

SECOND COUNT.

1. The plaintiff, C. Coulter Charlton, for the sake of brevity, here repeats the allegations and matters and things set forth in paragraph 1 of the first count of this complaint.

2. The plaintiff, C. Coulter Charlton, for the sake of brevity, here repeats the allegations and matters and things set forth in paragraph 2 of the first count of this complaint.

3. The plaintiff, C. Coulter Charlton, for the sake of brevity, here repeats the allegations and matters and things set forth in paragraph 3 of the first count of this complaint.

4. On March 10, 1928, while said policy still remained in full force and effect, plaintiff, Lucy C. Charlton suffered bodily injury caused by said

auto-cab or taxi so described, maintained and used as aforesaid.

5. Said Lucy C. Charlton was then and still is the wife of Plaintiff, C. Coulter Charlton.

6. By reason of said injuries inflicted upon said Lucy C. Charlton as aforesaid, the said plaintiff, C. Coulter Charlton, thereafter on January 21, 1929, recovered against said Conrad Brathwaite by the final judgment of the New Jersey Supreme Court, as damages on account thereof, the sum of $250.00.

7. The Plaintiff, C. Coulter Charlton, for the sake of brevity, here repeats the allegations and matters and things set forth in paragraph 5 of the first count of this complaint.

8. The said judgment of the plaintiff, C. Coulter Charlton, is within the limits of said policy and has not been paid.

9. The plaintiff, C. Coulter Charlton avers that by the terms of said act of the legislature and the stipulations of said policy said contract was for his benefit and an action has accrued to him to sue for the recover from said defendant the amount of said judgment.

Plaintiff, C. Coulter Charlton, demands as damages on this count the sum of $250.00 with lawful interest thereon from January 21, 1929, besides the costs of this suit.

THIRD COUNT.

1. The plaintiffs, C. Coulter Charlton and Lucy C. Charlton, for the sake of brevity, here repeat

all the allegations and matters and things set forth in paragraph 1 of the first count of this complaint.

2. The plaintiffs, C. Coulter Charlton and Lucy C. Charlton, for the sake of brevity, here repeat the allegations and matters and things set forth in paragraph 2 of the first count of this complaint.

3. The plaintiffs, C. Coulter Charlton and Lucy C. Charlton, for the sake of brevity, here repeat the allegations and matters and things set forth in paragraph 3 of the first count of this complaint.

4. The plaintiffs, C. Coulter Charlton and Lucy C. Charlton, for the sake of brevity, here repeat the allegations and matters and things set forth in paragraph 4 of the first count of this complaint.

5. The plaintiffs, C. Coulter Charlton and Lucy C. Charlton, for the sake of brevity, here repeat the allegations and matters and things set forth in paragraph 5 of the second count of this complaint.

6. The plaintiffs, C. Coulter Charlton and Lucy C. Charlton, for the sake of brevity, here repeat the allegations and matters and things set forth in paragraph 6 of the second count of this complaint.

7. The plaintiffs, C. Coulter Charlton and Lucy C. Charlton, for the sake of brevity, here repeat the allegations and matters and things set forth in paragraph 5 of the first count of this complaint.

8. Also on said January 21, 1929, plaintiffs, C. Coulter Charlton and Lucy C. Charlton, having joined their said causes of action in the same suit, recovered against said Conrad Brathwaite by final

judgment of the New Jersey Supreme Court, as their costs in said suit, the sum of $67.22.

9. The said judgment of the plaintiffs, C. Coulter Charlton and Lucy C. Charlton, is within the limits of said policy and has not been paid.

10. Plaintiffs, C. Coulter Charlton and Lucy C. Charlton, aver that by the terms of said act of the legislature and the stipulations of said policy said contract was for their benefit and an action has accrued to them to sue for and recover from said defendant the amount of said judgment.

Plaintiffs, C. Coulter Charlton and Lucy C. Charlton, demand as damages on this count the sum of $67.22 with lawful interest thereon from January 21, 1929, besides the costs of this suit.

WM. ELMER BROWN, JR.,
Attorney for Plaintiffs.

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AUTO-CAB LIABILITY POLICY

JERSEY MUTUAL
CASUALTY INSURANCE COMPANY
Newark, N. J.

(hereinafter called the Company)

In consideration of the payment of premium of One Hundred Twenty Five——Dollars, hereby agrees to indemnify, Conrad Brathwaite——of 210 No. Virginia Ave., Atlantic City, N. J. hereinafter called the Assured, for a term of 12 months from the 16th day of June 1927, at noon, to the 16th day of June, 1928, at noon, against loss arising from the liability imposed by law upon the Assur-

ed for damages on account of bodily injuries or death suffered by any person or persons as a result of an accident occuring, while this policy is in force, by reason of the ownership, maintenance, or use of the auto-cab hereinafter described, it being understood and agreed that the indemnity herein granted shall be in strict accordance with the provisions of Chapter 231, Laws of New Jersey, 1926, and that the Company shall not be liable for any loss sustained other than such loss as the Assured may sustain by reason of such ownership, maintenance and use of the within described auto-cab by virtue of the provisions of such Chapter; and to defend in the name and on behalf of the Assured any legal proceedings brought against the Assured to enforce a claim covered by this policy, whether groundless or not, for damages on account of such bodily injuries or death suffered or alleged to have been suffered as described above during the policy period, unless the Company shall elect to effect settlement thereof.

The Liability of the Company for loss from any one judgment resulting in bodily injuries to or in the death of any one person is limited to Five Thousand Dollars ($5,000.00) and there shall be a continuing liability of the Company for such amount under this policy, notwithstanding any recovery thereunder.

Description of Auto-Cab Insured.

Trade Name: Buick.
Model Year: 1924.
Motor Number: 1153701.
Serial Number: 1154140.
State License: ——
Municipal License: ——
Body Type: Sedan.

Seating Capacity: 5.

1. Notice, Claims and Suits. The Assured shall give to the company immediate written notice of any accident and shall also give like notice of claims for damages on account of such accidents. If any suit is brought against the Assured to recover such damages the Assured shall immediately forward to the Company at its home office in Newark, N. J., every summons or other process served upon him. The Company shall have the exclusive right to contest or settle any suits or claim. The Assured shall not interfere in any way respecting any negotiations for the settlement of any claim or suit, nor in the conduct of any legal proceedings but shall at all times, render to it all possible co-operation and assistance, and the Assured shall not voluntarily admit any liability for any accident.

2. Subrogation. In the event that the Company becomes liable for payment of loss under this policy, the Company shall be subrogated to the amount of such liability, to all rights of the Assured against any person, firm or corporation arising out of the accident causing such liability and the Assured shall do everything which may be necessary to secure to the company such rights.

3. Cancellation. Either the Assured or the Company may cancel this policy at the end of any quarterly period by filing a notice of their intention so to do in the office of the Commissioners of Motor Vehicles of New Jersey, at Trenton, at least twenty days prior thereto, in which event future premiums shall thereupon cease and the Company shall not be liable to the Assured for the payment of any unearned portion of the premium already paid.

4. Statutory Provisions. Upon acceptance of this policy the Assured becomes a Member of the Company and has the right to vote at its meetings as provided for in the By-Laws of the Company.

5. Assessments. In addition to the premiums provided for in this Policy, the Assured agrees to pay such assessments as may be made by the Company in accordance with the Insurance Laws of the State of New Jersey and the By-Laws of the Company. The Assured's Liability to assessment shall in no event be greater than an amount equal to the amount of, and in addition to the cash premium written in this policy.

6. Dividends. The Board of Directors may, subject to the approval of the Commissioner of Banking and Insurance and the provisions of the Insurance Laws of the State of New Jersey, declare dividends at the end of each fiscal year, or more often, after retaining sufficient sums to pay all outstanding obligations.

In Witness Whereof, Jersey Mutual Casualty Insurance Company has caused these presents to be signed by its President and Secretary, under its corporate seal, at Newark, New Jersey, the 16th day of June, 1927, but the same shall not be binding upon the Company, unless countersigned by its Authorized Manager.

JOSEPH D. ESENT,
President.

ROBERT WALLACE,
Secretary.

Countersigned:
ALEXANDER T. MORELLI (Signed)
Authorized Manager.

Answer.

Filed April 8, 1929.

Defendant answering the Complaint filed in the above captioned matter, says that:

FIRST COUNT.

1. Defendant admits the allegations contained in Paragraph One.

2. Defendant admits the allegations contained in Paragraph Two, insofar as they relate to Policy No. 2178.

3. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Three, but leaves the Plaintiffs to their proof thereof.

4. Defendants deny the allegations contained in Paragraph Four.

5. Defendant admits the allegations contained in Paragraph Five.

6. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Six, but leaves the Plaintiffs to their proof thereof.

7. Defendant denies the allegations contained in paragraph Seven.

SECOND COUNT.

1. Defendant repeats the answers to the allegations contained in paragraph one of the First Count as though fully set out herein.

2. Defendant repeats the answers to the alle-

gations contained in Paragraph Two of the First Count as though fully set out herein.

3. Defendant repeats the answers to the allegations contained in Paragraph Three of the First Count as though fully set out herein.

4. Defendant denies the allegations contained in Paragraph Four.

5. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Five, but leaves the Plaintiffs to their proof thereof.

6. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Six, but leaves the Plaintiffs to their proof thereof.

7. Defendant repeats the answers to the allegations contained in Paragraph Five of the First Count as though fully set out herein.

8. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Eight, but leaves the plaintiffs to their proof thereof.

9. Defendant denies the allegations contained in Paragraph Nine.

THIRD COUNT.

1. Defendant repeats the answers to the allegations contained in Paragraph One of the First Count as though fully set out herein.

2. Defendant repeats the answers to the allegations contained in Paragraph Two of the First Count as though fully set out herein.

3. Defendant repeats the answers to the allegations contained in Paragraph Three of the First Count as though fully set out herein.

4. Defendant repeats the answers to the allegations contained in Paragraph Four of the First Count as though fully set out herein.

5. Defendant repeats the answers to the allegations contained in Paragraph Five of the Second Count as though fully set out herein.

6. Defendant repeats the answers to the allegations contained in Paragraph Six of the Second Count as though fully set out herein.

7. Defendant repeats the answers to the allegations contained in Paragraph Five of the First Count as though fully set out herein.

8. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Eight, but leaves the Plaintiffs to their proof thereof.

9. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Nine, but leaves the Plaintiffs to their proof thereof.

10. Defendant denies the allegations contained in Paragraph Ten.

FIRST SEPARATE DEFENSE.

Defendant avers that the said policy was not in force and/or effect on the 10 day of March, 1928, nor at any time thereafter.

Answer.

SECOND SEPARATE DEFENSE.

Defendant avers that the said Conrad Brothwaite failed and neglected to give any notice or knowledge to Defendant of this alleged occurrence and in other particulars failed and neglected to comply with the terms of the said policy.

GEORGE F. SEYMOUR, JR.,
Attorney for Defendant.

Reply.

Filed April 10, 1929.

The plaintiffs in reply to defendant's answer filed herein say:

They deny each and every allegation in the answer and the special defenses set up therein.

WM. ELMER BROWN, JR.,
Attorney for Plaintiffs.

Clerk's Certificate.

I, the undersigned, Clerk of the Supreme Court of the State of New Jersey do certify that the foregoing is a true transcript of the pleadings in the above stated cause as the same remain on file in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this Seventh day of January A. D. nineteen hundred and thirty.

(Seal)

FRED L. BLOODGOOD,
Clerk.

Postea.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. JERSEY MUTUAL CASUALTY INSURANCE COMPANY, a corporation, Defendant.	Action at Law. Postea.

This case was tried before Judge W. Frank Sooy with a jury at Atlantic County Circuit on November 6, 1929.

The jury rendered a verdict against the defendant in favor of the plaintiff Lucy C. Charlton for Two Thousand Ninety-five ($2,095.00) Dollars on the First Count of the complaint filed herein; in favor of the plaintiff C. Coulter Charlton for Two Hundred Sixty-one Dollars and Eighty-seven ($281.87) Cents on the Second Count of said complaint; and in favor of the plaintiffs C. Coulter Charlton and Lucy C. Charlton for Seventy Dollars and Forty-one ($70.41) Cents on the Third Count of said complaint.

W. F. SOOY,
C. C. J.

Judgment.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. JERSEY MUTUAL CASUALTY INSURANCE COMPANY, a corporation, Defendant.	Action at Law Judgment.

This case was tried before Judge W. Frank Sooy with a jury at Atlantic County Circuit on November 6, 1929.

The jury rendered a verdict against the defendant and in favor of the plaintiff Lucy C. Charlton for Two Thousand Ninety-five ($2,095.00) Dollars on the First Count of the complaint filed herein; in favor of the plaintiff C. Coulter Charlton for Two Hundred Sixty-one Dollars and Eighty-seven ($261.87) Cents on the Second Count of said complaint; and in favor of the plaintiffs C. Coulter Charlton and Lucy C. Charlton for Seventy Dollars and Forty-one ($70.41) Cents on the Third Count of said complaint.

Whereupon it is adjudged that the plaintiff Lucy C. Charlton do recover of the said defendant Jersey Mutual Casualty Insurance Co., a corporation the sum of Two thousand Ninety-five Dollars dam-

ages on the First Count of the complaint and that the plaintiff C. Coulter Charlton do recover of the said defendant Jersey Mutual Casualty Insurance Co., a corporation the sum of Two hundred Sixty-one Dollars and Eighty-seven cents damages on the Second Count of the complaint and that the plaintiffs C. Coulter Charlton and Lucy C. Charlton do recover of the said defendant Jersey Mutual Casualty Insurance Co., a corporation the sum of Seventy Dollars and Forty-one Cents damages on the third Count of the complaint together with their costs which have been taxed at the sum of Seventy-one dollars and eighty-four cents making in the whole the sum of Two thousand four hundred and ninety-nine dollars and twelve cents.

Damages $2095.00 L.C.C. on 1st Count.
" $ 261.87 C.C.C. on 2nd Count.
" $ 70.41 Both Pltffs. on 3rd Count.

$2427.28
Costs 71.84

$2499.12

Judgment signed and entered November 7, 1929.

WM. S. GUMMERE,
C. J.

Notice of Appeal.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs-Respondents, vs. JERSEY MUTUAL CASUALTY INSURANCE COMPANY, Defendant-Appellant.	Action at Law. Notice of Appeal to the Court of Errors and Appeals.

To WILLIAM ELMER BROWN, Esquire,
Attorney of Plaintiffs-Respondents:

Take Notice, that the defendant in the above-entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause as it adjudges that the plaintiff, Lucy C. Charlton should recover a verdict of Two Thousand and Ninety-five Dollars ($2095.00), and the plaintiff C. Coulter Charlton should recover a verdict in the sum of Two Hundred Sixty-one Dollars and Eighty-seven Cents ($261.87) and the plaintiff, C. Coulter Charlton should recover a verdict in the sum of Seventy Dollars and Forty-one Cents ($70.41) by direction of the Court.

Grounds for appeal will be filed within the prescribed time.

Respectfully yours,

GEORGE F. SEYMOUR, JR.,
Attorney of Defendant-Appellant.

Served December 7, 1929.

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. JERSEY MUTUAL CASUALTY INSURANCE COMPANY, a corporation, Defendant.	On Appeal. Grounds for Appeal.

To: WILLIAM ELMER BROWN, JR.,
Attorney for Plaintiffs,
645 Guarantee Trust Bldg.,
Atlantic City, N. J.

Sir:

Take Notice that the following are the grounds intended to be relied upon on the argument of the appeal in the above captioned matter:

1. The following questions were overruled:

To the witness Dr. C. Coulter Charlton: "Following the accident did Mr. Brathwaite come to see you?"

"Did you have any conversation with Mr. Brathwaite after the accident?"

To the witness Conrad Brathwaite: "When you had the accident did you know whether or not you were insured?"

To the witness Alexander T. Morelli: "Did you cause a notice of cancellation of that policy to be sent to Mr. Conrad Brathwaite?"

"Do you of your own knowledge know whether or not a notice of cancellation was forwarded to the Motor Vehicle Commissioner?"

"Did you forward a notice of cancellation to the City Clerk?"

"Do you know why this taxi endorsement was attached to the policy?"

To the witness Ann Delany: "Did you receive a letter from the Jersey Mutual Casualty Insurance Co. dated October 14th, 1927 notifying you that this policy had been cancelled and cancellation was to take effect as of November 2nd?"

"Miss Delany, when you receive these policies do you notify the Commissioner of Motor Vehicles?"

"Did you cause a notice to be sent to Mr. Brathwaite that his insurance policy had been cancelled?"

"Miss Delany, when public documents are filed with your office, do they go outside your office?"

"Miss Delany, do you remember Mr. Brown at any time coming to your office and asking you to let him see the policy involved?"

2. The learned trial Judge erred in refusing to admit into evidence the endorsement or rider attached to the original policy.

3. The learned trial Judge erred in construing the taxi Acts of 1926 and 1927 in accordance with decisions under the Kates Act of 1916.

Grounds for Appeal.

4. The learned trial Judge erred in refusing to permit the Defendant to introduce evidence to show that Conrad Brathwaite had failed to give any notice to it of the accident of March 10th, 1928.

5. The learned trial Judge erred in refusing to permit the Defendant to introduce evidence to show the failure of Conrad Brathwaite to comply with his obligations under the Contract.

6. The learned trial Judge erred in refusing to permit the Defendant to show that the policy of insurance involved had been cancelled prior to the happening of the accident.

7. The learned Trial Judge erred in refusing to permit a continuance of the matter in order to afford the Defendant an opportunity to produce witnesses from the Department of Motor Vehicles in order to show that the policy involved had been cancelled prior to the date of the accident.

8. The learned trial Court erred in refusing to permit an amendment of the answer when it became apparent that Counsel for the Plaintiff had omitted to include the entire policy in the Complaint.

9. The learned trial Court erred in refusing the Defendant's motion for a direction of a verdict at the close of the case.

10. The learned trial Court erred in granting the Plaintiff's motion for a direction of a verdict at the close of the case.

GEORGE F. SEYMOUR, JR.,
Attorney for Defendant.

Testimony.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON,
Plaintiffs,
vs.
JERSEY MUTUAL CASUALTY INSURANCE COMPANY, a corporation,
Defendant.
} At Law.

The above-entitled case was tried November 6, 1929, before Honorable WILLIAM FRANK SOOY, Judge, and a Jury.

APPEARANCES:

WILLIAM ELMER BROWN, JR., for the Plaintiffs.
GEORGE F. SEYMOUR, ESQ., for the Defendant.
(THOMAS TAGGART, JR., of Counsel).

Mr. Taggart: I would like to amend the first separate defense. It should be 10th day of March instead of the 28th, the day of the accident.

Mr. Brown: I have no objection.

The Court: Very well.

(Mr. Brown opened the plaintiffs' case to the jury.)

(Mr. Taggart opened the defendant's case to the jury.)

Mr. Brown: I offer in evidence a certified copy of the pleadings and the judgment record in the New Jersey Supreme Court in the case of C. Coulter Charlton and Luch C. Charlton against Conrad Brethwaite.

The Court: And that shows that the accident happened on March 10th and that the judgment was entered on January 21, 1929?

Mr. Brown: Correct. And it shows that the judgment was in this form: $2000 to Lucy C. Charlton on the first count of the complaint, which was for the bodily injuries, and that is covered in the first count of the complaint in this case.

It shows $250 to C. Coulton Charlton on the second count of the complaint as for medicines, doctors' bills and loss of services; and it also shows a judgment for $67.22 for the costs of that suit, and there is a judgment included in the judgment in this suit in the sum of $150 which was for property damage to the automobile which cannot be recovered under this policy; but the postea shows the entry of the judgment in that form.

(The paper offered is received in evidence and marked as an exhibit for the plaintiffs, P-1.)

Mr. Brown: Now, then, it is agreed between counsel that it shall be stipulated on the record that the automobile of defendant Conrad Brethwaite that was in the accident which resulted in this judgment was the automobile which is covered by the policy of the defendant company.

The Court: Was the automobile that is listed in the policy.

Mr. Brown: That is what I mean, that is listed in the policy.

The Court: They deny the coverage.

Mr. Brown: Correct.

Now there are one or two other things you denied. I don't think you meant to do it. You required us to prove the relationship between Dr. and Mrs. Charlton.

Mr. Taggart: I will admit that.

Mr. Brown: The pleadings also require proof that Lucy C. Charlton is the wife of Dr. Charlton. I don't think that it is necessary, but we can stipulate that on the record.

Mr. Taggart: I will admit that.

The Court: You also admit—

Mr. Taggart: We admit the transcript.

DR. C. COULTER CHARLTON, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct-examination by Mr. Brown:

Q. Dr. Charlton, you are one of the plaintiffs in this suit? A. I am.

Q. And this judgment which you recovered from Conrad Brethwaite—you and your wife recovered against Conrad Brethwaite in January of this year. Has the judgment been paid? A. It has not.

Q. And the entire amount of the judgment is still due and owing? A. It is.

Mr. Brown: Cross-examine.

Mr. Taggart: No cross-examination.

(Witness excused.)

Plaintiff Rests.

DR. C. COULTER CHARLTON, called as a witness on behalf of the defense, having been previously sworn, was examined and testified as follows:

Direct-examination by Mr. Taggart:

Q. You were driving the car or your wife? A. I was driving.

Q. You were driving. Following that accident did Mr. Brethwaite come to see you?

Mr. Brown: I object. It is immaterial whether he did or not.

The Court: Yes. I think the purpose is to endeavor to prove that Mr. Brethwaite said he was not insured?

Mr. Taggart: Yes.

The Court: That will be overruled, and exception granted.

Mr. Taggart: All right.

Q. Did you have a conversation with Mr. Brethwaite after the accident?

Mr. Brown: I object.

The Court: I cannot see any materiality of a conversation that he may have had with Mr. Brethwaite after the accident. The

question as to the negligence of Brethwaite himself has been passed on by another jury.

Mr. Taggart: Yes. That was not the purpose of the question. That is all, Doctor. Your Honor will allow me an exception?

The Court: Oh, yes.

(Witness excused.)

CONRAD BRETHWAITE, called as a witness on behalf of the defense, being sworn, was examined and testified as follows:

Direct-examination by Mr. Taggart:

Q. Mr. Brethwaite, on or about June 16, 1927, did you make an application for insurance on the Jersey Mutual Casualty Insurance Company? A. Yes, I did.

Q. At that time did you sign an application? A. Yes.

Q. I show you what purports to be an application to the Jersey Mutual Casualty Insurance Company and ask you whether or not that is your signature? A. Yes.

Q. That is your signature? A. Yes.

Mr. Taggart: I offer that in evidence.

Mr. Brown: I cannot see the purpose, but I do not think that I have any objection to it.

(The paper offered is received in evidence and marked as an exhibit for the defendant, D-1.)

Q. On that application did you receive a policy from the Jersey Mutual Casualty Insurance Company? A. Yes.

Q. And what did you do with that policy? A. Taken to the City Hall.

Q. And you left that policy at the City Hall? A. Yes.

Mr. Brown: I don't know that that makes any difference.

The Court: I do not suppose it does, but it is probably preliminary to something.

Q. Did you receive notice that your insurance had been cancelled for non-payment of premiums? A. Yes. I was out of town.

Mr. Brown: Now I object to that because of the fact that it makes no difference whether he received notice at all or not. The policy provides for the method of cancellation.

The Court: The method provided for by the policy is that they may cancel this policy at the end of any quarterly period by filing notice of their intention so to do in the office of the Commissioner of Motor Vehicles at Trenton, New Jersey, at least twenty days prior thereto, in which event it shall cease, and that is the only mode provided in the policy for cancellation. The mere fact that you told him you were going to cancel it would not affect it under the terms of this policy.

Q. When you had the accident do you know whether or not you were insured?

Mr. Brown: I object to that.

The Court: I sustain the objection.

Mr. Taggart: Exception.

The Court: Yes.

Mr. Taggart: Allow me an exception to the other?

The Court: Yes.

Q. After this accident happened did you notify the Jersey Mutual Casualty Insurance Company that you had an accident?

Mr. Brown: I object to that.

The Court: Do not the cases hold that this particular kind of a policy is made for the benefit of the public and that the rights of the public cannot be defeated by the failure of the jitney driver to do the various things that would ordinarily be required of an insured? That is to say, to notify the company of the accident, *et cetera?*

Mr. Brown: That was so held in the case in 92 Law, 215. As I find, it is the original case cited by the courts, and in that very case that question was—

The Court: That is what I understand to be the law.

Mr. Taggart: I believe that case was decided before this form of insurance under which we operate was involved. This statute was passed with reference to the insurance of omnibuses in 1926. I think your Honor can take judicial notice that the decision in 92 Law was prior to the Act of 1926.

The Court: I do not know whether it was or not, but it construes the same provision

with reference to omnibuses as though it had been in the jitney act prior to that time; in other words, the omnibus contains the same clause that the jitney act did with reference to insurance; that it should be for the benefit of the general public.

Mr. Taggart: The only difference in that respect is that there are two different acts, the jitney act and the omnibus act, and I do not think we are guided by the jitney act.

Mr. Brown: The provision of the omnibus act is exactly the same as that of the jitney act, and this "Collard" case proceeded under the provision of the jitney act, or 231 of 1926 as amended in Chapter 83 of 1927.

The Court: Your language in your taxi act as amended by the 1927 act is verbatim with that of the jitney act that was construed in the case cited by Mr. Brown. That is verbatim, as I read it, with your provision in the jitney act.

Mr. Taggart: Of course, I am not acquainted with that provision in the jitney act.

Mr. Brown: That is the jitney act and the other is the omnibus act. (Handing cases to the Court.)

Mr. Taggart: Your Honor realizes that we are not bound by that interpretation of the Court of Errors and Appeals, whatever it might be, unless the facts were very similar to the facts in our case, and unless the policy involved in that case was similar to the policy involved in this case.

The Court: The policies in the two cases

are identical except that one was a policy for a jitney and the other was a policy for a taxicab or an auto bus, whichever it was.

Mr. Taggart: The one I am interested in is the policy for taxicabs.

The Court: Yes. Well, now, then, the language of the two acts is identical. Now the Court of Errors and Appeals in construing the taxicab act in that clause which refers to indemnity, says that that was for an insurance policy issued for the benefit of the general public, and it said that the rights of the general public could not be defeated by failure on the part of the assured to do something with respect to notification of the accident or something of that kind, but that the liability to respond in damages to the injured or to the public was fixed as of the time of the accident.

Mr. Taggart: Then in our policy we stipulate that the assured shall give to the company immediate written notice of any accident and shall also give notice to the defendant of damages on account of any such accident if any suit is brought against the insured for any such damages. Under our contract we are entitled to that notice, and unless this is contrary to the constitution or statute, there is nothing which can be abrogated as far as any decisions of the Court of Errors and Appeals are concerned.

The Court: But the Court of Errors Appeals has said, irrespective of any terms in the policy and irrespective of anything else, that the public was insured and that as be-

tween the public and the insurance company, you must pay even though the assured failed to do some things that he should have done; and that would be a defense in a suit against the insurance company by the insured. But it is not a defense as against a person who is not the insured, but is of the general public.

Mr. Taggart: Well, you will allow me an exception for the reason that our policy stipulates these conditions and these conditions have not been fulfilled.

The Court: You offer to prove, in order to get it squarely on the record—you offer to prove that Mr. Brethwaite, the assured, failed to notify you immediately after the accident that such an accident had happened, and that after he had been sued by the plaintiffs in the present case he failed to forward the summons and complaint to the insurance company and for that reason you relieved of liability?

Mr. Taggart: Yes, sir.

The Court: And the offer will be overruled because it seems to me not to be a defense in this case under the ruling of Collard against Manufacturers Casualty Insurance Company. And then I will allow you an exception.

Mr. Taggart: So that all questions material to this notice are stricken?

The Court: Yes.

Mr. Taggart: That is all, Mr. Brethwaite.

(Witness excused.)

ALEX T. MORELLI, called as a witness on behalf of the defense, being sworn, was examined and testified as follows:

Direct-examination by Mr. Taggart:

Q. Mr. Morelli, where do you live? A. In Bloomfield.

Q. Are you in business? A. Yes, sir.

Q. What business are you in? A. Insurance.

Q. Are you associated with any particular insurance company? A. Yes, sir.

Q. What company are you associated with? A. Jersey Mutual Casualty Insurance Company.

Q. What is your association with that company? A. General manager.

Q. Do you know whether or not a policy of insurance was issued to Mr. Conrad Brethwaite on or about June 16, 1927? A. Yes, I do.

Q. Do you know whether or not that policy of insurance was thereafter cancelled because of nonpayment of premiums? A. Yes.

Mr. Brown: I object to that. That calls for a conclusion.

The Court: It calls for a conclusion.

Mr. Taggart: Well, I will withdraw that and furnish it the proper way.

The Court: All right.

Q. Do you know whether or not the policy was cancelled?

Mr. Brown: I object.

The Court: That calls for a conclusion. Under the terms of your policy, you may

cancel the policy by serving notice of your intention to the office of the Commissioner of Motor Vehicles at least twenty days prior to the quarterly period.

Q. I show you what purports to be an application by Conrad Brethwaite to the Jersey Mutual Casualty Insurance Company and ask you whether or not you received that application? A. Yes, sir; we did.

Q. And in that application what are the terms of the payment of the premium?

Mr. Brown: I object. It speaks for itself.

The Court: But in order that I may have it, I will let him tell what the quarterly periods were.

A. The quarterly periods were $31.25.

The Court: I do not mean that.

Q. How much was the amount of the premium?

Mr. Brown: I think that is immaterial.

The Court: It is immaterial entirely. What were the quarterly periods for payment of the insurance premium?

A. After inception, September, December and March 16th.

Q. That is the 16th of each and every one of those months? A. The 16th of each and every one of those months.

The Court: 16th of September, December, March.

The Witness: That is following the first inception period of the three months.

Q. Was the premium which was due on September 16th paid?

Mr. Brown: I object.

The Court: I sustain the objection. As I understand, the purpose of calling this witness is to endeavor to show a cancellation of the policy prior to the time of this accident. The mere question of whether the premium was paid or not paid is immaterial. The question is whether or not they cancelled the policy.

Mr. Taggart: Well, that is material in that we desire to show the policy was not in force, and was not in force for two reasons: first, non-payment of premium, and, second, that the proper person was notified.

Mr. Brown: I do not think the reason for cancellation is important at all.

The Court: No. The question is whether it was cancelled.

Q. Was this policy cancelled by your company?

Mr. Brown: I object.

The Court: I sustain the objection.

Q. Mr. Morelli, did you cause a notice of cancellation of that policy to be sent to Mr. Conrad Brethwaite? A. Yes, sir.

Mr. Brown: I object to that because that does not coincide with the provision of the policy.

The Court: Yes.

Mr. Taggart: Allow me an exception.

The Court: Yes. You see, the mere fact that he may not have paid the premium for eleven months would not amount to anything standing alone.

The question is whether or not, not having paid the premium, the company cancelled the policy. Now they may have had a right to cancel under the terms of the policy, although it does not say that they had; but that is not the question—what rights they had. The question is as to what they did. You may show a cancellation. What rights they had does not mean anything unless there was a cancellation.

Q. On or about October 14, 1927, did you cause to be sent to the City Clerk of Atlantic City a notice of cancellation of this policy?

Mr. Brown: I object.

The Court: I sustain the objection on the ground that your policy provides by its own terms that the way to cancel the policy is to send a notice of intention so to do to the Commissioner of Motor Vehicles of New Jersey.

Mr. Taggart: Inadvertently Mr. Brown has not included all the policy in that complaint. We have the policy here, and there is a rider attached to the policy and in there we have complied with the law, and the law is at the time—at the time of the policy it was that we should send it to the Municipal Clerk. We have attached that rider to our policy.

Mr. Brown: That is news to me. You admitted that was the policy in your answer. In the second paragraph of the first count of the complaint, I alleged the policy and they admitted all the allegations of that paragraph with reference to that policy. And I made a copy of it.

Mr. Taggart: Of course we did not have the policy. There was only one policy made and if Mr. Brown did not make a true copy that is not our fault.

The Court: I understand that now you come along in your answer and say, answering the first count, defendant admits the allegations contained in paragraph 2 in so far as they relate to policy 2178; and 2178 is the policy in evidence, agreed upon, and the copy annexed to the complaint is a copy of 2178. Now, then, for the first time you come in and say that is not the policy, and the only thing I can be guided by is the pleadings. You admitted it.

Mr. Brown: If your Honor please, they don't specify a rider to this policy or any change in it.

In your answer you admitted the policy attached to my complaint was the policy.

Mr. Taggart: And we had no copy of the policy in the office.

Mr. Brown: Certainly I had not.

Mr. Taggart: We took it for granted you made the copy from the original which was in the office of the City Clerk. Now, if you didn't make a true copy it is not our fault.

The Court: Well, you must have at some

time ascertained that the copy of the policy annexed to the complaint was not a true copy of the policy. Then having ascertained that, the thing to have done was to move to amend your answer by setting up the difference in the policy as it actually existed and as it was set forth in the complaint.

Mr. Taggart: Well, I didn't ascertain that fact until Monday afternoon when I went to the City Hall to inspect these records for the purpose of subpoenaing them here in court.

The Court: There is nothing before the Court now, anyhow.

Q. Mr. Morelli, I show you what purports to be an insurance policy issued by the Jersey Mutual Casualty Insurance Company to Conrad Brethwaite and ask you whether or not that is the policy involved? A. Yes, sir.

Mr. Brown: You are confining yourself now to the main policy?

Mr. Taggart: I am confining myself to the policy on file in the City Clerk's office.

Mr. Brown: You handed the witness three or four papers. May I ask which you are directing his attention to?

Mr. Taggart: The policy itself and its endorsement.

Mr. Brown: You mean by the endorsement a separate paper that is attached to it?

Mr. Taggart: Attached.

Mr. Brown: Well, if your Honor please, it does not seem to me that they can at this time come in and ask us to be bound by a rider to a policy that

they have not set up in their pleadings in any way, nor about which we have had no notice.

Mr. Taggart: You had notice when you copied the pleadings.

Mr. Brown: If I had noticed the rider it would have been on it.

The Court: Well, assuming for the purpose of the matter now before the Court—you have in your answer, of course, admitted that the policy sued upon was that of which a copy is annexed to the complaint; but you now endeavor to add to that policy something which has not been pleaded at all, and which is annexed to the policy as a taxi-cab endorsement. In that endorsement you say it is also understood and agreed that no cancellation of this policy shall become effective until twenty days after notice of such cancellation has been forwarded to the clerk of Atlantic City. But that does not in any way change the terms of your original policy which says that either the assured or the company may cancel this policy at the end of any quarterly period by filing notice of their intention so to do in the office of the Commissioner of Motor Vehicles of New Jersey.

In other words, your original policy says in order to cancel it, you must file a notice of cancellation in the office of the Commissioner of Motor Vehicles. Now you say in your rider that it is agreed that notwithstanding the fact that you have to file it in the office of the Commissioner of Motor Vehicles, it shall not become effective until you file it in the Clerk's office.

Mr. Taggart: The reason why that rider was filed with that policy is that there were two methods provided for cancellation of policies and

notice. One was that the notice should be sent to the Commissioner of Motor Vehicles, and the one, which is really involved, is the law which requires that notice be sent to the City Clerk. That form of policy had been prepared to comply with the law of 1926. When the law of 1927 came along and amended that, of course, that policy includes the amendment and that is why that policy rider was attached.

The Court: I do not care why it was attached. It makes no difference to me because the rider does not change the terms of the policy with reference to cancellation excepting that it says that in addition to filing the notice in the office of the Commissioner of Motor Vehicles, you will also file it in the office of the City Clerk, and it shall not become effective until you do; but if you do not do that which the original policy required, that is to say, file it in the office of the Commissioner of Motor Vehicles, then your filing in the office of the City Clerk does not do any good at all.

Mr. Taggart: But the provision of the policy also provides that we will comply with the law of New Jersey with respect to these policies, and we have done so.

The Court: If you want to show a cancellation, you have to show it in accordance with the terms of your original policy, and if you desire, in order to carry that on through, you may show that you also filed that notice in the office of the City Clerk. But the filing of the notice in the office of the City Clerk and not having been filed in the office of the Commissioner of Motor Vehicles, will do you no good at all. What is your offer now?

Mr. Taggart: I offer to show by this witness

that notice of cancellation of this policy was sent to the City Clerk of Atlantic City according to the law of 1927.

The Court: No, no.

Mr. Taggart: Which was in effect at the time this policy was written.

The Court: No, you do not want to do any such thing. You want to show by this witness that he sent to the City Clerk a notice in accordance with the provision of the rider attached to the original policy. That is what you want to show, and I will say this: that I will permit you to show that provided you are also going to show that you filed a notice in the office of the Commissioner of Motor Vehicles as required by the original policy. If you are not going to show that you filed the notice in the office of the Commissioner of Motor Vehicles as required by the original policy, it will avail you nothing to show that you filed the notice in the City Clerk's office.

Mr. Taggart: May I have leave to amend these pleadings to show this rider was attached at the time the policy was issued? It is not prejudicial to Mr. Brown.

The Court: In my ruling I will consider that the rider that you have produced here in court was attached to the original policy and was attached there at the time the policy was issued. I still say that unless you filed your notice of cancellation in the office of the Commissioner of Motor Vehicles in accordance with the original policy, the mere filing of it in accordance with the rider in the office of the City Clerk would not avail you as a cancellation; because your rider simply says that before a cancellation shall become effective,

the notice of cancellation shall be filed in the City Clerk's office. But to make it effective at all it must have been filed as provided for in the original contract in the office of the Commissioner of Motor Vehicles.

Mr. Taggart: Will you allow me to show that this cancellation was filed according to the law of 1927, in effect at the time this policy was written?

The Court: I will permit you to show nothing else than that you have complied with the terms of your policy which provide that it shall be cancelled in a certain way, and I will permit you to show both the rider and the policy. But I assume —no, I won't assume at all. Have you, as a matter of fact, filed a notice of cancellation in the office of the Commissioner of Motor Vehicles?

Mr. Taggart: Yes, sir; we have.

The Court: Why don't you prove it?

Mr. Taggart: The only difficulty in not being able to prove it is that we have not got somebody here from the Motor Vehicle office.

The Court: That is not my fault.

Mr. Taggart: And if I had known this was the condition of things yesterday afternoon we would have had somebody. We can prove that, and I think if that question is going to be involved, we should have an opportunity to do it.

The Court: Well, this case has been on the list ever since the opening day of court. It was marked ready for trial on the Friday call, last Friday; it was ready for trial—I mean listed for actual trial on Monday, and at that time didn't come up for trial by reason of unforseen circumstances. Now, then, with all that time, and with these policies right squarely before you, it seems to me the Court's discretion is not appealed to at all.

Q. Did you cause a notice of cancellation of this policy to be sent to the Commissioner of Motor Vehicles?

Mr. Brown: I object to that. They must show that it was actually filed with the Commissioner of Motor Vehicles.

The Court: That is what the policy provides.

Q. Do you of your own knowledge know whether or not a notice of cancellation was forwarded to the Motor Vehicle Commissioner?

Mr. Brown: I object.

The Court: I do not see that it makes a bit of difference whether or not one was forwarded. The question is under the policy was there one filed in the office of the Commissioner of Motor Vehicles? I will sustain the objection and allow you an exception.

Mr. Taggart: The presumption is if one was forwarded it was received.

Q. Did you forward a notice of cancellation of this policy to the City Clerk of Atlantic City?

Mr. Brown: I object.

The Court: The rider says that must be filed or forwarded? Which does it say?

Mr. Taggart: "It is also understood and agreed that no cancellation of this policy shall become * * * has been forwarded * * * to the Clerk of Atlantic City."

The Court: Well, in the absence of proof that it has been filed in the office of the Com-

missioner of Motor Vehicles, I hold it as immaterial whether it was forwarded to the office of the City Clerk. If, however, you are prepared to prove it was filed in the office of the Commissioner of Motor Vehicles, I will permit you to show that it was also filed in the office of the City Clerk, or forwarded.

Mr. Taggart: I desire to show that on the ground that at the time that this policy was effective, there was a law passed which required the forwarding of notice to the City Clerk.

Q. Did you forward a notice of cancellation to the City Clerk?

Mr. Brown: I object.

The Court: I sustain the objection on the same ground as before—that whether or not you forwarded notice makes no difference unless you filed one in the office of the Commissioner of Motor Vehicles.

Mr. Taggart: And you will permit me an exception to that?

The Court: Yes.

Mr. Taggart: At this time I would like the opportunity to continue this matter until I have the opportunity to bring a man from the Motor Vehicle Department to prove it.

The Court: Motion denied. I do not have a great deal of sympathy with these suits. The defense is technical in its nature, done for the purpose of defeating the right of recovery of a person who has recovered a judgment and who should recover under the law;

and when a technical defense of that kind is manifest, counsel knows in advance that it is technical and that he is going to be required to strictly prove that which he alleges in his answer; and if he wants to "get out from under" on the ground of technicalities, he must be here prepared to do so.

Mr. Taggart: At this time I would like to have the opportunity to amend the pleadings so that I may allege that the taxi endorsement was not made part of the original complaint and should be in the complaint.

The Court: The motion will be denied because it is untimely and should not be granted at this time.

Mr. Taggart: Allow me an exception.

The Court: Yes.

Q. Mr. Morelli, do you know why this taxi endorsement was attached to the policy?

Mr. Brown: I object.

The Court: I sustain the objection.

Mr. Taggart: Allow me an exception.

The Court: Yes.

Mr. Taggart: I desire to show this for the purpose of proving that at the time that this endorsement was made to this policy, there was a change in the law, and in order to comply with that law we attached the taxi endorsement to the policy at the time it was issued.

(Witness excused.)

Mr. Taggart: I offer policy of insurance, Jersey Mutual Casualty Insurance Company, to Mr. Conrad Brethwaite.

Mr. Brown: If the rider is detached I have no objection.

The Court: There has been nothing alleged in the pleadings with reference to any rider at all, and the admission in the pleadings is that the copy of the policy annexed to the complaint is the policy under which this suit is brought. I will permit the introduction of the policy itself and overrule the offer of any rider by reason of the fact that the rider was not pleaded or set up in this case. And it would also seem to me, upon reading the rider, that the rider helps you not at all when it comes to the question as to whether or not there was a cancellation; because it simply provides that before cancellation becomes effective something must be done, while the original policy provides the means of cancellation.

Mr. Taggart: I ask an exception.

ANN DELANY, called as a witness on behalf of the defense, being sworn, was examined and testified as follows:

Direct-examination by Mr. Taggart:

Q. Are you employed by the City? A. I am.

Q. In what capacity are you employed? A. Assistant City Clerk.

Q. As assistant city clerk do you have charge of the policies of insurance which are filed by the taxicab men? A. I do.

Q. I show you what purports to be an insurance

policy issued by the Jersey Mutual Casualty Insurance Company to Conrad Brethwaite. Attached is a taxi endorsement and power of attorney. I ask you whether or not those papers were filed in your office?

Mr. Brown: I object. It makes no difference whether they were or not. And, furthermore, he is now addressing the witness's attention to that which your Honor has already ruled out, to wit, the rider to the policy. If the question is directed solely to the main policy, I have no objection.

The Court: There is no dispute that you have complied with the requirements of the law in so far as the filing of your policy was concerned; in fact, they do not care whether you filed your policy or not. They say you are liable by virtue of the fact that there was a judgment rendered and that it has not been paid. I will overrule your offer particularly inasmuch as it applies not only to the policy itself but to the rider which has already been overruled, and because whether it complied or not is immaterial to this issue.

Mr. Taggart: Mr. Brown was premature. I have not offered this in evidence.

The Court: You are asking her whether it was filed, and I say it is immaterial whether it was filed because no point was made by either side as to the filing of that policy. They do not care whether the policy was filed or not. They say it was filed, as a matter of fact.

Q. Did you receive a letter from the Jersey Mutual Casualty Insurance Company, dated October 14th, notifying you that this policy had been cancelled and cancellation was to take effect as of November 2nd?

Mr. Brown: I object.
The Court: I sustain the objection.
Mr. Taggart: Exception.

Q. Miss Delany, when you received these policies, do you notify the Commissioner of Motor Vehicles?

Mr. Brown: I object.
The Court: I sustain the objection.

Q. Did you cause a notice to be sent to Mr. Brethwaite that his insurance policy had been cancelled?

Mr. Brown: I object.
The Court: I sustain the objection.
Mr. Taggart: Allow me an exception, and an exception on that other thing.

Q. Miss Delany, when public documents are filed with your office, do they go outside of your office?

Mr. Brown: I object.
The Court: I sustain the objection.
Mr. Taggart: Allow me an exception. The purpose is to show documents that are filed in the City Clerk's Office are not permitted to be taken out by anybody unless under subpoena or court order.

Q. Miss Delany, do you remember Mr. Brown at any time coming to your office and asking you to let him see the policy involved?

Mr. Brown: I object.

The Court: I sustain the objection.

Mr. Taggart: I ask an exception on the ground that I want to show Mr. Brown came there and asked to see the policy, and I would follow that with the question of what the policy consisted of at that time.

Q. Is the man from the Motor Vehicle office here that was subpoenaed by Mr. Brown? Do you know anything about this case with reference to the forwarding—

Mr. Brown: I object. That is one way of getting it before the jury, but—

Mr. Taggart: I will go over and talk to him privately.

The Court: Are you done with Miss Delany?

Mr. Taggart: Yes.

(Witness excused.)

Defendant Rests.

PLAINTIFFS' MOTION FOR DIRECTION OF VERDICT.

Mr. Brown: I move for a direction of verdict in favor of the plaintiff and against the defendant. Not that I anticipated this at all, but I have the amount here figured with the interest.

Plaintiff's Motion for Direction of Verdict.

Mr. Taggart: At this time I would like to ask the Court to direct a verdict in favor of the defendant because the plaintiff has not shown this policy was in force at the time this accident occurred.

The Court: Your motion is denied and an exception granted.

Mr. Brown's motion is granted, and the jury is directed to bring in a verdict in favor of the plaintiff, Mrs. C. Coulter Charlton, in the sum of $2095, and in favor of C. Coulter Charlton in the sum of $261.87; and the third count in favor of both plaintiffs in the sum of $70.41.

Mr. Taggart: Allow me an exception to the ruling.

The Court: Yes.

(The jury found as directed by the Court.)

Exhibit P-1.

The State of New Jersey to

CONRAD BRATHWAITE,

(L.S.)

You are summoned to answer the annexed complaint of C. Coulter Charlton and Lucy C. Charlton in an action at law in the Supreme Court. And take notice that unless you file your answer to the said complaint with the Clerk of the Supreme Court, at Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this sixteenth day of May, nineteen hundred and twenty-eight.

FRED L. BLOODGOOD,
Clerk.

WM. ELMER BROWN, JR.
Attorney.

Exhibit P-1.

Filed May 23, 1928.

SUPREME COURT OF NEW JERSEY,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. CONRAD BRATHWAITE, Defendant.	Action at Law. Complaint.

The Plaintiffs, C. Coulter Charlton and Lucy C. Charlton of the City of Absecon, County of Atlantic and State of New Jersey, say that:

FIRST COUNT.

1. On March 10, 1928, plaintiff, C. Coulter Charlton, was then and there driving and operating his automobile in a westerly direction in and along the right hand side of that certain highway known as Absecon Boulevard, at or near the point where said Absecon Boulevard is intersected by Tennessee Avenue, in the City of Atlantic City, Atlantic County, New Jersey. In said automobile and riding with plaintiff, C. Coulter Charlton, as passenger therein, was his wife, Lucy C. Charlton, one of the plaintiffs herein.

2. On said date defendant was the owner of a certain automobile which was then and there being operated by his agent or servant, in a norther-

ly direction in and along said Tennessee Avenue, as a taxi used for the transportation of passengers for hire, under and by virtue of a license duly granted to the said defendant by said City of Atlantic City, as is in such cases provided by law.

3. At the time aforesaid defendant's automobile was driven as aforesaid in a northerly direction along said Tennessee Avenue and across said Absecon Boulevard, in such a careless and negligent manner that it struck and collided with the automobile of plaintiff, C. Coulter Charlton, in which said plaintiffs, C. Coulter Charlton and Lucy C. Charlton, were then and there riding.

4. The defendant, through his agent or servant, was negligent in that said automobile was being driven as aforesaid, at a high rate of speed, without regard to the rights or safety of other persons using said highway, without having his said automobile under proper control so as to avoid running into other vehicles on said highway and injuring other persons riding therein, and also because no warning was given of the approach of defendant's automobile by blowing a horn, or otherwise; and by reason of these divers acts of negligence of defendant, the collision aforesaid occurred.

5. Neither of the plaintiffs herein were guilty of negligence that in any way contributed to or caused said collision.

6. As a result of said collision, plaintiff, Lucy C. Charlton, was greatly and severely injured, to wit: She was cut and bruised in and about her

body and was internally injured in and about the chest, and ever since the time said injuries were inflicted she has been, and still is, suffering greatly from the effects thereof. Said plaintiff, Lucy C. Charlton, has also suffered and undergone great pain and torment, both of body and mind, and still suffers therefrom and has been permanently injured; she has suffered great shock to her nervous system and has been, and still is, sick and sore and disabled from properly performing her duties as a wife.

SECOND COUNT.

1. For sake of brevity, plaintiffs repeat paragraphs 1, 2, 3, 4, 5, and 6 of the First Count.

2. As a result of said collision and by reason of said injuries received by plaintiff, Lucy C. Charlton, the plaintiff C. Coulter Charlton was deprived of his said wife's services during the time of her said incapacitation and still is deprived to a great extent of his said wife's services, and was also put to great expense for doctors' and nurses' services, hospital attention, and medicine in endeavoring to bring about a cure of his said wife, Lucy C. Charlton, from her said injuries.

THIRD COUNT.

1. For sake of brevity, plaintiffs repeat paragraphs 1, 2, 3, 4, and 5, of the First Count.

2. As a result of said collision, the automobile of plaintiff, said C. Coulter Charlton, was injured and damaged, to wit: The chassis, splashboards, running board, fender, bumper and other parts of said automobile were injured and damaged.

Exhibit P-1.

The plaintiff, Lucy C. Charlton, demands Fifty Thousand ($50,000.00) Dollars damages on the First Count; the plaintiff, C. Coulter Charlton, demands Ten Thousand ($10,000.00) Dollars damages on the Second Count; and the plaintiff, C. Coulter Charlton, demands One Thousand ($1,000.00) Dollars damages on the Third Count.

WM. ELMER BROWN, JR.,
Attorney for Plaintiffs.

I hereby deputize and appoint M. B. Woodruff to serve the within writ.

Witness my hand and seal this 21 day of May 1928.

JAMES CIMINO
Sheriff of Atlantic Co. by

Under Sheriff.

Duly served within Summons & Complaint May 21st, 1928 personally on Conrad Brathwaite, at the Pennsylvania Railroad Stateion, Atlantic City, Atlantic County, New Jersey.

JAMES CIMINO, Sheriff, by
M. B. Woodruff,
Special Deputy Sheriff.

Sheriff's fees $5.22
Received May 21, 1928, Sheriff.

Exhibit P-1.

Filed June 11, 1928.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. CONRAD BRATHWAITE, Defendant.	Answer and Counterclaim.

Defendant Conrad Brathwaite, residing in Atlantic City, New Jersey, says that:

ANSWER TO FIRST COUNT.

1. He admits paragraph 1 of this count.

2. He admits paragraph 2 of this count.

3. He denies paragraph 3 of this count.

4. He denies paragraph 4 of this count.

5. He denies paragraph 5 of this count.

6. He denies paragraph 6 of this count.

ANSWER TO SECOND COUNT.

1. All allegations and averments contained in the answer to the First Count, are referred to and repeated in answer to this count.

ANSWER TO THIRD COUNT.

1. All allegations and averments contained in

the answer of the First Count, are referred to and repeated in answer to this count.

FIRST SEPARATE DEFENSE.

1. The collision referred to in the complaint, was due solely to the carelessness and negligence of the complainant of the plaintiff, C. Coulter Charlton, and was not in anywise caused or due to any failure to use due care or any neglect on the part of this defendant.

2. Plaintiff C. Coulter Charlton, was negligent in that he was operating his automobile at a high and excessive rate of speed, and failed to keep the same under safe and proper control, and also that the was negligent in that he attempted to pass the defendant on the right hand side, going in the same direction in which the defendant was going on the highway, contrary to the statutes regulating the use thereof.

SECOND SEPARATE DEFENSE.

1. Plaintiff C. Coulter Charlton was guilty of negligence which was a contributory cause of the collision referred to in the complaint, and of the injuries and damages, if any, thereby sustained by plaintiff.

COUNTER-CLAIM.

By way of counter-claim against the plaintiff, C. Coulter Charlton, the defendant says that:

1. He repeats the statement in paragraphs 1 and 2 of the first separate defense.

Exhibit P-1.

2. The defendant was the owner of, and was operating a motor vehicle by his agent, in a northeasterly direction in and along the said Absecon Boulevard, in a careful manner, at or near the point where the said Absecon Boulevard intersects with the said Tennessee Avenue, in the city of Atlantic City, County of Atlantic and State of New Jersey. The plaintiff, C. Coulter Charlton, was operating his said vehicle in the same direction in a reckless and negligent manner, and failed to have the said automobile under proper control with due care as to the safety of other persons operating automobiles on the said Absecon Highway.

3. The plaintiff, C. Coulter Charlton, owed to this plaintiff, the duty of at all times operating said motor vehicle in a reasonable rate of speed, and to have the same under proper and safe control.

4. The plaintiff, C. Coulter Charlton, failed in his duty to this defendant, and because of the negligent conduct on the part of the said plaintiff, a collision occurred between the said plaintiff's car, and the car of the defendant, and as a direct result thereof, the automobile owned by the said defendant, collided with and ran into this defendant's automobile. The collision with defendant's car was the result of the negligent conduct of the said defendant; in that, at the time said plaintiff was operating his said motor vehicle at a high, excessive and unreasonable rate of speed, and failed to have the same under proper safe and reasonable control, and also failed to make due and proper observations of the conditions of traffic, and under

Exhibit P-1.

all the circumstances considered, failed to exercise that degree of care and caution made necessary; in that, the said plaintiff attempted and did pass this defendant on the right hand side of the defendant, which is contrary to the statutes governing motor vehicle traffic.

5. As a result, this defendant suffered great damages to his said automobile, and was compelled to expend a large sum to put in proper repair, and as a result of the said collision, caused by the carelessness and negligence of the plaintiff, the automobile of the defendant has greatly depreciated in value.

The defendant counter-claims $1,000.00 damages.

JAMES A. LIGHTFOOT,
Attorney for the Defendant.

Exhibit P-1.

Filed June 14, 1928.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. CONRAD BRATHWAITE, Defendant.	Reply and Answer to Counterclaim.

Plaintiffs join issue with the defendant on the answer filed herein and by way of answer to defendants counterclaim say that:

1. They deny the allegations contained in the first and second separate defenses contained in defendant's answer. They deny paragraph one of the counterclaim.

2. They admit that defendant was the owner of and was operating a motor vehicle by his agent on the day in question, but deny every other allegation contained in paragraph two of the counterclaim.

3. They deny the allegations contained in paragraphs three, four and five of the counterclaim.

WM. ELMER BROWN, JR.,
Attorney for Plaintiffs.

Exhibit P-1.

Filed Jan. 21, 1929.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs,	Action at Law.
vs.	Postea.
CONRAD BRATHWAITE, Defendant.	

This case was tried before Judge W. Frank Sooy with a jury at Atlantic County Circuit, on January 17, 1929.

The jury rendered a verdict against the defendant and in favor of the plaintiff, Lucy C. Charlton, for Two thousand ($2000.00) Dollars on the first count of the complaint filed herein; in favor of the plaintiff, C. Coulter Charlton, for Two hundred and fifty ($250.00) Dollars on the second count of said complaint; and in favor of the plaintiff, C. Coulter Charlton for One hundred and fifty ($150.00) Dollars on the third count of said complaintiff.

The jury further rendered a verdict against the defendant, Conrad Brathwaite, and in favor of the plaintiff, C. Coulter Charlton, for no cause of action, on the counter-claim filed herein.

W. F. SOOY,
C. C. J.

Exhibit P-1.

NEW JERSEY SUPREME COURT,

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs, vs. CONRAD BRATHWAITE, Defendant.	Action at Law. Postea. Judgt. for Pltff. On Compl't & Counterclaim.

It is ordered that judgment be and hereby is entered against the defendant and in favor of Lucy C. Charlton, plaintiff, on the first count of the complaint for the sum of two thousand dollars, and in favor of C. Coulter Charlton, plaintiff, on the second and third counts of the complaint, for the sum of four hundred dollars, besides costs to be taxed nisi, and in favor of plaintiffs and against the defendant on the defendant's counterclaim.

Entered January 21, 1929. On motion of

WM. ELMER BROWN, JR., Atty.

$2000.00 L.C.C. on 1st count
$ 400.00 C.C.C. on 2nd & 3rd counts.

Costs $67.22

Exhibit P-1.

NEW JERSEY SUPREME COURT,

C. COULTER CHARLTON and LUCY C. CHARLTON, Plaintiffs,	Action at Law. On Postea.
vs.	
CONRAD BRATHWAITE, Defendant.	Wm. Elmer Brown, Jr., Attorney.

Judgment entered this twenty-first day of January A. D. nineteen hundred and twenty-nine against the defendant and in favor of Lucy C. Charlton, plaintiff, on the first count of the complaint for the sum of two thousand dollars damages, and in favor of C. Coulter Charlton, plaintiff, on the second and third counts of the complaint, for the sum of four hundred dollars, damages and sixty-seven dollars and twenty two cents costs.

WM. S. GUMMERE,
C. J.

$2000.00 L.C.C. on 1st count.
$ 400.00 C.C.C. on 2nd and 3rd counts.
Costs $67.22

Exhibit P-1.

I, Fred L. Bloodgood, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the entire proceedings in the above stated cause as the same remain on file and of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this First day of November, A. D. nineteen hundred and Twenty-nine.

(Seal)

FRED L. BLOODGOOD,
Clerk.

NEW JERSEY COURT OF ERRORS AND APPEALS.

C. Coulter Charlton and Lucy C. Charlton,
Plaintiffs-Respondents,

v.

Jersey Mutual Casualty Insurance Company,
Defendant-Appellant.

Action at Law.

On Appeal from Supreme Court, Atlantic Co. Circuit.

BRIEF OF RESPONDENTS.

This is an appeal from a judgment entered November 7, 1929, in the Supreme Court.

FACTS.

One Conrad Brathwaite was the owner of an "auto cab" or "taxi" which he maintained and

operated in the City of Atlantic City under license duly issued to him. On June 16, 1927, the appellant herein, issued its policy or contract of indemnity whereby it agreed to indemnify said Brathwaite for a term of twelve months against loss in accordance with the provisions of Chapter 231, Pamphlet Laws of 1926.

On March 10, 1928, Lucy C. Charlton, one of the respondents herein, suffered bodily injuries as the result of a collision between the automobile in which she was riding and the taxicab of said Brathwaite.

Thereafter, the respondents brought suit against said Brathwaite, and after trial thereof recovered judgment in the following form:

(a) In favor of said Lucy C. Charlton, on account of her bodily injuries, in the sum of $2,000;

(b) In favor of said C. Coulter Charlton, for medical expenses, &c., in attempting to bring about a cure of his wife's injuries, in the sum of $250.00; and

(c) In favor of said C. Coulter Charlton for property damage to his said automobile, in the sum of $150.00.

Said Brathwaite refused to pay and satisfy said judgment, as did also the appellant herein. This suit was therefore instituted to recover on the aforesaid policy the first two items of said judgment together with court costs. It was conceded that under the terms of said policy there was no liability for the payment of that part of said judgment which was on account of the property damage.

Appellant's principal defense to said suit was

that its policy "was not in force and/or effect on the 10 day of March, 1928, nor at any time thereafter" (see first separate defense of answer. State of Case, page 12, line 36).

Appellant, at the trial below, endeavored to show that its policy had been cancelled prior to the date of said accident. All efforts in this direction were unsuccessful for the reason that proper legal proof of cancellation was not produced. The learned trial Court therefore granted plaintiffs-respondents' motion for direction of verdict.

ARGUMENT.

Part I.

The first point argued in appellant's brief is that "statutory insurance differs from an ordinary contract as between the insurance company and the beneficiary."

As authority for this statement the case of *Gillard v. Manufacturers' Casualty Insurance Company,* 92 N. J. L. 141, is cited. Appellant then attempts to analyze the opinion of the Court in that case in such a way as to apply it to the situation here presented and, in doing so, proceeds to distort its real meaning.

The policy upon which this suit was based complies with the statute (P. L. 1926, p. 383) and its amendments (P. L. 1927, pp. 151 and 407). Insofar as the Act of 1926 ordains the liability under the required policy it is the same as the provisions of the so-called "Kates Act" (relating to jitneys), P. L. 1916, p. 283. Said Act of 1926 required that

said policy should be filed with the Commissioner of Motor Vehicles. By the amendment passed during 1927 (P. L. 1927, p. 407), it was required that said policy should be filed with the clerk of the municipality in which the "taxi" is operated and that said clerk should issue a certificate showing the filing of said policy to be presented to and filed with the Department of Motor Vehicles before a State license shall issue. In no other material respect does the amendment change the requirements of the original Act.

In appellant's policy the following provision appears:

> "**CANCELLATION.** Either the Assured or the Company may cancel this policy at the end of any quarterly period by filing a notice of their intention so to do in the office of the Commissioner of Motor Vehicles, at Trenton, at least twenty days prior thereto, in which event future premiums shall thereupon cease and the Company shall not be liable to the assured for the payment of any unearned portion of the premium already paid."

Appellant has argued at some length in its brief that this provision of its policy was not binding upon it because the method of cancellation prescribed was illegal. An attempt is made to establish the illegality of that part of the policy by referring to the Amendment of 1927, wherein it is required that the policy shall be filed with the city clerk instead of the Commissioner of Motor Vehicles. Continuing its curious process of reasoning, appellant endeavors to persuade this Court that the Act of 1926 required policies, filed in compliance with it, to be cancelled by notice filed with the Commis-

sioner of Motor Vehicles and that, therefore, by reason of the provisions of the Amendatory Act of 1927, changing the place for filing the policy from said Commissioner's office to the office of the city clerk, it is urged by appellant that the policy must be cancelled by notice filed with the city clerk. In fact, appellant contends that, in an effort to comply with the provisions of the Act of 1927, it attached to its policy a rider or endorsement which in part read as follows:

> "It is also understood and agreed that *no cancellation* of this policy *shall become effective until* twenty days' *notice* of such proposed cancellation *has been forwarded to the Clerk* of Atlantic City."

(More will be said about this endorsement hereafter in this brief.)

As stated in appellant's brief, "Defendant tried to convince the Court that its acts were in accordance with the then existing laws of the State, that is, with Chapter 231, Laws of 1926, and its amendment, Chapter 215, Laws of N. J., 1927, but such proof was of no avail and was not admitted by the Court." Its efforts in this direction were apparently based upon the theory (as argued in its brief) that it was bound only by what is referred to as the "statutory policy" as distinguished from the contract itself. All provisions of the policy that are not in accord with what appellant now thinks they should be are referred to as illegal, and on that theory it begs leave to be excused for its failure to comply with the provisions of the policy contract respecting the method of cancellation. To use the language of appellant, it bemoans the fact that it

should be "penalized for doing a legal act in a legal way, because it did not conform to an illegal procedural Act that is no longer practical."

A sufficient answer to all appellant's contentions can be found when, after careful search and study of the statutes, not one word is present therein having reference to a method by which such policies must or can be cancelled. The policy here in question is not in conflict with the statutes. On the contrary, every requirement of the statute has been provided for in the policy.

The provision respecting cancellation is in addition to particular requirements of the Act of 1926 and its amendment but that fact does not nullify the provision. There is nothing in the statute which in any wise bars an insurance company from imposing in its policy any covenant or provision which is not in conflict with that law. This has been recognized by our Courts. See

MacClellan v. Gen'l Cas. & Surety Co., 4 N. J. Misc. R. 926;

Gillard v Mfgr's. Cas. Ins. Co., 92 N. J. L. 141, affirmed 93 N. J. L. 215.

As was said in *Bess v. Commonwealth Cas. Co.*, 101 N. J. L. 380, "Such contract may be said to be two-fold—that which it voluntarily undertook and that which was thereupon imposed upon it by statute." Applying this same language to the case at bar, the provision pertaining to cancellation was that part of the contract which appellant voluntarily undertook and was no part of that which was imposed upon it by the statute.

Part II.

An effort will now be made to answer appellant's various grounds of appeal in the order named by it (S. of C., p. 16).

FIRST—The first ground of appeal deals with certain questions which the Court overruled during the trial (S. of C., p. 16, l. 28).

One was a question put to witness Charlton—"Following the accident did Mr. Brathwaite come to see you?" (S. of C., p. 22, l. 21). A reference to the State of Case, p. 22, lines 24 to 32, will disclose that the purpose of the question was "to prove that Mr. Brathwaite said he was not insured." Under these circumstances it is submitted the question was properly overruled. What Brathwaite may have said to Charlton about that would have no materiality in this case. The answer would not have helped to determine if the policy was properly cancelled.

The next question—"Did you have a conversation with Mr. Brathwaite after the accident?" (S. of C., p. 22, line 34), was likewise overruled. This question was immaterial to the issue here. As the trial Court said (S. of C., p. 22, line 40), "The question as to the negligence of Brathwaite himself has been passed on by another jury."

Witness Conrad Brathwaite was asked, "When you had the accident do you know whether or not you were insured?" (S. of C., p. 24, l. 39). This was certainly an immaterial question. If the witness had answered he knew he was not insured it would not have been proof, binding on plaintiffs in this case, that policy had been properly cancelled.

The trial Court's ruling with respect to question, "Did you cause a notice of cancellation of that policy to be sent to Mr. Conrad Brathwaite?" (S. of C., p. 31, l. 33), is also cited as error. The best proof that this was not error is the fact that appellants do not claim that the policy could have been cancelled by notice to Brathwaite, the assured.

Witness Morelli was asked, "Do you of your own knowledge know whether or not a notice of cancellation was forwarded to the Motor Vehicle Commissioner?" (S. of C., p. 39, l. 13). This was overruled because it was immaterial that the notice was *forwarded* to the Commissioner. The policy provided that such a notice must be *filed* with him.

Witness Morelli was also asked, "Did you forward a notice of cancellation to the City Clerk of Atlantic City?" (S. of C., p. 40, l. 18). This was overruled because it was not shown that a notice was filed with the Motor Vehicle Commissioner as required by the main policy. The so-called rider or endorsement on the policy did not remove the necessity of that being done. It merely provided that no cancellation of the policy should "*become effective until twenty days' notice of such proposed cancellation has been forwarded to the Clerk of Atlantic City.*" The trial Court in his ruling said, "If, however, you are prepared to prove it was filed in the office of the Commissioner of Motor Vehicles, I will permit you to show it was also filed in the office of the city clerk, or forwarded."

Another question asked and overruled was—"Do you know why this taxi endorsement was attached to the policy?" (S. of C., p. 41, l. 22). It was said that this offer was made to show that the endorsement was made to comply with the law. It had reference to the rider or endorsement hereinbefore re-

ferred to. The Court ruled the question was immaterial to this issue and, we submit, properly so. Why the rider was attached was of no consequence. That would not help to determine the liability of defendant company on the policy.

Witness Ann Delaney was asked, "Did you receive a letter from the Jersey Mutual Casualty Insurance Co. dated October 14th, 1927, notifying you that this policy had been cancelled and cancellation was to take effect as of November 2nd?" (S. of C., p. 44, l. 1). By the provisions of the policy cancellation could only be made "at the end of any quarterly period by filing a notice of the company's intention so to do in the office of the Commissioner of Motor Vehicles at Trenton, at least twenty days prior thereto" (S. of C., p. 8, line 31). The quarterly periods ended September 16th, December 16th, and March 16th (S. of C., p. 30, line 29, to p. 31, line 2). What, then, could be the importance of showing that a notice had been received by the city clerk for cancellation to take effect November 2nd?

Same witness was asked, "Miss Delaney, when you receive these policies do you notify the Commissioner of Motor Vehicles?" (S. of C., p. 44, line 13). This question had no importance. The sole issue was one of cancellation. Neither party to the suit had, by the pleadings or otherwise, raised any question about the proper filing of the policy.

Another question overruled and about which appellant complains was, "Did you cause a notice to be sent to Mr. Brathwaite that his insurance policy had been cancelled?" (S. of C., p. 44, line 19). Brathwaite was the assured. There was nothing in the terms of the policy which required the city clerk to notify the assured that the policy had been cancelled. We submit, therefore, that the refusal of

the trial Court to permit this question to be answered was proper.

The next question asked of the witness, Ann Delaney, was, "Miss Delaney, when public documents are filed with your office, do they go outside your office?" (S. of C., p. 44, line 27). Counsel announced that his purpose in asking this question "was to show documents that are filed in the city clerk's office are not permitted to be taken out by anybody unless under subpoena or court order" (S. of C., p. 44, line 32). By no stretch of imagination can it be said that the question nor the purpose of asking it were material to the issue in this case. As has been previously said, the issue was confined solely to the cancellation of the policy.

Then the next question asked the same witness was, "Miss Delaney, do you remember Mr. Brown at any time coming to your office and asking you to let him see the policy involved?" (S. of C., p. 45, line 1). Counsel said the purpose of the question was "to show Mr. Brown came there and asked to see the policy, and I would follow that with the question of what the policy consisted of at that time" (S. of C., p. 45, line 10). The immateriality of this was apparent, and the trial Court was certainly correct in sustaining the objection to it.

Appellant argues in its brief that all of the questions overruled as aforesaid were asked in an effort to show that the policy had been cancelled "in conformance with the laws in existence at the time of the life of the policy." However, that was of no importance. There was no statutory requirement concerning the cancellation of such policies. The method of cancellation was provided for in the policy itself. How appellant can read into the Taxi Act what it contends is there is difficult to understand.

SECOND—Appellant's second ground of appeal is, "The learned trial Judge erred in refusing to admit into evidence the endorsement or rider attached to the original policy" (S. of C., p. 17, line 32).

To plaintiffs' complaint was attached what was alleged to be a copy of the policy in question (see paragraphs 2, Counts 1, 2 and 3, S. of C., page 1).

Defendant, by its answer, admitted all the allegations of said complaint "insofar as they relate to Policy No. 2178" (S. of C., page 10).

When well along in the course of the trial defendant contended that the copy of the policy, as attached to said complaint and admitted by its answer, was not a full and complete copy and that there was an endorsement or rider attached to and a part of said policy. Up to this time nothing had been said in any of the pleadings or otherwise about the rider.

Examination of the rider disclosed that it provided that no cancellation of the policy should become effective until twenty days after notice of such cancellation had been forwarded to the clerk of Atlantic City (S. of C., p. 35, line 17).

The trial Court ruled, "But that does not in any way change the terms of your original policy, which says that either the assured or the company may cancel this policy at the end of any quarterly period by filing notice of their intention so to do in the office of the Commissioner of Motor Vehicles of New Jersey" (S. of C., p. 35, line 21). "You say in your rider that it is agreed that notwithstanding the fact that you have to file it in the office of the Commissioner of Motor Vehicles, it shall not become effective until you file it in the clerk's office" (S. of C., p. 35, line 32). "* * * if you do not do that which the original policy required, that is to say, file it

in the office of the Commissioner of Motor Vehicles, then your filing in the office of the city clerk does not do any good at all'' (S. of C., p. 36, line 20).

Application was made by appellant (defendant) to amend its answer ''to show this rider was attached at the time the policy was issued'' (S. of C., p. 37, line 24). The learned trial Court then said, ''In my ruling I will consider that the rider that you have produced here in court was attached to the original policy and was attached there at the time the policy was issued. I still say that unless you filed your notice of cancellation in the office of the Commissioner of Motor Vehicles in accordance with the original policy, the mere filing of it in accordance with the rider in the office of the city clerk would not avail you as a cancellation'' (S. of C., p. 37, line 29). Then the Court below inquired, ''Have you, as a matter of fact, filed a notice of cancellation in the office of the Commissioner of Motor Vehicles?'' (S. of C., p. 38, line 17). Counsel replied, ''Yes, sir; we have.'' To this the Court remarked, ''Why don't you prove it?'' Counsel was then forced to admit that ''The only difficulty in not being able to prove it is that we have not got somebody here from the motor vehicle office'' (S. of C., p. 38, line 22). Then the Court ruled, ''There has been nothing alleged in the pleadings with reference to any rider at all, and the admission in the pleadings is that the copy of the policy annexed to the complaint is the policy under which this suit is brought. I will permit the introduction of the policy itself and overrule the offer of any rider by reason of the fact that the rider was not pleaded or set up in this case. And it would seem to me, upon reading the rider, that the rider helps you not at all when it comes to the question as to whether or not there was a cancellation; because it simply provides

that before cancellation becomes effective something must be done, while the original policy provides the means of cancellation" (S. of C., p. 42, lines 9 to 23, incl.).

Without further argument, it is submitted that the reasoning of the Court as related above, was sound, and that there was no error in excluding the so-called rider from the evidence.

THIRD — The third ground for appeal is that "The learned trial Judge erred in construing the Taxi Acts of 1926 and 1927 in accordance with decisions under the Kates Act of 1916" (S. of C., p. 17, line 36). Appellant insists that in this connection the Court erred "in applying this rule to the case at bar, for in the case at bar the learned Judge Sooy was granting to the injured party privileges under an illegal provision in the insurance policy." Again appellant is relying upon what we have hereinbefore referred to as that imaginative statutory law by which it contends that its contractual policy is void because not contemplated in that which has been called the "statutory policy." By what mental contortion can appellant in its brief rely upon the *Gillard case* (*supra*), decided under the Kates Act, and in that same brief say that the trial Court erred in relying upon that same case for its rulings? The provisions of the Taxi Act, with its amendments, are, in the main, the same as the provisions of the Jitney Act. Suffice it, therefore, to say that the decisions of our Courts construing the Jitney Act are available in the construction of the provisions of the Taxi Act.

FOURTH and **FIFTH** — The fourth and fifth grounds of appeal assigned by appellant have ap-

parently been abandoned by it, because no reference thereto is made in appellant's brief. However, the answer to both is found in the opinion of the Court in *Gillard v. Manufacturers Casualty Ins. Co.*, 92 N. J. L. 141, affirmed 93 N. J. L. 215.

SIXTH — This ground of appeal reads, "The learned trial Judge erred in refusing to permit the defendant to show that the policy of insurance involved had been cancelled prior to the happening of the accident" (S. of C., p. 18, line 13).

This assignment is of a very general character. It does not refer to any particular offer of testimony which was overruled. The answer thereto can best be found by reading the reasons assigned by the Court in connection with its various rulings on evidence as they appear throughout the state of the case. The reasons for the Court's rulings has been hereinbefore referred to in the answer to the first ground of appeal.

SEVENTH—Appellant's seventh ground of appeal is that, "The learned trial Judge erred in refusing to permit a continuance of the matter in order to afford the defendant an opportunity to produce witnesses from the Department of Motor Vehicles in order to show that the policy involved had been cancelled prior to the date of the accident" (S. of C., p. 18, line 19).

On page 38 of the State of the Case, beginning with line 17, the following appears:

> "The Court: * * * Have you, as a matter of fact, filed a notice of cancellation in the office of the Commissioner of Motor Vehicles?
>
> Mr. Taggart: Yes, sir; we have.
>
> The Court: Why don't you prove it?

Mr. Taggart: The only difficulty in not being able to prove it is that we have not got somebody here from the motor vehicle office.

The Court: That is not my fault.

Mr. Taggart: And if I had known this was the condition of things yesterday afternoon we would have had somebody. We can prove that, and I think if that question is going to be involved, we should have an opportunity to do it.

The Court: Well, this case has been on the list ever since the opening day of court. It was marked ready for trial on the Friday call, last Friday; it was ready for trial—I mean listed for actual trial on Monday, and at that time didn't come up for trial by reason of unforeseen circumstances. Now then, with all that time, and with these policies right squarely before you, it seems to me the Court's discretion is not appealed to at all."

And again on page 40 of the State of the Case, beginning at line 30, we find:

"Mr. Taggart: At this time I would like the opportunity to continue this matter until I have an opportunity to bring a man from the Motor Vehicle Department to prove it.

The Court: Motion denied. I do not have a great deal of sympathy with these suits. The defense is technical in its nature, done for the purpose of defeating the right of recovery of a person who has recovered a judgment and who should recover under the law; and when a technical defense of that kind is manifest, counsel knows in advance that it is technical and that he is going to be required to strictly prove that which he alleges in his answer; and if he

wants to 'get out from under' on the ground of technicalities, he must be here prepared to do so."

This application being an appeal to the trial Court's discretion, it is apparent from the above quotations that the use of that discretion was not arbitrarily abused.

EIGHTH—The eighth ground of appeal is that "The learned trial Court erred in refusing to permit an amendment of the answer when it became apparent that counsel for the plaintiff had omitted to include the entire policy in the complaint" (S. of C., p. 18, line 26).

Again we may turn to the State of the Case for reply to this assignment. At page 37, beginning at line 24, the following appears:

"Mr. Taggart: May I have leave to amend these pleadings to show this rider was attached at the time the policy was issued? It is not prejudicial to Mr. Brown.

The Court: In my ruling I will consider that the rider that you have produced here in court was attached to the original policy and was attached there at the time the policy was issued. I still say that unless you filed your notice of cancellation in the office of the Commissioner of Motor Vehicles in accordance with the original policy, the mere filing of it in accordance with the rider in the office of the City Clerk would not avail you as a cancellation; because your rider simply says that before a cancellation shall become effective, the notice of cancellation shall be filed in the City Clerk's office. But to make it effective at all it must have been filed, as provided for in the original

contract, in the office of the Commissioner of Motor Vehicles."

And again on page 41, beginning at line 11, we read:

"Mr. Taggart: At this time I would like to have the opportunity to amend the pleadings so that I may allege that the taxi endorsement was not made part of the original complaint and should be in the complaint.

The Court: The motion will be denied because it is untimely and should not be granted at this time."

Several times in its brief appellant refers to the rider having been admitted in the case by the trial Court. While the assertion is incorrect, it certainly is inconsistent with appellant's second and eighth grounds of appeal.

It is respectfully submitted that for the reasons assigned by the Court below the application for amendment to include the rider was properly overruled.

NINTH—In the ninth ground of appeal appellant contends that "The learned trial Court erred in refusing the defendant's motion for a direction of a verdict at the close of the case" (S. of C., p. 18, line 32).

The only reason assigned for this motion was that "the plaintiff has not shown this policy was in force at the time this accident occurred" (S. of C., p. 46, lines 1 to 4).

The policy was admitted by the answer. It was written "for a term of 12 months from the 16th day of June, 1927, at noon, to the 16th day of June, 1928, at noon" (S. of C., p. 6, line 37).

It was shown that the accident upon which plaintiffs had recovered their judgment against Brathwaite, the assured, occurred March 10, 1928 (S. of C., p. 20, line 12).

This latter date was within the period of the term of the policy. Therefore, it is submitted, that the presumption was that the accident occurred while the policy was in force. The burden was upon defendant to show that it had been cancelled before the date of the accident and not upon plaintiff to prove that it had not. Defendant's motion was, therefore, properly denied.

TENTH—The tenth and last ground of appeal is that, "The learned trial Court erred in granting the plaintiff's motion for a direction of a verdict at the close of the case" (S. of C., p. 18, line 36).

Plaintiff had proven a judgment against Brathwaite entered January 21, 1929 (S. of C., p. 20, lines 8 to 30); that said judgment was for injuries sustained during the time said policy was in force as the result of said Brathwaite's negligent operation of a taxi listed in the policy (S. of C., p. 20, line 36, to p. 21, line 4); and that said judgment had not been paid (S. of C., p. 21, lines 31 to 40).

Defendant failed in the proof of its defenses thereto, as has been heretofore shown in this brief. Assuming, then, that all of appellant's grounds of appeal hereinbefore referred to are without merit, the trial Court committed no error in granting plaintiffs' motion for direction of a verdict in their favor.

It is respectfully submitted that the judgment herein should be sustained and this appeal dismissed.

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