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SUMMONS.

ATLANTIC COUNTY, ss.

The State of New Jersey to General Casualty & Surety Company, a corporation  
(Seal) of the State of Michigan. You are summoned to answer the annexed complaint of Benjamin McClellan in an action at law in the Atlantic County Circuit Court. And take notice that unless you file your answer to said complaint with the clerk of the Atlantic County Circuit Court, at Mays Landing 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. 10

Witness THEODORE W. SCHIMPF, Judge of the Atlantic County Circuit Court, at Mays Landing, this thirty-first day of March, 1925. 20

WILLIAM A. BLAIR,  
*Clerk.*

PAUL M. SALSBERG,  
*Attorney.*



automobile vehicle described therein, a copy of which is annexed hereto and made part hereof.

3. On that day, said Cleveland G. Waites owned and operated a certain motor vehicle commonly called a "jitney" and described in said policy.

4. On October 7th, 1924, while said policy still remained in full force and effect, plaintiff suffered bodily injury caused by said automobile vehicle so described, owned and operated and thereafter on January 22nd, 1925, recovered against said Cleveland G. Waites by the final judgment of the Atlantic County Circuit Court as damages on account thereof the sum of five hundred dollars (\$500.00) and also the sum of forty-four dollars and fourteen cents (\$44.14) for his costs of suit. 10

5. In was part of said agreement on the part of defendant that:

Notwithstanding anything herein contained to the contrary, this Company will pay any final judgment within the limits of this policy as stipulated in Condition L. recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called jitneys, their operation in cities" approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto. 20 30

6. Said final judgment is within the limits of said policy as stipulated in Condition L. and has not been paid.

7. Said Cleveland G. Waites complied with all the terms and performed all the conditions of said policy on his part.

10 8. Plaintiff 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 and recover the amount of said judgment of defendant.

Plaintiff demands as damage five hundred forty-four dollars and fourteen cents (\$544.14) with interest from January 22nd, 1925, besides cost of suit.

PAUL M. SALSBERG,  
*Attorney of Plaintiff.*

20

Number	Amount
AA 58519	

INCORPORATED UNDER THE LAWS OF THE  
STATE OF MICHIGAN.  
GENERAL CASUALTY & SURETY COMPANY.  
a Stock Company  
Detroit, Michigan.

30 IN CONSIDERATION of the payment of the Premium and of the statements contained in the schedule hereinafter set forth, the General Casualty & Surety Company hereinafter called the Company, does hereby agree to indemnify the Assured designated in the said Schedule AGAINST LOSS FROM

THE LIABILITY IMPOSED BY LAW UPON THE ASSURED for damages on account of bodily injuries, including death resulting at any time therefrom, accidentally suffered or alleged to have been suffered by any person or persons not employed by the Assured, caused by automobile vehicles described in Statement numbered 5 of the Schedule, or by the loading or unloading of merchandise carried on vehicles of the commercial type, within the United States and Canada, subject to the following conditions: 10

CONDITION A. This Policy does not cover (1) any obligation assumed or imposed upon the Assured by any Workmen's Compensation Law or agreement or plan, or (2) while any automobile vehicle is being used for or in any race or speed test, or (3) being driven by any person in violation of law as to age, or if there be no age limit, under the age of 16 years, or (4) being used for towing or propelling any trailer or any other vehicle used as a trailer, or (5) being used for rental or livery purposes or for the carrying of passengers for a consideration. 20

CONDITION B. Upon the occurrence of an accident, the Assured shall, as soon as practicable, give written notice thereof with the fullest information obtainable at the time to the Executive Office of the Company in Detroit, Michigan, or to its duly authorized agent. If a claim is made on account of such accident, the Assured shall give like notice thereof with full particulars. 30

CONDITION C. If thereafter any suit is brought against the Assured to enforce such a claim for damages, the Assured shall immediately forward to such Executive Office of the company every summons or other process, and the Company will defend such suit, whether groundless or not; the ex-

penses incurred by the Company in defending such suit, including court costs and all interests accruing after entry of judgment, will be borne by the Company irrespective of the limits of liability expressed in the policy. The Company shall have the right to settle any claim or suit at any time.

10 CONDITION D. The assured shall not voluntarily assume any liability, nor incur any expense or settle any claim unless such settlement or expenditures are first authorized in writing by the Company; except that the Assured may provide at the time of the accident and at the cost of the Company such immediate surgical relief as is imperative. Whenever requested by the Company, the Assured shall aid in securing information, evidence and the attendance of witnesses; in effecting settlement; in prosecuting appeals, the Assured shall at all times render to the Company all co-operation and assistance within his power.

20 CONDITION E. In case of payment of loss under this policy the Company shall be subrogated to all rights of the Assured against any person or corporation as respects such loss.

30 CONDITION F. If the Assured carries other valid insurance against loss and expense arising from an accident covered by this policy, the Assured shall not be entitled to recover from this Company a larger proportion of the entire loss and expense than the amount hereby insured bears to the total amount of his insurance.

CONDITION G. No assignment or change of interest under this policy whether voluntary or involuntary shall bind the Company unless the written consent of the Company is endorsed thereon signed by its President, Vice President or Secretary, but in the event of the death of the Assured, if an individual, this insurance shall continue in force for

the benefit of the executors, administrators or trustees of the estate of the assured, for a period within the term of this policy of thirty days from twelve o'clock noon of the date of such death and not later unless consented to by endorsement as above.

CONDITION H. This policy may be cancelled by the Assured by notice to the Company. It may be cancelled by the Company at any time by giving written notice to the Assured at his address given herein, stating when the cancellation may be effective. 10  
If cancelled by the Company, the Company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. The check of this Company mailed to the address of the Assured as given herein shall be a sufficient tender.

CONDITION I. No condition or provision of this policy shall be waived or altered by anyone unless by endorsement hereon signed by the President, Vice President or Secretary of the Company, nor shall notice to any agent, nor shall knowledge possessed by any agent or by any other person be held to effect a waiver or change in this contract or in any part of it. 20

CONDITION J. If the limitation of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto in force in the state in which the business operations herein described are conducted, such specific statutory provisions shall supersede any such condition in this contract inconsistent therewith. 30

CONDITION K. The word "Assured" whenever used in this Policy shall be construed to include, in addition to the Assured named in the policy, any person or persons while riding in or operating any automobile insured hereunder for private pleas-

ure or business calls (excluding automobiles of the commercial type) with the permission of said named Assured, or with the permission of any adult member of said named Assured's household other than a chauffeur or a domestic servant.

10 CONDITION L. The liability of the Company for loss from an accident resulting in bodily injuries to or in the death of one person only is limited to Five Thousand Dollars (\$5,000) and, subject to the same limit for each person, the total liability of the Company for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars (\$10,000).

20 CONDITION M. The period of time during which this policy shall be in force is 12 months, beginning on the 21st day of August, 1923, noon, and ending on the 21st day of August, 1924, noon, standard time, at the place where this policy has been counter-

#### SCHEDULE.

Statement 1: Name of the Assured CLEVELAND G. WAITES.

Statement 2: Address of the Assured 627 Lexington Ave., Atlantic City, N. J.

Statement 3: The Assured is Individual.

Statement 4: The occupation or business of the assured is Jitney.

30 Statement 5: The description of all the automobile vehicles covered by this policy is as follows:

Trade name of cars: Willys-Knight. Factory Engine No.: 1134

Type:	Motive Power:	Model
Touring.	Gas.	year
		1923

Liability:	Total premium for each car:
\$140.00	\$140.00.

Statement 6: The number of chauffeurs employed by the assured is Owner Driver.

Statement 7: The purposes for which the above described automobile vehicles are to be used are Jitney.

Statement 8: The automobiles covered hereby are and will be principally maintained and garaged in the City or Town of Atlantic City, N. J.

10

Statement 9: The automobiles covered hereby are and will be principally used in the City or Town (and its vicinity) of Atlantic City, N. J.

Statement 10: No similar insurance has been declined or cancelled by any Company during the past 2 years, except as follows: No exceptions.

Statement 11: No claim has ever been made against the assured for personal injuries or death caused by any automobile vehicle owned, rented or driven by him except as follows: No exceptions.

20

IN WITNESS WHEREOF the GENERAL CASUALTY & SURETY COMPANY has caused this Policy to be executed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

Countersigned by	Elmert H. Dearth
E. E. Charlton.	President.
Authorized Representation	B. Frank Bushman
	Secretary.

30

RIDER:

GENERAL CASUALTY & SURETY COMPANY,  
DETROIT, MICH.

Special endorsement for Atlantic City only.

It is understood and agreed that Condition L. of this policy is hereby amended to read:

“The liability of the Company for loss from any

accident resulting in bodily injury to or death of any person or persons is limited to Five Thousand Dollars (\$5,000)."

And it is further understood and agreed that that portion of Condition A, now reading:

"(5) being used for rental or livery purposes or for carrying of passengers for a consideration."

is hereby eliminated and shall form no part of the policy contract. This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated.

Attached to and forming part of Automobile Policy No. AA 58519 of the GENERAL CASUALTY & SURETY COMPANY, issued to Cleveland G. Waites.

GENERAL CASUALTY & SURETY COMPANY.

Elmer H. Dearth,  
President.

B. Frank Bushman  
Secretary.

Countersigned by:

E. E. Charlton.

Authorized Representative.

SECOND RIDER:

GENERAL CASUALTY & SURETY COMPANY,

Detroit, Mich.

Endorsement.

Atlantic City, N. J.

Notwithstanding anything herein contained to the contrary, this Company will pay any final judgments within the limits of this policy as stipulated in Condition L. recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every per-

son suffering loss, damage or injury as described in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called 'Jitneys,' their operation in cities," approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto.

Notice of occurrence of an accident, claim of injury or legal suit when served upon the Company by the Fiscal Officer of the City of Atlantic City, State of New Jersey, shall be deemed and taken to be a notice as required to be given by the Assured under the terms of Paragraphs A. and B. of this contract. 10

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

This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated. 20

Attached to and forming part of Policy No. AA 58519 of the General Casualty & Surety Company issued to Cleveland G. Waites.

(Signed) E. E. Charlton

Agent.

**BACK OF POLICY:**

Home Office Detroit, Mich.

Automobile Liability Policy.

AA No. 58519. 30

**READ YOUR POLICY.**

Issued to Cleveland G. Waites.

Expires August 21st, 1924.

Premium \$140.00.

Gale, Incorporated,

313 Guarantee Trust Bldg.,

Atlantic City, N. J.

## ANSWER.

## ATLANTIC COUNTY CIRCUIT COURT.

---

10	BENJAMIN McCLELLAN, <i>Plaintiff,</i>	}	Answer. Action at Law.
20	v. GENERAL CASUALTY & SURETY COMPANY, a corporation of the State of Michigan, <i>Defendant.</i>		

---

Defendant, a corporation of the State of Michigan, answering the complaint of the plaintiff, says:

1. It admits paragraph 1.
2. It admits that it entered into a policy with Cleveland G. Waites, but says that the policy speaks for itself.
3. It admits paragraph 3.
- 30 4. It admits paragraph 4, except that it denies that said automobile was at the time of the injury to the plaintiff operated in accordance with the terms of the policy.
5. It denies paragraph 5.
6. It denies paragraph 6.

7. It denies paragraph 7.

8. It denies paragraph 8.

FIRST DEFENSE.

1. The policy of insurance referred to herein is a contract between the defendant and one Cleveland G. Waites and only extends to the benefit of other persons by virtue of such statutes of the State of New Jersey as may impose such obligation upon the defendant. 10

2. The plaintiff is not within the benefit of the statute in such case made and provided because, First, said vehicle at the time of the injury to the plaintiff was not being operated as a jitney in accordance with the statute hereinabove referred to. Second, because said vehicle at the time of the injury to plaintiff was not being operated within the limited route prescribed by the statute in such case made and provided and by the ordinance of the City of Atlantic City applicable thereto. 20

WILLIAM CHARLTON,  
*Attorney for Defendant.*

## ORDER.

## ATLANTIC COUNTY CIRCUIT COURT.

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10 BENJAMIN McCLELLAN,  
   *Plaintiff,* }  
   v.    } Action at Law.  
 CLEVELAND G. WAITES,  
   *Defendant.* }    } Order.

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20 It appearing to the Court that heretofore rule to  
 show cause was allowed why the verdict obtained  
 from the jury in the above entitled cause should not  
 be reduced, and it appearing on the return of said  
 rule after hearing the argument of counsel that said  
 verdict should not be reduced, Now Therefore, judg-  
 ment is entered for the plaintiff and against the  
 defendant in the sum of \$500 with costs of suit.

THEODORE W. SCHIMPF,  
*Judge.*

SUMMONS.

ATLANTIC COUNTY, ss.

The State of New Jersey to General Casualty & Surety Company, a corporation  
(Seal) of the State of Michigan. You are summoned to answer the annexed complaint  
of Adele Rowan, in an action at law in  
the Atlantic County Circuit Court. And take notice  
that unless you file your answer to said complaint  
with the clerk of the Atlantic County Circuit Court,  
at Mays Landing 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 THEODORE W. SCHIMPF, Judge of the Atlantic County Circuit Court, at Mays Landing, this  
thirty-first day of March, 1925.

WILLIAM A. BLAIR,  
*Clerk.*

PAUL M. SALSBURG,  
*Attorney.*



automobile vehicle described therein, a copy of which is annexed hereto and made part hereof.

3. On that day, said Cleveland G. Waites owned and operated a certain motor vehicle commonly called a "jitney" and described in said policy.

4. On October 7th, 1924, while said policy still remained in full force and effect, plaintiff suffered bodily injury caused by said automobile vehicle so described, owned and operated and thereafter on January 22nd, 1925, recovered against said Cleveland G. Waites by the final judgment of the Atlantic County Circuit Court as damages on account thereof the sum of twelve hundred fifty dollars (\$1250.00) and also the sum of forty-four dollars and fourteen cents (\$44.14) for her costs of suit. 10

5. In was part of said agreement on the part of defendant that:

Notwithstanding anything herein contained to the contrary, this Company will pay any final judgment within the limits of this policy as stipulated in Condition L. recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called jitneys, their operation in cities" approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto. 20 30

6. Said final judgment is within the limits of said policy as stipulated in Condition L. and has not been paid.

7. Said Cleveland G. Waites complied with all the terms and performed all the conditions of said policy on his part.

10 8. 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 the amount of said judgment of defendant.

Plaintiff demands as damages twelve hundred ninety-four dollars and fourteen cents (\$1294.14) with interest from January 22nd, 1925, besides costs of suit.

PAUL M. SALSBURG,  
*Attorney of Plaintiff.*

20 Number Amount

AA 58519

INCORPORATED UNDER THE LAWS OF THE  
STATE OF MICHIGAN.

GENERAL CASUALTY & SURETY COMPANY.  
a Stock Company  
Detroit, Michigan.

30 IN CONSIDERATION of the payment of the Premium and of the statements contained in the schedule hereinafter set forth, the General Casualty & Surety Company hereinafter called the Company, does hereby agree to indemnify the Assured designated in the said Schedule AGAINST LOSS FROM THE LIABILITY IMPOSED BY LAW UPON THE ASSURED for damages on account of bodily injuries, including death resulting at any time therefrom, accidentally suffered or alleged to have been suffered by any person or persons not em-

ployed by the Assured, caused by automobile vehicles described in Statement numbered 5 of the Schedule, or by the loading or unloading of merchandise carried on vehicles of the commercial type, within the United States and Canada, subject to the following conditions:

CONDITION A. This Policy does not cover (1) any obligation assumed or imposed upon the Assured by any Workmen's Compensation Law or agreement or plan, or (2) while any automobile vehicle is being used for or in any race or speed test, or (3) being driven by any person in violation of law as to age, or if there be no age limit, under the age of 16 years, or (4) being used for towing or propelling any trailer or any other vehicle used as a trailer, or (5) being used for rental or livery purposes or for the carrying of passengers for a consideration. 10

CONDITION B. Upon the occurrence of an accident, the Assured shall, as soon as practicable, give written notice thereof with the fullest information obtainable at the time to the Executive Office of the Company in Detroit, Michigan, or to its duly authorized agent. If a claim is made on account of such accident, the Assured shall give like notice thereof with full particulars. 20

CONDITION C. If thereafter any suit is brought against the Assured to enforce such a claim for damages, the Assured shall immediately forward to such Executive Office of the company every summons or other process, and the Company will defend such suit, whether groundless or not; the expenses incurred by the Company in defending such suit, including court costs and all interests accruing after entry of judgment, will be borne by the Company irrespective of the limits of liability expressed 30

in the policy. The Company shall have the right to settle any claim or suit at any time.

CONDITION D. The assured shall not voluntarily assume any liability, nor incur any expense or settle any claim unless such settlement or expenditures are first authorized in writing by the Company; except that the Assured may provide at the time of the accident and at the cost of the Company such immediate surgical relief as is imperative. Whenever requested by the Company, the Assured shall aid in securing information, evidence and the attendance of witnesses; in effecting settlement; in prosecuting appeals, the Assured shall at all times render to the Company all co-operation and assistance within his power.

CONDITION E. In case of payment of loss under this policy the Company shall be subrogated to all rights of the Assured against any person or corporation as respects such loss.

20 CONDITION F. If the Assured carries other valid insurance against loss and expense arising from an accident covered by this policy, the Assured shall not be entitled to recover from this Company a larger proportion of the entire loss and expense than the amount hereby insured bears to the total amount of his insurance.

30 CONDITION G. No assignment or change of interest under this policy whether voluntary or involuntary shall bind the Company unless the written consent of the Company is endorsed thereon signed by its President, Vice President or Secretary, but in the event of the death of the Assured, if an individual, this insurance shall continue in force for the benefit of the executors, administrators or trustees of the estate of the assured, for a period within the term of this policy of thirty days from twelve

o'clock noon of the date of such death and not later unless consented to by endorsement as above.

CONDITION H. This policy may be cancelled by the Assured by notice to the Company. It may be cancelled by the Company at any time by giving written notice to the Assured at his address given herein, stating when the cancellation may be effective. If cancelled by the Company, the Company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. The check of this Company mailed to the address of the Assured as given herein shall be a sufficient tender. 10

CONDITION I. No condition or provision of this policy shall be waived or altered by anyone unless by endorsement hereon signed by the President, Vice President or Secretary of the Company, nor shall notice to any agent, nor shall knowledge possessed by any agent or by any other person be held to effect a waiver or change in this contract or in any part of it. 20

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

CONDITION K. The word "Assured" whenever used in this Policy shall be construed to include, in addition to the Assured named in the policy, any person or persons while riding in or operating any automobile insured hereunder for private pleasure or business calls (excluding automobiles of the commercial type) with the permission of said named Assured, or with the permission of any adult mem- 30

ber of said named Assured's household other than a chauffeur or a domestic servant.

CONDITION L. The liability of the Company for loss from an accident resulting in bodily injuries to or in the death of one person only is limited to Five Thousand Dollars (\$5,000) and, subject to the same limit for each person, the total liability of the Company for loss from any one accident resulting in bodily injuries to or in the death of more than  
 10) one person is limited to Ten Thousand Dollars (\$10,000).

CONDITION M. The period of time during which this policy shall be in force is 12 months, beginning on the 21st day of August, 1923, noon, and ending on the 21st day of August, 1924, noon, standard time, at the place where this policy has been counter-signed.

#### SCHEDULE.

Statement 1: Name of the Assured CLEVELAND  
 20) G. WAITES.

Statement 2: Address of the Assured 627 Lexington Ave., Atlantic City, N. J.

Statement 3: The Assured is Individual.

Statement 4: The occupation or business of the assured is Jitney.

Statement 5: The description of all the automobile vehicles covered by this policy is as follows:

Trade name of cars: Willys-Knight. Factory Engine No.: 1134

30) Type: Touring. Motive Power: Gas. Model year 1923

Liability: \$140.00 Total premium for each car: \$140.00.

Statement 6: The number of chauffeurs employed by the assured is Owner Driver.

Statement 7: The purposes for which the above described automobile vehicles are to be used are Jitney.

Statement 8: The automobiles covered hereby are and will be principally maintained and garaged in the City or Town of Atlantic City, N. J.

Statement 9: The automobiles covered hereby are and will be principally used in the City or Town 10  
(and its vicinity) of Atlantic City, N. J.

Statement 10: No similar insurance has been declined or cancelled by any Company during the past 2 years, except as follows: No exceptions.

Statement 11: No claim has ever been made against the assured for personal injuries or death caused by any automobile vehicle owned, rented or driven by him except as follows: No exceptions.

IN WITNESS WHEREOF the GENERAL CASUALTY & SURETY COMPANY has caused this 20  
Policy to be executed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

Countersigned by	Elmert H. Dearth
E. E. Charlton.	President.
Authorized Representative	B. Frank Bushman
	Secretary.

**RIDER:**

GENERAL CASUALTY & SURETY COMPANY, 30  
DETROIT, MICH.

Special endorsement for Atlantic City only.

It is understood and agreed that Condition L. of this policy is hereby amended to read:

“The liability of the Company for loss from any accident resulting in bodily injury to or death of

any person or persons is limited to Five Thousand Dollars (\$5,000)."

And it is further understood and agreed that that portion of Condition A, now reading:

"(5) being used for rental or livery purposes or for carrying of passengers for a consideration." is hereby eliminated and shall form no part of the policy contract. This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated.

10 Attached to and forming part of Automobile Policy No. AA 58519 of the GENERAL CASUALTY & SURETY COMPANY, issued to Cleveland G. Waites.

GENERAL CASUALTY & SURETY COMPANY

Elmer H. Dearth,  
President.

B. Frank Bushman  
Secretary.

20 Countersigned by:

E. E. Charlton.

Authorized Representative.

SECOND RIDER:

GENERAL CASUALTY & SURETY COMPANY,

Detroit, Mich.

Endorsement.

Atlantic City, N. J.

30 Notwithstanding anything herein contained to the contrary, this Company will pay any final judgments within the limits of this policy as stipulated in Condition L. recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described

in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called 'Jitneys,' their operation in cities," approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto.

Notice of occurrence of an accident, claim of injury or legal suit when served upon the Company by the Fiscal Officer of the City of Atlantic City, State of New Jersey, shall be deemed and taken to be a notice as required to be given by the Assured under the terms of Paragraphs A. and B. of this contract. 10

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

This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated. 20

Attached to and forming part of Policy No. AA 58519 of the General Casualty & Surety Company issued to Cleveland G. Waites.

(Signed) E. E. Charlton

Agent.

**BACK OF POLICY:**

Home Office Detroit, Mich.

Automobile Liability Policy.

AA No. 58519. 30

**READ YOUR POLICY.**

Issued to Cleveland G. Waites.

Expires August 21st, 1924.

Premium \$140.00.

Gale, Incorporated,

313 Guarantee Trust Bldg.,

Atlantic City, N. J.

## ANSWER.

## ATLANTIC COUNTY CIRCUIT COURT.

---

10	ADELE ROWAN,	<i>Plaintiff,</i>	} Action at Law. Answer.
	v.		
	GENERAL CASUALTY & SURETY COMPANY, a corporation of the State of Michigan,	<i>Defendant.</i>	

---

20 Defendant, a corporation of the State of Michigan, answering the complaint of the plaintiff, says:

1. It admits paragraph 1.
2. It admits that it entered into a policy with Cleveland G. Waites, but says that the policy speaks for itself.
3. It admits paragraph 3.
- 30 4. It admits paragraph 4, except that it denies that said automobile was at the time of the injury to the plaintiff operated in accordance with the terms of the policy.
5. It denies paragraph 5.

6. It denies paragraph 6.
7. It denies paragraph 7.
8. It denies paragraph 8.

FIRST DEFENSE.

1. The policy of insurance referred to herein is a contract between the defendant and one Cleveland G. Waites and only extends to the benefit of other persons by virtue of such statutes of the State of New Jersey as may impose such obligation upon the defendant. 10

2. The plaintiff is not within the benefit of the statute in such case made and provided because, First, said vehicle at the time of the injury to the plaintiff was not being operated as a jitney in accordance with the statute hereinabove referred to. Second, because said vehicle at the time of the injury to plaintiff was not being operated within the limited route prescribed by the statute in such case made and provided and by the ordinance of the City of Atlantic City applicable thereto. 20

WILLIAM CHARLTON,  
*Attorney for Defendant.*



SUMMONS.

ATLANTIC COUNTY, ss.

The State of New Jersey to General Casualty & Surety Company, a corporation  
(Seal) of the State of Michigan. You are summoned to answer the annexed complaint of Laura O'Neill in an action at law in the Atlantic County Circuit Court. And take notice that unless you file your answer to said complaint with the clerk of the Atlantic County Circuit Court, at Mays Landing 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. 10

Witness THEODORE W. SCHIMPF, Judge of the Atlantic County Circuit Court, at Mays Landing, this thirty-first day of March, 1925. 20

WILLIAM A. BLAIR,  
*Clerk.*

PAUL M. SALSBERG,  
*Attorney.*

## COMPLAINT.

## ATLANTIC COUNTY CIRCUIT COURT.

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10	LAURA O'NEILL,	} <i>Plaintiff,</i>	} Action at Law. Complaint.
	v.		
	GENERAL CASUALTY & SURETY COMPANY, a corporation of the State of Michigan,	} <i>Defendant.</i>	

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20 Plaintiff residing in the City of Atlantic City,  
New Jersey, says that:

1. On August 21st, 1923, defendant was, and still is, a corporation duly incorporated under the laws of the State of Michigan with power to contract to indemnify persons against loss from the liability imposed by law growing out of the operation of motor vehicles and duly registered and authorized to transact business in the State of New Jersey.
- 30 2. On that day, in consideration of one hundred forty dollars (\$140.00) to it paid, it executed to one Cleveland G. Waites, its policy or contract of indemnity numbered AA 58519, thereby agreeing to indemnify him against loss from liability imposed by law for damages on account of bodily injuries accidentally received by any person caused by the

automobile vehicle described therein, a copy of which is annexed hereto and made part hereof.

3. On that day, said Cleveland G. Waites owned and operated a certain motor vehicle commonly called a "jitney" and described in said policy.

4. On October 7th, 1924, while said policy still remained in full force and effect, plaintiff suffered bodily injury caused by said automobile vehicle so described, owned and operated and thereafter on January 22nd, 1925, recovered against said Cleveland G. Waites by the final judgment of the Atlantic County Circuit Court as damages on account thereof the sum of twelve hundred fifty dollars (\$1250.00) and also the sum of forty-four dollars and fourteen cents (\$44.14) for her costs of suit. 10

5. It was part of said agreement on the part of defendant that:

Notwithstanding anything herein contained to the contrary, this Company will pay any final judgment within the limits of this policy as stipulated in Condition L. recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called jitneys, their operation in cities" approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto. 20 30

6. Said final judgment is within the limits of said policy as stipulated in Condition L. and has not been paid.

7. Said Cleveland G. Waites complied with all the terms and performed all the conditions of said policy on his part.

8. 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 the amount of said judgment of defendant.

Plaintiff demands as damages six hundred ninety-four dollars and fourteen cents (\$694.14) with interest from January 22nd, 1925, besides costs of suit.

PAUL M. SALSBURG,  
*Attorney of Plaintiff.*

20

Number	Amount
AA 58519	
INCORPORATED UNDER THE LAWS OF THE STATE OF MICHIGAN. GENERAL CASUALTY & SURETY COMPANY. a Stock Company Detroit, Michigan.	

30 IN CONSIDERATION of the payment of the Premium and of the statements contained in the schedule hereinafter set forth, the General Casualty & Surety Company hereinafter called the Company, does hereby agree to indemnify the Assured designated in the said Schedule AGAINST LOSS FROM THE LIABILITY IMPOSED BY LAW UPON THE ASSURED for damages on account of bodily

injuries, including death resulting at any time therefrom, accidentally suffered or alleged to have been suffered by any person or persons not employed by the Assured, caused by automobile vehicles described in Statement numbered 5 of the Schedule, or by the loading or unloading of merchandise carried on vehicles of the commercial type, within the United States and Canada, subject to the following conditions:

CONDITION A. This Policy does not cover (1) any obligation assumed or imposed upon the Assured by any Workmen's Compensation Law or agreement or plan, or (2) while any automobile vehicle is being used for or in any race or speed test, or (3) being driven by any person in violation of law as to age, or if there be no age limit, under the age of 16 years, or (4) being used for towing or propelling any trailer or any other vehicle used as a trailer, or (5) being used for rental or livery purposes or for the carrying of passengers for a consideration. 10

CONDITION B. Upon the occurrence of an accident, the Assured shall, as soon as practicable, give written notice thereof with the fullest information obtainable at the time to the Executive Office of the Company in Detroit, Michigan, or to its duly authorized agent. If a claim is made on account of such accident, the Assured shall give like notice thereof with full particulars. 20

CONDITION C. If thereafter any suit is brought against the Assured to enforce such a claim for damages, the Assured shall immediately forward to such Executive Office of the company every summons or other process, and the Company will defend such suit, whether groundless or not; the expenses incurred by the Company in defending such suit, including court costs and all interests accruing 30

after entry of judgment, will be borne by the Company irrespective of the limits of liability expressed in the policy. The Company shall have the right to settle any claim or suit at any time.

10 CONDITION D. The assured shall not voluntarily assume any liability, nor incur any expense or settle any claim unless such settlement or expenditures are first authorized in writing by the Company; except that the Assured may provide at the time of the accident and at the cost of the Company such immediate surgical relief as is imperative. Whenever requested by the Company, the Assured shall aid in securing information, evidence and the attendance of witnesses; in effecting settlement; in prosecuting appeals, the Assured shall at all times render to the Company all co-operation and assistance within his power.

20 CONDITION E. In case of payment of loss under this policy the Company shall be subrogated to all rights of the Assured against any person or corporation as respects such loss.

CONDITION F. If the Assured carries other valid insurance against loss and expense arising from an accident covered by this policy, the Assured shall not be entitled to recover from this Company a larger proportion of the entire loss and expense than the amount hereby insured bears to the total amount of his insurance.

30 CONDITION G. No assignment or change of interest under this policy whether voluntary or involuntary shall bind the Company unless the written consent of the Company is endorsed thereon signed by its President, Vice President or Secretary, but in the event of the death of the Assured, if an individual, this insurance shall continue in force for the benefit of the executors, administrators or trustees of the estate of the assured, for a period within

the term of this policy of thirty days from twelve o'clock noon of the date of such death and not later unless consented to by endorsement as above.

CONDITION H. This policy may be cancelled by the Assured by notice to the Company. It may be cancelled by the Company at any time by giving written notice to the Assured at his address given herein, stating when the cancellation may be effective. If cancelled by the Company, the Company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. The check of this Company mailed to the address of the Assured as given herein shall be a sufficient tender. 10

CONDITION I. No condition or provision of this policy shall be waived or altered by anyone unless by endorsement hereon signed by the President, Vice President or Secretary of the Company, nor shall notice to any agent, nor shall knowledge possessed by any agent or by any other person be held to effect a waiver or change in this contract or in any part of it. 20

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

CONDITION K. The word "Assured" whenever used in this Policy shall be construed to include, in addition to the Assured named in the policy, any person or persons while riding in or operating any automobile insured hereunder for private pleasure or business calls (excluding automobiles of the commercial type) with the permission of said named 30

Assured, or with the permission of any adult member of said named Assured's household other than a chauffeur or a domestic servant.

- 10 **CONDITION L.** The liability of the Company for loss from an accident resulting in bodily injuries to or in the death of one person only is limited to Five Thousand Dollars (\$5,000) and, subject to the same limit for each person, the total liability of the Company for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars (\$10,000).

**CONDITION M.** The period of time during which this policy shall be in force is 12 months, beginning on the 21st day of August, 1923, noon, and ending on the 21st day of August, 1924, noon, standard time, at the place where this policy has been countersigned.

#### SCHEDULE.

- 20 **Statement 1:** Name of the Assured CLEVELAND G. WAITES.  
**Statement 2:** Address of the Assured 627 Lexington Ave., Atlantic City, N. J.  
**Statement 3:** The Assured is Individual.  
**Statement 4:** The occupation or business of the assured is Jitney.  
**Statement 5:** The description of all the automobile vehicles covered by this policy is as follows:
- |                     |                |                             |            |
|---------------------|----------------|-----------------------------|------------|
| Trade name of cars: | Willys-Knight. | Factory Engine No.:         | 1134       |
| Type:               | Touring.       | Motive Power:               | Gas.       |
|                     |                |                             | Model year |
|                     |                |                             | 1923       |
| Liability:          | \$140.00       | Total premium for each car: | \$140.00.  |
- 30

Statement 6: The number of chauffeurs employed by the assured is Owner Driver.

Statement 7: The purposes for which the above described automobile vehicles are to be used are Jitney.

Statement 8: The automobiles covered hereby are and will be principally maintained and garaged in the City or Town of Atlantic City, N. J.

Statement 9: The automobiles covered hereby are and will be principally used in the City or Town (and its vicinity) of Atlantic City, N. J. 10

Statement 10: No similar insurance has been declined or cancelled by any Company during the past 2 years, except as follows: No exceptions.

Statement 11: No claim has ever been made against the assured for personal injuries or death caused by any automobile vehicle owned, rented or driven by him except as follows: No exceptions.

IN WITNESS WHEREOF the GENERAL CASUALTY & SURETY COMPANY has caused this Policy to be executed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company. 20

Countersigned by	Elmert H. Dearth
E. E. Charlton.	President.
Authorized Representative	B. Frank Bushman
	Secretary.

**RIDER:**

GENERAL CASUALTY & SURETY COMPANY, 30  
DETROIT, MICH.

Special endorsement for Atlantic City only.

It is understood and agreed that Condition L. of this policy is hereby amended to read:

“The liability of the Company for loss from any accident resulting in bodily injury to or death of

any person or persons is limited to Five Thousand Dollars (\$5,000)."

And it is further understood and agreed that that portion of Condition A, now reading:

"(5) being used for rental or livery purposes or for carrying of passengers for a consideration."

is hereby eliminated and shall form no part of the policy contract. This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated.

Attached to and forming part of Automobile Policy No. AA 58519 of the GENERAL CASUALTY & SURETY COMPANY, issued to Cleveland G. Waites.

GENERAL CASUALTY & SURETY COMPANY

Elmer H. Dearth,  
President.

B. Frank Bushman  
Secretary.

20 Countersigned by:  
E. E. Charlton.

Authorized Representative.

SECOND RIDER:

GENERAL CASUALTY & SURETY COMPANY,  
Detroit, Mich.  
Endorsement.

Atlantic City, N. J.

30 Notwithstanding anything herein contained to the contrary, this Company will pay any final judgments within the limits of this policy as stipulated in Condition L. recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described

in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called 'Jitneys,' their operation in cities," approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto.

Notice of occurrence of an accident, claim of injury or legal suit when served upon the Company by the Fiscal Officer of the City of Atlantic City, State of New Jersey, shall be deemed and taken to be a notice as required to be given by the Assured under the terms of Paragraphs A. and B. of this contract. 10

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

This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated. 20

Attached to and forming part of Policy No. AA 58519 of the General Casualty & Surety Company issued to Cleveland G. Waites.

(Signed) E. E. Charlton

Agent.

BACK OF POLICY:

Home Office Detroit, Mich.

Automobile Liability Policy.

AA No. 58519. 30

READ YOUR POLICY.

Issued to Cleveland G. Waites.

Expires August 21st, 1924.

Premium \$140.00.

Gale, Incorporated,

313 Guarantee Trust Bldg.,

Atlantic City, N. J.

## ANSWER.

LAURA O'NEILL,  
*Plaintiff,*  
 v.  
 10 GENERAL CASUALTY & SURETY  
 COMPANY, a corporation of  
 the State of Michigan,  
*Defendant.*

Action at Law.  
Answer.

Defendant, a corporation of the State of Michigan, answering the complaint of the plaintiff, says:

- 20 1. It admits paragraph 1.
2. It admits that it entered into a policy with Cleveland G. Waites, but says that the policy speaks for itself.
3. It admits paragraph 3.
4. It admits paragraph 4, except that it denies that said automobile was at the time of the injury to the plaintiff operated in accordance with the terms of the policy.
- 30 5. It denies paragraph 5.
6. It denies paragraph 6.
7. It denies paragraph 7.
8. It denies paragraph 8.

FIRST DEFENSE.

1. The policy of insurance referred to herein is a contract between the defendant and one Cleveland G. Waites and only extends to the benefit of other persons by virtue of such statutes of the State of New Jersey as may impose such obligation upon the defendant.

2. The plaintiff is not within the benefit of the statute in such case made and provided because, First, said vehicle at the time of the injury to the plaintiff was not being operated as a jitney in accordance with the statute hereinabove referred to. Second, because said vehicle at the time of the injury to plaintiff was not being operated within the limited route prescribed by the statute in such case made and provided and by the ordinance of the City of Atlantic City applicable thereto.

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20

WILLIAM CHARLTON,  
*Attorney for Defendant.*

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## ORDER.

## ATLANTIC COUNTY CIRCUIT COURT.

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10	LAURA O'NEILL,  v. CLEVELAND G. WAITES,	} <i>Plaintiff,</i>  <i>Defendant.</i>	} Action at Law. Order.
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20 It appearing to the Court that heretofore rule to show cause was allowed why the verdict obtained from the jury in the above entitled cause should not be reduced, and it appearing on the return of said rule after hearing the argument of counsel that said verdict should be reduced.

Now, Therefore, it is on this 12th day of March, 1925, Ordered that the verdict rendered herein be reduced from \$1000 to \$650, with costs of suit, and that judgment be entered in this cause for the plaintiff and against the defendant, in the sum of \$650.00.

THEODORE W. SCHIMPF,  
*Judge.*

TESTIMONY.

ATLANTIC COUNTY SUPREME COURT.

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BENJAMIN McCLELLAN,  
 v.  
 GENERAL CASUALTY & SURETY  
 COMPANY, etc.

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ADELE ROWAN,  
 v.  
 GENERAL CASUALTY & SURETY  
 COMPANY, etc.

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Testimony.

LAURA O'NEILL,  
 v.  
 GENERAL CASUALTY & SURETY  
 COMPANY, etc.

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Mays Landing, N. J.  
 June 19, 1925.

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APPEARANCES:

PAUL M. SALSBURG, Esq., for the plaintiff.  
 WILLIAM CHARLTON, Esq., for the defendant.

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(The above entitled case was tried June 19, 1925,  
 before Hon. Theodore W. Schimpf, without a jury  
 by consent of both counsel.)

Mr. Salsburg: If the Court please, we have certain things we are going to admit on the record at the beginning; that is, that the three cases, *Laura O'Neill v. General Casualty and Surety Company*, *Adele Rowan v. same*, and *Benjamin McClellan v. the same*, be tried together by assent.

Secondly, it is stipulated that in the answers in all three cases, paragraph six which reads: "Said final judgment is within the limits of said policy as stipulated in condition L and has not been paid —"  
10 that is admitted in the answer by the defendant, whereas heretofore it was denied.

The Court: In section six of the complaint?

Mr. Salsburg: Of the answer. The defendant admits that.

The Court: What you first said was section six  
20 of the answer.

Mr. Salsburg: That is what I am talking about—  
of the complaint.

The Court: The answer will be amended so as to admit section six of the complaint.

Mr. Salsburg: That is right, in each of the three cases. It is further stipulated that this accident occurred at Fifth Avenue and the White Horse Pike  
30 in Atlantic County, New Jersey. In the fourth paragraph of the complaint it is stipulated that where it says October 7th, 1924, that should be amended to read October 7th, 1923; and in the case of *Laura O'Neill* the amount of her judgment is stated to be \$1,250 whereas it was a typographical error and

should have been \$650, and it is consented that that be amended.

(Mr. Salsburg opened the plaintiff's case to the Court.)

(Mr. Charlton opened the defendant's case to the Court.)

Mr. Salsburg: You admit the policy? 10

Mr. Charlton: Oh, yes.

Mr. Salsburg: By consent of counsel the insurance policy marked AA 58519 issued to Cleveland G. Waite by the General Casualty and Surety, a stock company of Detroit, Michigan, is offered in evidence.

(The policy offered is received in evidence and marked as an exhibit for the plaintiff P1.)

Mr. Salsburg: We rest. 20

Mr. Charlton: If the Court please, I move for a direction of verdict for the defendant on the ground that one of the essentials of the plaintiff's proof is that the plaintiff has complied with the terms and conditions of the policy. That is denied in the answer and there is no proof here.

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DEFENDANT'S MOTION FOR A DIRECTION OF VERDICT. 30

Mr. Charlton: If the Court please, I move for a direction of verdict for the defendants on the ground that one of the essentials of the plaintiffs' proof is that the defendant Waite has complied with the terms and conditions of the policy. That is denied in the answer and there is no proof here.

The Court: Well, I think if you want to I will let you open your case to put in your defense.

Mr. Salsburg: I won't object to it.

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DEFENDANTS' CASE.

10 CLEVELAND G. WAITES, called as a witness on behalf of the defendant, being duly sworn and examined, testified as follows:

Direct examination.

By Mr. Charlton:

Q. Mr. Waites, are you the Cleveland G. Waites that was sued by Mr. McClellan, Mrs O'Neill and Mrs Rowan?

20 A. Yes; I am.

Q. Were you driving the automobile involved in that judgment?

A. Yes.

Q. What business were you in at the time that you had the collision with these people?

Mr. Salsburg: I object.

The Court: I will permit him to say.

30 Q. What business were you in at and about the time you had the collision with these people?

A. Why, I had a party of friends out.

Q. No, what business were you in generally?

A. Why, private business.

Q. You drove a jitney, didn't you?

A. Yes, sir; drove a jitney.

The Court: Why don't you answer it when he asks you? You were in business?

The Witness: Yes, sir; jitney business.

The Court: Well, why didn't you say so?

The Witness: Engaged in.

10

Q. Do you remember the day that you had the accident with them—I don't remember the date. Do you remember it generally?

A. Yes, a Sunday.

Q. Where did it take place?

A. It took place on this side of Egg Harbor; I imagine about —

Mr. Salsburg: I object. That has been agreed upon by stipulation. 20

The Court: Well, I will permit it.

Q. Now, where did it happen?

A. This side of Egg Harbor; I imagine —

Q. How much this side of Egg Harbor?

A. I imagine about a mile and a quarter this side of Egg Harbor.

Q. Did it happen at Fifth Avenue and the White Horse Pike? 30

A. Well, it was at an intersecting street, road that came into the White Horse Pike.

Q. And the road called Fifth Avenue?

A. I don't know what is the name of the road, but it was a road came into the White Horse Pike.

Q. What were you doing that day that you had the accident?

A. Well, I was driving over the White Horse Pike. I had been out driving with —

Q. How long had you been out of Atlantic City?

A. I had been out of Atlantic City fully an hour and a half.

Q. And where did you go when you left Atlantic City?

10 A. Well, I was directed by the gents I had —

Mr. Salsburg: I object. The answer is not responsive.

The Court: No; it is not. Where did you go?

Q. Where did you go?

A. We went beyond Egg Harbor, and back coming down back the White Horse Pike.

20 Q. Toward where?

A. Atlantic City.

Q. Now, were you driving the car that you used in the jitney business?

A. Yes.

Q. Did you have any sign on the car?

A. Nothing but my attached sign. We have a sign there. You cannot remove it. It is an irremovable sign.

Q. Did you have any other marks on the car, any of your jitney marks except this sign?

30 A. Why, we carry the numbers on our headlights; the number of the jitney.

Q. Were you picking up any passengers as you drove along?

A. No.

Q. Driving over the streets of Atlantic City to pick up passengers?

A. No.

Q. Now, were you laying out the route you were going to cover?

A. Yes, sir; the occupants directed me, where they wanted to go.

Mr. Salsburg: I object.

The Court: I think that is all right.

Mr. Salsburg: Well, his answer is not responsive, if the Court please. 10

The Court: Oh, yes; that is all right.

Q. Were you doing this for pleasure or for pay?

A. I was doing it for pleasure; they were friends of mine.

Q. And you also had a little pay, didn't you?

A. Well, they paid the expenses.

Q. Paid the expenses? Cross-examine. 20

Cross-examination.

By Mr. Salsburg:

Q. Did you testify at the previous proceedings against you that you were paid or that you went on pleasure?

Mr. Charlton: If the Court please, I object. I think he ought to read the question and answer and ask him if he said it. 30

The Court: Well, I think that is the question that he is asked. He may answer.

Q. Did you testify at the previous proceedings against you that you were paid or that you went on pleasure?

A. Pleasure.

Q. Did you testify at the previous proceedings that Mr. Cheatham paid you?

A. No.

Q. For this excursion?

A. No.

10 Q. You did not?

A. Mr. Cheatham engaged me.

Q. Who paid you?

A. I wasn't paid at all.

Q. Well, when Mr. Charlton asked you if you received any pay didn't you receive any money?

A. No more than the expense of the car; that is the gasoline and oil.

Q. Didn't you receive five dollars?

A. Gasoline and oil.

20 Q. Did you receive five dollars?

A. Yes.

Q. You did?

A. Yes.

Q. And you received five dollars for the purpose of driving these people, didn't you?

A. No; I supplied my car with gas and oil and had a tire changed.

Q. You don't have any other license other than a jitney license, do you?

30 A. No.

Q. And you did not at that time?

A. No; I didn't have any other.

Q. When you transported passengers the only license under which you operated in transporting them for compensation was your jitney license?

A. Yes.

Mr. Charlton: Just a moment. I object to that because I think it is an improper question. The Court must take judicial notice that a man does not have any other license to drive around the street in Atlantic City or anywhere else.

The Court: For carrying passengers, yes.

Mr. Charlton: If that is the point he ought to make it clear.

10

The Court: It was clear to me.

Q. When you transported passengers the only license under which you operated in transporting them for compensation was a jitney license?

A. Yes.

The Court: I suppose the only way to make that clear is to "transport" "compensation" into "pay."

20

Q. Whom did you receive money from?

A. Mr. Cheatham is the only man I received it from.

Q. How much did you receive?

A. Five dollars.

(Witness excused.)

DEFENDANT RESTS.

PLAINTIFF RESTS.

30

(Mr. Charlton summed up for the defendants.)

(Mr. Salsburg summed up for the plaintiffs.)

The Court: I do not think I have to decide this case under the statutory theory at all. I think the terms of this policy are broad enough to cover these plaintiffs and enable them all to bring suits against you on your policy.

- 10 The three plaintiffs, Laura O'Neill, Adele Rowan and Benjamin McClellan recovered judgment in the Circuit Court against Cleveland G. Waites for injuries arising from an accident happening on the White Horse Pike a short distance southwardly of Egg Harbor City in the County of Atlantic. Egg Harbor City is approximately eighteen miles from Atlantic City. Cleveland G. Waites was insured by the General Casualty and Surety Company of Detroit, Michigan, against loss from the liability imposed by law upon him, the assured, for damages on account of bodily injuries, including death, resulting at anytime therefrom, accidentally suffered or alleged to have been suffered \* \* \* caused by automobile vehicles described in statement number five of the schedule, etc.
- 20

The policy is number AA 58519, and was issued on the twenty-first day of August, 1923. The automobile insured was a jitney, licensed by the City of Atlantic City, and Cleveland G. Waites was the owner and driver of the jitney. Condition A of the policy which may be described as the "non-coverage" clause of the policy, has stricken from the clause "this policy does not cover a vehicle being used for rental or livery purposes or for the carrying of passengers for a consideration," and in its place is a rider which provides "and it is further understood and agreed that that portion of condi-

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tion A now reading "5, being used for rental or livery purposes or for the carrying of passengers for a consideration" is hereby eliminated and shall form no part of the policy contract." It is clear, therefore, that under this policy contract it was the intention of the company to insure against loss imposed by law upon the assured while operating his car for rental or livery purposes or for the carrying of passengers for a consideration.

The schedule attached to the policy provides in statement 7: "The purposes for which the above described automobile vehicles are to be used are jitney;" Statement 8: "The automobiles covered hereby are and will be principally maintained and garaged in the City or town of Atlantic City, New Jersey;" Statement 9: "The automobiles covered hereby are and will be principally used in the city or town (and its vicinity) of Atlantic City, New Jersey."

Egg Harbor is in the vicinity of Atlantic City. The automobile on October 7, 1923, while being operated as a vehicle carrying passengers for hire collided with and injured the plaintiffs. Judgments were recovered and suit is now instituted against the insurance company, the General Casualty and Surety Company, to recover the amount of those judgments.

The second rider to the policy provides: "Notwithstanding anything herein contained to the contrary this company will pay any final judgment within the limits of this policy as stipulated in condition L recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein or any fault in respect thereto; and it is further understood that this contract shall be for the benefit of every person suf-

fering loss, damage or injury as described in this contract.”

The judgments recovered by the plaintiffs in their actions against Cleveland G. Waites were recovered by these persons on account of the ownership, maintenance and use of the automobile and some fault in respect thereto or its management.

10 It is clear that under this clause these plaintiffs may recover directly from this insurance company the amount of these judgments, provided the judgments were rendered for loss sustained in accordance with the terms of the first paragraph of the policy.”

Another rider provides: “Or as described in the terms of an act entitled ‘An Act concerning auto buses commonly called jitneys, their operation in cities, approved March 17, 1916, and known as Chapter 136 of the laws of 1916, State of New Jersey, and supplements and amendments thereto.’”

20 It is not necessary in my judgment to have recourse to the alternative provision of the second rider as the language of the first provision of that rider is sufficiently clear to enable these plaintiffs to maintain their actions.

30 In respect to the judgment attained by Adele Rowan, a part of that judgment was for property damage to the automobile of the said Adele Rowan. That part of the judgment cannot be recovered in this proceeding; for the policy limits its indemnity to the assured against loss from the liability imposed by law upon the assured for damages on account of bodily injuries including death, and condition L provides: “The liability of the company for loss from an accident resulting bodily injuries is limited to five thousand dollars.”

The three judgments are within the limit of \$5,000, but the recovery for Adele Rowan will be

limited to the amount of her judgment representing her bodily injuries and not representing property damage.

Judgment may be entered, therefore, for Laura O'Neill in the sum of \$711.26 and costs; for Adele Rowan in the sum of \$1069.14 and costs; and for Benjamin McClellan the sum of \$557.56 and costs.

It better be stated on the record that with respect to the Adele Rowan judgment, counsel stipulate that of the amount of the judgment \$1000 is agreed upon 10 as the amount of the judgment for personal injuries and \$250 as the amount of the judgment for property damage; so that judgment will be entered for Adele Rowan in the sum of \$1069.14 and costs.

Mr. Charlton: I except to the finding as to liability under the first part of the rider.

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EXHIBIT P1.

20

Number Amount  
AA 58519  
INCORPORATED UNDER THE LAWS OF THE  
STATE OF MICHIGAN.  
GENERAL CASUALTY & SURETY COMPANY.  
a Stock Company  
Detroit, Michigan.

IN CONSIDERATION of the payment of the 30  
Premium and of the statements contained in the  
schedule hereinafter set forth, the General Casualty  
& Surety Company hereinafter called the Company,  
does hereby agree to indemnify the Assured design-  
ated in the said Schedule AGAINST LOSS FROM  
THE LIABILITY IMPOSED BY LAW UPON  
THE ASSURED for damages on account of bodily

injuries, including death resulting at any time therefrom, accidentally suffered or alleged to have been suffered by any person or persons not employed by the Assured, caused by automobile vehicles described in Statement numbered 5 of the Schedule, or by the loading or unloading of merchandise carried on vehicles of the commercial type, within the United States and Canada, subject to the following conditions:

- 10 CONDITION A. This Policy does not cover (1) any obligation assumed or imposed upon the Assured by any Workmen's Compensation Law or agreement or plan, or (2) while any automobile vehicle is being used for or in any race or speed test, or (3) being driven by any person in violation of law as to age, or if there be no age limit, under the age of 16 years, or (4) being used for towing or propelling any trailer or any other vehicle used as a trailer, or (5) being used for rental or livery purposes or for the carrying of passengers for a consideration.

CONDITION B. Upon the occurrence of an accident, the Assured shall, as soon as practicable, give written notice thereof with the fullest information obtainable at the time to the Executive Office of the Company in Detroit, Michigan, or to its duly authorized agent. If a claim is made on account of such accident, the Assured shall give like notice thereof with full particulars.

- 30 CONDITION C. If thereafter any suit is brought against the Assured to enforce such a claim for damages, the Assured shall immediately forward to such Executive Office of the company every summons or other process, and the Company will defend such suit, whether groundless or not; the expenses incurred by the Company in defending such suit, including court costs and all interests accruing

after entry of judgment, will be borne by the Company irrespective of the limits of liability expressed in the policy. The Company shall have the right to settle any claim or suit at any time.

CONDITION D. The assured shall not voluntarily assume any liability, nor incur any expense or settle any claim unless such settlement or expenditures are first authorized in writing by the Company; except that the Assured may provide at the time of the accident and at the cost of the Company such 10 immediate surgical relief as is imperative. Whenever requested by the Company, the Assured shall aid in securing information, evidence and the attendance of witnesses; in effecting settlement; in prosecuting appeals, the Assured shall at all times render to the Company all co-operation and assistance within his power.

CONDITION E. In case of payment of loss under this policy the Company shall be subrogated to all rights of the Assured against any person or corpora- 20 tion as respects such loss.

CONDITION F. If the Assured carries other valid insurance against loss and expense arising from an accident covered by this policy, the Assured shall not be entitled to recover from this Company a larger proportion of the entire loss and expense than the amount hereby insured bears to the total amount of his insurance.

CONDITION G. No assignment or change of interest under this policy whether voluntary or in- 30 voluntary shall bind the Company unless the written consent of the Company is endorsed thereon signed by its President, Vice President or Secretary, but in the event of the death of the Assured, if an individual, this insurance shall continue in force for the benefit of the executors, administrators or trustees of the estate of the assured, for a period within

the term of this policy of thirty days from twelve o'clock noon of the date of such death and not later unless consented to by endorsement as above.

10      CONDITION H. This policy may be cancelled by the Assured by notice to the Company. It may be cancelled by the Company at any time by giving written notice to the Assured at his address given herein, stating when the cancellation may be effective. If cancelled by the Company, the Company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. The check of this Company mailed to the address of the Assured as given herein shall be a sufficient tender.

20      CONDITION I. No condition or provision of this policy shall be waived or altered by anyone unless by endorsement hereon signed by the President, Vice President or Secretary of the Company, nor shall notice to any agent, nor shall knowledge possessed by any agent or by any other person be held to effect a waiver or change in this contract or in any part of it.

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

30      CONDITION K. The word "Assured" whenever used in this Policy shall be construed to include, in addition to the Assured named in the policy, any person or persons while riding in or operating any automobile insured hereunder for private pleasure or business calls (excluding automobiles of the

commercial type) with the permission of said named Assured, or with the permission of any adult member of said named Assured's household other than a chauffeur or a domestic servant.

CONDITION L. The liability of the Company for loss from an accident resulting in bodily injuries to or in the death of one person only is limited to Five Thousand Dollars (\$5,000) and, subject to the same limit for each person, the total liability of the Company for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to Ten Thousand Dollars (\$10,000). 10

CONDITION M. The period of time during which this policy shall be in force is 12 months, beginning on the 21st day of August, 1923, noon, and ending on the 21st day of August, 1924, noon, standard time, at the place where this policy has been counter-signed.

SCHEDULE.

20

Statement 1: Name of the Assured CLEVELAND G. WAITES.

Statement 2: Address of the Assured 627 Lexington Ave., Atlantic City, N. J.

Statement 3: The Assured is Individual.

Statement 4: The occupation or business of the assured is Jitney.

Statement 5: The description of all the automobile vehicles covered by this policy is as follows:

Trade name of cars: Willys-Knight. Factory Engine No.: 1134 30

Type: Touring. Motive Power: Gas. Model year 1923

Liability: \$140.00 Total premium for each car: \$140.00

Statement 6: The number of chauffeurs employed by the assured is Owner Driver.

Statement 7: The purposes for which the above described automobile vehicles are to be used are Jitney.

Statement 8: The automobiles covered hereby are and will be principally maintained and garaged in the City or Town of Atlantic City, N. J.

10 Statement 9: The automobiles covered hereby are and will be principally used in the City or Town (and its vicinity) of Atlantic City, N. J.

Statement 10: No similar insurance has been declined or cancelled by any Company during the past 2 years, except as follows: No exceptions.

Statement 11: No claim has ever been made against the assured for personal injuries or death caused by any automobile vehicle owned, rented or driven by him except as follows: No exceptions.

20 IN WITNESS WHEREOF the GENERAL CASUALTY & SURETY COMPANY has caused this Policy to be executed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

Countersigned by	Elmer H. Dearth
E. E. Charlton.	President.
Authorized Representative	B. Frank Bushman
	Secretary.

RIDER:

30 GENERAL CASUALTY & SURETY COMPANY,  
DETROIT, MICH.

Special endorsement for Atlantic City only.

It is understood and agreed that Condition L. of this policy is hereby amended to read:

“The liability of the Company for loss from any accident resulting in bodily injury to or death of

any person or persons is limited to Five Thousand Dollars (\$5,000)."

And it is further understood and agreed that that portion of Condition A, now reading:

"(5) being used for rental or livery purposes or for carrying of passengers for a consideration." is hereby eliminated and shall form no part of the policy contract. This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated. 10

Attached to and forming part of Automobile Policy No. AA 58519 of the GENERAL CASUALTY & SURETY COMPANY, issued to Cleveland G. Waites.

GENERAL CASUALTY & SURETY COMPANY

Elmer H. Dearth,  
President.

B. Frank Bushman  
Secretary. 20

Countersigned by:

E. E. Charlton.

Authorized Representative.

SECOND RIDER:

GENERAL CASUALTY & SURETY COMPANY,

Detroit, Mich.

Endorsement.

Atlantic City, N. J.

Notwithstanding anything here contained to the contrary, this Company will pay any final judgments within the limits of this policy as stipulated in Condition L. recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto, and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described 30

in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called 'Jitneys,' their operation in cities," approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto.

10 Notice of occurrence of an accident, claim of injury or legal suit when served upon the Company by the Fiscal Officer of the City of Atlantic City, State of New Jersey, shall be deemed and taken to be a notice as required to be given by the Assured under the terms of Paragraphs A. and B. of this contract.

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

20 This endorsement is subject, however, to all the conditions, agreements and limitations of the policy as written, except as herein specifically stated.

Attached to and forming part of Policy No. AA 58519 of the General Casualty & Surety Company issued to Cleveland G. Waites.

(Signed) E. E. Charlton

Agent.

**BACK OF POLICY:**

Home Office Detroit, Mich.  
Automobile Liability Policy.  
AA No. 58519.

30

**READ YOUR POLICY.**

Issued to Cleveland G. Waites.  
Expires August 21st, 1924.  
Premium \$140.00.

Gale, Incorporated,  
313 Guarantee Trust Bldg.,  
Atlantic City, N. J.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

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BENJAMIN McCLELLAN, <i>Plaintiff-Respondent.</i>	}	Action at Law. Notice of Appeal	10
<i>v.</i> GENERAL CASUALTY & SURETY COMPANY, <i>a corporation.</i> <i>Defendant-Appellant.</i>			
LAURA O'NEILL, <i>Plaintiff-Respondent,</i>	}	Action at Law. Notice of Appeal	20
<i>v.</i> GENERAL CASUALTY & SURETY COMPANY, <i>a corporation.</i> <i>Defendant-Appellant.</i>			
ADELE ROWAN, <i>Plaintiff-Respondent,</i>			
<i>v.</i> GENERAL CASUALTY & SURETY COMPANY, <i>a corporation,</i> <i>Defendant-Appellant.</i>			

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To Paul M. Salsburg, Esquire, Attorney for 30  
*Plaintiffs-Respondent:*

Take Notice, that the defendant in each case ap-  
peals to the Supreme Court of the State of New

Jersey from the whole and every part of the judgment entered in the case.

WILLIAM CHARLTON,  
*Attorney for Defendant-Appellant.*

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[ENDORSED]

10

Due and legal service of a copy of the within notice hereby acknowledged this 8th day of July, 1925.

Paul M. Salsburg,  
Atty. for Plaintiff-  
Respondents.

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GROUNDS OF APPEAL.

NEW JERSEY SUPREME COURT.  
ATLANTIC COUNTY.

BENJAMIN McCLELLAN,  
v.  
GENERAL CASUALTY & SURETY  
COMPANY, etc.

ADELE ROWAN,  
v.  
GENERAL CASUALTY & SURETY  
COMPANY, etc.

LAURA O'NEILL,  
v.  
GENERAL CASUALTY & SURETY  
COMPANY, etc.

On Appeal.  
Action at Law.  
Notice.  
Grounds of Appeal.

10

20

To Paul M. Salsburg, Esquire, Attorney for Com-  
plainant-Respondents:

Take Notice, that the following are the grounds of appeal which defendant-appellant will rely upon at the hearing of this cause: 30

First: The Court wrongfully construed the second rider to the policy.

Second: At the time of the accident, the automobile of Cleveland G. Waites was not being used as a jitney as required by the policy.

Third: The verdict was against the weight of the evidence in that it was undisputed.

10 Fourth: That the accident happened at a distance of eighteen miles from Atlantic City while the automobile of Waites was being driven on a pleasure trip and under the direction of other persons than the owner and driver.

Fifth: Because the Court denied the defendant's motion to direct the verdict.

Sixth: Because the Court determined its judgment upon the policy and that determination was not proper in law.

20 Seventh: Because the complainants were not entitled to the benefit of the policy under the facts of the case.

WILLIAM CHARLTON,  
*Attorney for Defendant-Appellant.*

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[ENDORSED]

30 Due and legal service of a copy of the within grounds of appeal hereby acknowledged this 4th day of August, 1925.

Paul M. Salsburg,  
Attorney for Plaintiffs-  
Respondents.

RULE AFFIRMING JUDGMENT AND  
REMITTITUR.

NEW JERSEY SUPREME COURT.

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BENJAMIN McCLELLAN, <i>Plaintiff-Respondent,</i>	} On Appeal from At- lantic County Cir- 10 cuit Court.
v.	
GENERAL CASUALTY & SURETY COMPANY, <i>a corporation,</i> <i>Defendant-Appellant.</i>	} Rule Affirming Judgment and Re- mittur.

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This cause having been duly argued at the October Term, 1925, of this Court by Paul M. Salsburg, of counsel for plaintiff-respondent, and William Charlton, of counsel for defendant-appellant, and the Court having considered the same, and finding no error in the record or proceedings in the Atlantic County Circuit Court — 20

It is thereupon, on this fifteenth day of November, in the year of our Lord, one thousand nine hundred and twenty-six, ordered and adjudged that the judgment of the Atlantic County Circuit Court, removed by appeal in this cause, be affirmed with costs; and that the record be remitted to the Atlantic County Circuit Court to be proceeded with in accordance with the judgment and the practise of this Court. 30  
Entered November 15, 1926.

On motion of

PAUL M. SALSBURG,  
*Attorney for Plaintiff-Respondent.*

RULE AFFIRMING JUDGMENT AND  
REMITTITUR.

NEW JERSEY SUPREME COURT.

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10 ADELE ROWAN,  
Plaintiff-Respondent, } On Appeal from At-  
v. } lantic County Cir-  
GENERAL CASUALTY & SURETY } Rule Affirming  
COMPANY, a corporation, } Judgment and Re-  
Defendant-Appellant. } mittur.

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20 This cause having been duly argued at the October Term, 1925, of this Court by Paul M. Salsburg, of counsel for plaintiff-respondent, and William Charlton, of counsel for defendant-appellant, and the Court having considered the same, and finding no error in the record or proceedings in the Atlantic County Circuit Court —

30 It is thereupon, on this fifteenth day of November, in the year of our Lord, one thousand nine hundred and twenty-six, ordered and adjudged that the judgment of the Atlantic County Circuit Court, removed by appeal in this cause, be affirmed with costs; and that the record be remitted to the Atlantic County Circuit Court to be proceeded with in accordance with the judgment and the practise of this Court. Entered November 15, 1926.

On motion of

PAUL M. SALSBURG,  
*Attorney for Plaintiff-Respondent.*

RULE AFFIRMING JUDGMENT AND  
REMITTITUR.

NEW JERSEY SUPREME COURT.

---

LAURA O'NEILL, <i>Plaintiff-Respondent,</i>	} On Appeal from At- lantic County Cir- cuit Court.	10
v.		
GENERAL CASUALTY & SURETY COMPANY, <i>a corporation,</i>	} Rule Affirming Judgment and Re- mittitur.	
<i>Defendant-Appellant.</i>		

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This cause having been duly argued at the October Term, 1925, of this Court by Paul M. Salsburg, of counsel for plaintiff-respondent, and William Charlton, of counsel for defendant-appellant, and the Court having considered the same, and finding no error in the record or proceedings in the Atlantic County Circuit Court — 20

It is thereupon, on this fifteenth day of November, in the year of our Lord, one thousand nine hundred and twenty-six, ordered and adjudged that the judgment of the Atlantic County Circuit Court, removed by appeal in this cause, be affirmed with costs; and that the record be remitted to the Atlantic County Circuit Court to be proceeded with in accordance with the judgment and the practise of this Court. 30  
Entered November 15, 1926.

On motion of

PAUL M. SALSBURG,  
*Attorney for Plaintiff-Respondent.*

## NOTICE OF APPEAL.

(Filed December 2, 1926.)

## NEW JERSEY SUPREME COURT.

10 BENJAMIN McCLELLAN,  
*Plaintiff-Respondent,*  
 v.

GENERAL CASUALTY & SURETY  
 COMPANY, a corporation,  
*Defendant-Appellant.*

ADELE ROWAN,  
*Plaintiff-Respondent,*  
 v.

20 GENERAL CASUALTY & SURETY  
 COMPANY, a corporation,  
*Defendant-Appellant.*

LAURA O'NEILL,  
*Plaintiff-Respondent,*  
 v.

GENERAL CASUALTY & SURETY  
 COMPANY, a corporation,  
*Defendant-Appellant.*

On Appeal From  
 New Jersey Su-  
 preme Court.  
 Notice of Appeal.

30

*To Paul M. Salsburg, Esq., Attorney for and of coun-  
 sel with Plaintiff-Respondent:*

Take notice, that defendant, General Casualty &  
 Surety Co., a corporation, appeals from the whole of

the judgment entered in the above cause, to the Court of Errors and Appeals. Issue tried before Honorable Theodore W. Schimpf, Esq., Circuit Court Judge, and affirmed on appeal to the Supreme Court.

Respectfully,

WILLIAM CHARLTON,  
*Attorney for Defendant-Appellant.*

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[ENDORSED]

Due and legal service of a copy of the within notice hereby acknowledged this 27th day of November, 1926.

Paul M. Salsburg,  
Attorney for Plaintiffs-Respondent.

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GROUNDS OF APPEAL.

(Filed December 1, 1926.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

BENJAMIN McCLELLAN,  
*Plaintiff-Appellee,*

v.

GENERAL CASUALTY & SURETY  
COMPANY, a corporation,  
*Defendant-Appellant.*

ADELE ROWAN,  
*Plaintiff-Appellee,*

v.

20 GENERAL CASUALTY & SURETY  
COMPANY, a corporation,  
*Defendant-Appellant.*

LAURA O'NBILL,  
*Plaintiff-Appellee,*

v.

GENERAL CASUALTY & SURETY  
COMPANY, a corporation,  
*Defendant-Appellant.*

On Appeal.  
Grounds of Appeal.

30

*To Paul M. Salsburg, Esq., Attorney for Plaintiffs-Appellees:*

Take notice, that the following are the grounds of appeal upon which defendant-appellant will rely in the Court of Errors and Appeals:

1. That the Supreme Court erred in affirming the judgment under review.

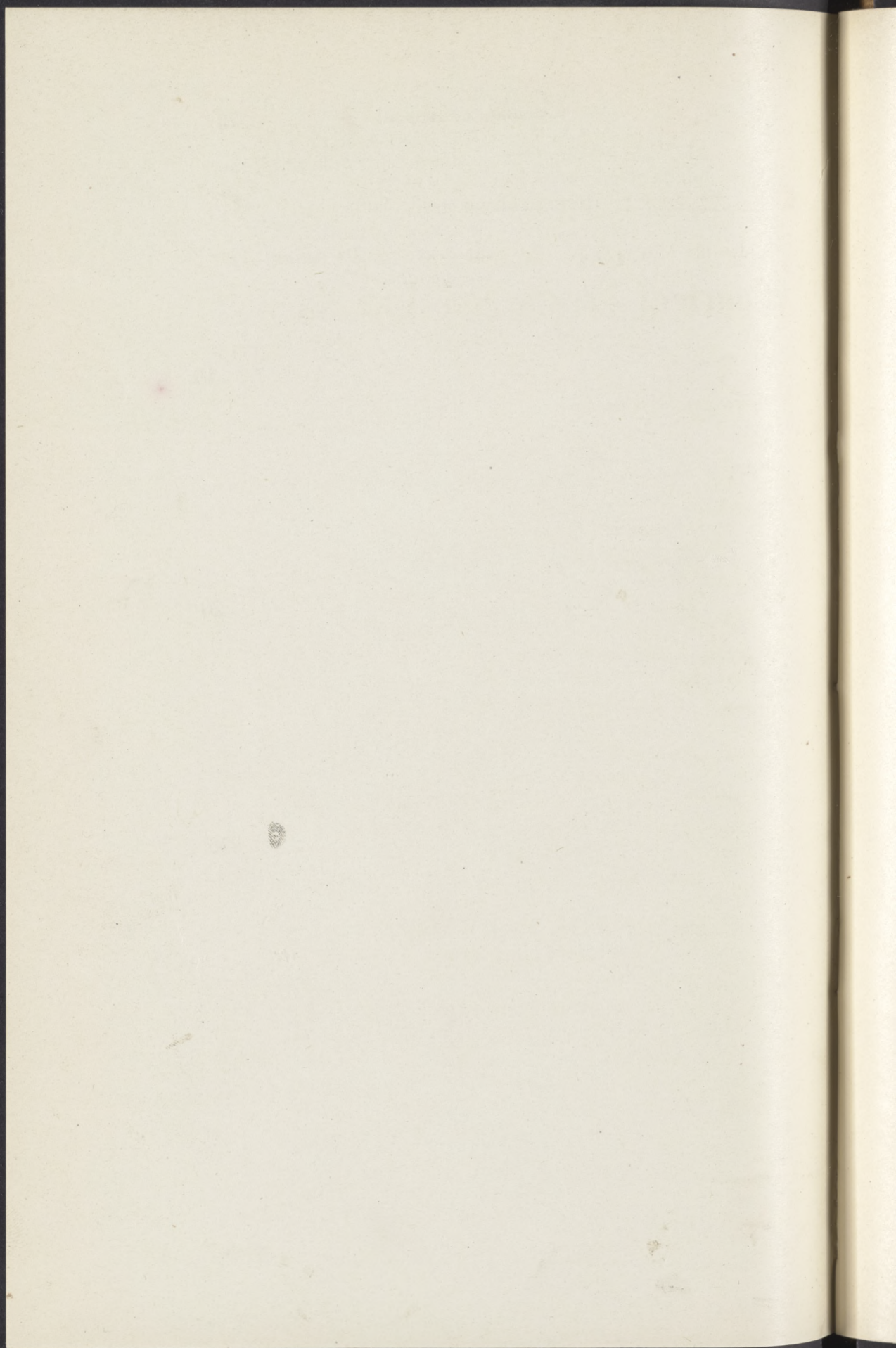
Respectfully yours,

WILLIAM CHARLTON,  
*Attorney for Defendant-Appellant.*

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30



## NEW JERSEY Court of Errors and Appeals.

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BENJAMIN McCLELLAN,  
*Plaintiff-Respondent,*  
*vs.*  
GENERAL CASUALTY & SURETY  
COMPANY, A CORPORATION,  
*Defendant-Appellant.* )  
On Appeal from New  
Jersey Supreme Court

ADELE ROWAN,  
*Plaintiff-Respondent,*  
*vs.*  
GENERAL CASUALTY & SURETY  
COMPANY, A CORPORATION,  
*Defendant-Appellant.* )  
On Appeal from New  
Jersey Supreme Court

LAURA O'NEILL,  
*Plaintiff-Respondent,*  
*vs.*  
GENERAL CASUALTY & SURETY  
COMPANY, A CORPORATION,  
*Defendant-Appellant.* )  
On Appeal from New  
Jersey Supreme Court

### BRIEF FOR PLAINTIFFS- RESPONDENTS.

#### General Statement.

These cases were tried together on June 19, 1925, at the Atlantic County Circuit Court, before his Honor Judge Schimpf, without a jury, and resulted in a find-

ing by the learned trial Judge in favor of the plaintiffs against the defendant in that court with permission to enter judgment for plaintiff-respondent Laura O'Neill, \$711.26 and costs; for plaintiff-respondent Adele Rowan for \$1,069.14 and costs, and for plaintiff-respondent Benjamin McClellan for \$557.66 and costs. (Case, page 55.) The situation presented to the Circuit Court was the culmination of a series of facts and judicial proceedings which may be briefly stated as follows: The appellant company issued its policy of indemnity insurance in the sum of \$5,000.00 to Cleveland G. Waites, upon his jitney bus under the provisions of the Act of March 17, 1916, Chapter 136 (P. L., p. 238). The policy was issued and dated August 21st, 1923, effective for the period of one year. While the policy was in force, and while the bus was in operation by the owner, the assured plaintiffs-respondents sustained injuries for which they separately sued the jitney owner and obtained verdicts in the Atlantic County Circuit Court, upon which, after some reduction in two instances by the trial court upon rules to show cause, the judgments were entered for plaintiff McClellan for \$500.00, for plaintiff Rowan for \$1,250.00, and for plaintiff O'Neill for \$650.00, besides costs in each case. These judgments not being paid or collected, suits were brought in the Atlantic County Circuit Court against the appellant upon the policy of indemnity filed by it with the city of Atlantic City, the defendant company being the insurer, and judgment was obtained for the sums of \$711.26, \$1,069.14 and \$557.56 as respectively above mentioned. From these judgments appeals were taken to the New Jersey Supreme Court, and each of said judgments were affirmed with costs. From these judgments these appeals are taken.

## LAW.

### I.

The record on appeal is defective.

The printed case discloses no judgments transmitted to this court with the appeals. Therefore, under the settled practice, there would seem to be nothing before the court to affirm or reverse.

*Flaherty v. North Jersey Street Railway Company*, 72 N. J. L. 312.

Passing for the present the question of defective appeal records, we broach the merits of the questions raised by the appeals.

The three complaints under which the judgments appealed from were obtained are identical in the following allegations: Paragraph 1, that defendant is a corporation authorized to contract to indemnify persons against loss from the liability imposed by law growing out of the operation of motor vehicle; paragraph 2, that it issued its policy or contract to Cleveland G. Waites, agreeing to indemnify him against loss from liability imposed by law for damages on account of bodily injuries accidentally received or caused by the automobile vehicle described therein; paragraph 3, that said Cleveland G. Waites owned and operated a certain motor vehicle commonly called a jitney and described in the policy; paragraph 4, that \* \* \* while the policy remained in force \* \* \* plaintiff suffered bodily injury caused by said automobile so described, owned and operated, and thereafter recovered against said Cleveland G. Waites \* \* \* final judgment in the Atlantic County Circuit Court on account thereof \* \* \* damages and costs; paragraph 5 alleges performance in the insured of conditions of the contract generally. A copy of the policy is attached to each complaint and referred to therein as annexed. The answer in each case admits paragraphs 1, 2, 3 and 4, and denies paragraphs 5 and 7. The complaint further

alleges (Par. 8) that by the terms of the policy the contract was for the benefit of the plaintiff, and thereby an action accrued to plaintiff to recover the amount of the judgments, which the answers also deny. The answers also set up as affirmative defenses (1) that the contract between the indemnity company only extends to the benefit of third persons by virtue of such statutes of the State of New Jersey as may impose such obligation on the defendant, and (2) plaintiffs are not within the benefit of this statute in said case made and provided because (a) the vehicle at the time of the injury was not being operated as a jitney in accordance with the statute, and (b) was not being operated within the limited route prescribed by statute.

Complaint—See case, pages 2-4.

Policy of Insurance—See case, pages 4-11.

Answer—See case, pages 12-13.

Testimony—See case, pages 43-51.

Findings—See case, pages 52-55.

When the case came to trial, together, the state of the pleadings was as above set forth that judgments against the insured had been admittedly obtained upon the verdict of a jury. No appeal was taken, but a rule to show cause had been allowed which resulted in the reduction in two instances of the amount of damages awarded by the jury. On familiar principles, therefore, all the facts necessary to justify a recovery against the insurer and to sustain the judgments recovered were conclusively presumed, for the purposes of these cases, to have been found by the jury in those cases. The liability imposed by law upon the assured for damages was thereby fixed, established and determined and the agreement of the insurance company to "indemnify the assured against loss from liability thus imposed" became immediately operative and forceful for the benefit of the assured. That the assured may under the terms of the policy, by suit for that purpose, compel the insurance company on its contract to indemnify him against his liability to respond in damages is certain, and this much

the company appellant concedes. The sole question on this appeal is whether under the terms of its contract with the assured the company has obligated itself to pay these judgments obtained by the plaintiffs-respondents. In other words, whether third persons may be entitled under the terms of the policy contract to the benefits thereof.

The pertinent clauses found in the policy are these:

The General Casualty & Surety Company \* \* \*  
 does hereby agree to indemnify the assured \* \* \*  
 against loss from the liability imposed by law upon the  
 assured for damages on account of bodily injuries  
 \* \* \* accidentally suffered \* \* \* by any per-  
 son or persons not employed by the assured, caused by  
 automobile vehicles described in statement numbered 5  
 of the schedule \* \* \* within the United States  
 and Canada, subject to the following conditions:

Condition A. This Policy does not cover (1) any obligation assumed or imposed upon the Assured by a Workmen's Compensation Law or agreement or plan, or (2) while any automobile vehicle is being used for or in any race or speed test, or (3) being driven by any person in violation of law as to age, or if there be no age limit, under the age of 16 years, or (4) being used for towing or propelling any trailer or any other vehicle used as a trailer, or (5) being used for rental or livery purposes or for the carrying of passengers for a consideration. (Condition A, Paragraph 5, is eliminated by being crossed off on the face of the policy in red ink and by a rider annexed to the policy as appears on page 10 of the case, line 6.) Also see case, pages 4-5.

Statement 7. The purposes for which the above-described automobiles are to be used are jitney. Statement 9. The automobiles covered hereby are and will be principally used in the city or town (and its vicinity) of Atlantic City, N. J. (Schedule, case, page 9.)

Notwithstanding anything herein contained to the contrary, this Company will pay any final judgments within the limits of this policy as stipulated in Condi-

tion L, recovered by any person or persons on account of the ownership, maintenance and use of the automobile described herein, or any fault in respect thereto; and it is further understood that this contract shall be for the benefit of every person suffering loss, damage or injury as described in this contract or as described in the terms of an act entitled "An Act concerning auto busses, commonly called "Jitneys," their operation in cities," approved March 17th, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey, and supplements and amendments thereto.

The judgments under review appear to be criticized in appellant's brief upon two principal grounds. 1. That at the time of the accident the automobile was not being operated for pay nor operating as a passenger vehicle on the prescribed route covered by its local license. 2. That the contract, rightfully construed, is one solely for the indemnity of the assured and does not extend its benefits to third persons. Hence the contention below and here on the part of the defendant-appellant is that the policy does not cover the accident. This contention obviously ignores the plain language of the policy, the adjudged cases construing the same contract in other cases, and the finding of the Court below in these cases. The learned Judge found as facts as follows:

Egg Harbor is in the vicinity of Atlantic City. The automobile on October 7th, 1923, while being operated carrying passengers for hire, collided with and injured plaintiffs.

That finding is, on familiar principles, conclusive.

The late Vice-Chancellor Stevens, in *Madison v. Morristown Gaslight Co.*, 63 N. J. E. 120, sheds much light on what is meant by the term "vicinity," at page 122. This profound jurist, after discussing the interpretation to be given to the word vicinity as found in the contract which he was then construing, says: "Vicinity is defined by Webster as 'that which is near and not remote.' Certainly to a Legislature speaking from Trenton, sixty

miles distant, Madison would be understood as being in the vicinity of—near—not remote from Morristown. In Jacob's law dictionary the term "vicinetum" is defined as "locus quem vicini habitant," and Burrill's law dictionary it is said to have been anciently understood of the same vill or the parts adjacent, but in later law of the same county."

And so there may be added to what has been said that from time immemorial it has been understood that a jury of the vicinage includes a citizen living in the remotest part of a county, regardless of its territorial extent, and at a great distance from the place where the litigants reside and whose controversy is to be tried by a jury.

In *Connell v. Commonwealth Casualty Company* (Errors and Appeals, 1921), 96 N. J. L. 510, the defendant issued its policy of accident insurance to a jitney owner and operator to enable him to operate his bus in Passaic, N. J., Garfield, N. J., Lodi, N. J., and vicinity. While taking the bus from its accustomed route to Brooklyn, N. Y., to be used for passenger service in a pending strike in that municipality, the bus collided with a pedestrian on a street in Newark, N. J., and so injured him that he afterward died. Judgment was recovered against the jitney owner and operator for \$5,000.00, the amount limited in the policy. The judgment being unpaid, suit was instituted and judgment recovered against the insurer. At the time of the accident the bus was without passengers. In that case, as here, it was contended that the accident not having occurred while the bus was being operated within the route prescribed by its local license, that it was not covered by the policy. However, the Court said per Mr. Justice Minturn:

"The difficulty inherent in this construction is that it ignores the other provisions of the policy bearing upon the subject-matter of the limitations of the indemnity,  
\* \* \* While it is true that in this instance the policy in its fifth item provides that the purpose for

which the automobiles are to be used and will continue to be used during the period of this policy are 'passenger service' in 'Passaic, N. J., Garfield, N. J., Lodi, N. J., and vicinity,' this limitation must be construed with reference to the fact that the route of passenger service is enlarged from the specific municipalities enumerated to their vicinity; and we will take judicial notice of the fact that the City of Newark, where the accident happened, is in the vicinity of the places enumerated."

The learned Justice further says:

"The vehicle lost none of its characteristics as a jitney because it was without passengers at the time, or because its movements were directed to Brooklyn to engage in the passenger service there. Whether at rest or in operation, or in the act of undergoing reparation, on the municipal route or apart from it, it still retained its passenger characteristics as a jitney bus under the policy of insurance, so far as the general public were concerned. Any violation of the jitney act was a matter between the operator and the municipality under whose license he was operating. But, while the policy of insurance remained in force, its legal effect as an indemnity to the traveling public cannot be minimized by any extraneous act or default of the insured, so long as he is conducting the vehicle within the general scope of the purpose for which the jitney car was insured." Citing *Gillard vs. Manufacturers' Insurance Company*, 93 N. J. L. 215.

The cited case construes the language of a provision contained in a policy of insurance issued under the Jitney Statute, or Kates Act, so called, which is identical with that of the second rider to appellant's policy and hereinabove quoted. The contention there was that the right of the plaintiff to sue after judgment recovered against the jitney owner and operator is derivative in character and depends entirely upon the rights of the insured under the terms of the policy. The application of that argument was directed to the fact that the insured failed to give notice of the accident and of the pendency of the

suit against him to the insurer, as required by the terms of the policy, and, therefore, the right of the plaintiff in that case to recover against the insured was to be determined by the status thus acquired by the insured, which in effect constituted a breach of the agreement, but the Court of Errors said, by Mr. Justice Minturn who delivered the opinion:

"The contention, it is obvious, ignores the express provision of the policy already quoted, which manifestly was contemplated to meet the situation here presented; for it provides 'that notwithstanding anything herein 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 the ownership, maintenance and use of automobiles, etc.,' and the further provision that 'this contract shall be for the benefit of every person suffering loss, damage or injury, etc.'"

In *Boyle vs. Manufacturers' Liability Insurance Co.*, 96 N. J. L. 380, this Court, considering an indemnity contract containing the same provision, said, speaking of *Gillard vs. Manufacturers' Insurance Co.*, *supra*:

"That adjudication demonstrates that the policy of jitney insurance is one of indemnity under the statute for the benefit of the traveling public, and that whatever legal rights or equities that may subsist as between the insured and insurer by reason of any violation of the term of the policy cannot affect the rights of the public who claim under its provisions after such claim has been substantiated by a judgment at law."

That declaration received the approval of this Court in *Bess v. Commonwealth Casualty Co.*, 3 *Adv. Rep.* 637 (see page 641).

The plaintiffs-respondents are content to rest upon the findings of fact and the resulting judgment in the court below and affirmed by the Supreme Court.

It is respectfully submitted that the judgments appealed from should be affirmed if in the present state of

the appeal records, the appeals can be considered, otherwise the appeals should be dismissed.

PAUL M. SALSBERG,  
*Attorney for and of Counsel with  
Plaintiffs-Respondents.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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BENJAMIN McCLELLAN,  
*Plaintiff-Respondent,*

v.

GENERAL CASUALTY & SURETY Co.,  
a corporation,  
*Defendant-Appellant.*

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ACTION AT LAW.

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ON APPEAL.

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ADELE ROWAN,  
*Plaintiff-Respondent,*

v.

GENERAL CASUALTY & SURETY Co.,  
a corporation,  
*Defendant-Appellant.*

---

ACTION AT LAW.

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ON APPEAL.

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LAURA O'NEILL,  
*Plaintiff-Respondent,*

v.

GENERAL CASUALTY & SURETY Co.,  
a corporation,  
*Defendant-Appellant.*

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ACTION AT LAW.

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ON APPEAL.

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BRIEF OF DEFENDANT-APPELLANT.

## STATEMENT OF FACTS.

On August 21st, 1923, General Casualty & Surety Company, a corporation, issued its policy of insurance #AA-58519 to one Cleveland G. Waites, who was then and there the owner and driver of a jitney under the ordinances and regulations of the City of Atlantic City, State of New Jersey.

The regulations of the City of Atlantic City respecting jitneys are based solely upon P. L. 1916—Chapter 136, and the amendments thereof.

In October, 1923, while the policy was in force, Waites entertained a party of his friends on a pleasure trip out into Atlantic County. He was not hired, but his friends donated \$5.00 to him for gasoline, oil and repairing a tire, which were necessary for the trip. He had removed all of the insignia of jitneys required by the laws of New Jersey and the ordinances of Atlantic City, except the fixed insignia consisting of an illuminated sign across the jitney and the numbers painted on the lenses of the headlights.

The route he followed out into Atlantic County beyond the city limits of Atlantic City, was a route directed by his guests. He drove from Atlantic City to Pleasantville, to Mays Landing, to Egg Harbor, and was headed in the direction of Atlantic City again at the time of the collision hereafter referred to.

While headed toward Atlantic City at a point about one mile from Egg Harbor City, Atlantic County, New Jersey, which spot is about eighteen miles outside of the city limits of Atlantic City, an accident occurred in which the three plaintiffs-respondents suffered bodily injuries.

Three actions were brought in the Atlantic County Circuit Court, one for each of the three plaintiffs-respondents against Cleveland G. Waites, and a verdict given against Waites by a jury in various amounts. On rule to show cause, these verdicts were reduced in two cases and sustained in the other case, of which more fully appears by the state of the case, the amounts being only incidental to this brief.

The plaintiffs-respondents failed to collect their damages from Waites and instituted actions in the Atlantic County Circuit Court against the General Casualty & Surety Company, upon its policy with Waites, for the various amounts of their judgments and costs. The three cases were tried as one at the Circuit by consent and were agreed to be appealed as one inasmuch as they contained the same statement of law and facts.

The Circuit Court sat without a jury and gave judgment for the plaintiffs, basing its judgments only upon the terms of the policy without regard to P. L. 1916—Chapter 136, the opinion of the Court being found at page 52 of the state of the case.

Defendant-appellant has appealed from those judgments.

#### LAW.

The liability of the General Casualty & Surety Company is twofold. That which it voluntarily undertook and that which was thereupon imposed upon it by the statute. P. L. 1916, Chapter 136, known as the "Jitney Law." Certainly it should not be made liable under its voluntary undertaking, because that, under the terms of the policy, is only to indemnify the assured (Waites) against loss from the liability imposed by law upon him, and he is not here, the plaintiff-respondent.

It is, therefore, argued that the Court should have granted to motion to direct the verdict in favor of the defendant-appellant at the conclusion of the case. It will be noted that the Court decided the case entirely upon the voluntary undertaking of the defendant-appellant.

As to the liability imposed upon the defendant-appellant by statute, it will be noticed that the accident occurred at a distance of eighteen miles from Atlantic City and did not occur by reason of the ownership, maintenance or use of such auto-bus upon the public streets of Atlantic City. P. L. 1916—Chapter 136.

It is true that the Court found that under the voluntary contract of the defendant-appellant, it had insured Waites for use of the automobile in the vicinity of Atlantic City, but it was argued, too, that was its voluntary contract and must be dealt with separately and cannot be considered under a determination of its involuntary contract under P. L. 1916, Chapter 136, which makes the injuries suffered necessary to have occurred while the automobile was being operated upon the public streets of the city. It might additionally be pointed out that if a distance of eighteen miles from Atlantic City is in its vicinity, then if one were in California, it would be as easy to say that Philadelphia is in the vicinity of New York and Plainfield in the vicinity of Newark.

It seems also clear from a reading of the statute that an automobile used as a jitney must be operated over public streets of the city and indiscriminately accepting and discharging such persons as offer themselves for transportation at various points along the route. This automobile obviously was not doing this upon the occasion in question.

The defendant-appellant argues that in construing this case, the policy of the law is of great importance. It seems obvious that the Jitney Act was passed requiring the insurance, as it does, to protect persons who might be walking or riding upon the streets in the city and who might be injured by misuse of a public vehicle. It was certainly not intended to cover persons riding or walking at a distance of eighteen miles from a municipality and it cannot be said with good force that the defendant-appellant in making its contract comply with the law, intended that it should be bound to protect such persons and have the benefits of the policy inure to them.

When the defendant-appellant made its policy and entered its rate, it did so intending to comply with the spirit of the law and was willing and is willing to pay such indemnity as it ought to pay under the law, but to hold it to pay damages to the plaintiffs-respondents in the circumstances in this case, it is argued, is to compel it to do something that it neither voluntarily undertook nor was required to do by the statute. Reference is made to the clear opinion of Mr. Justice Campbell, in "*Bess v. Commonwealth Casualty Company*," Vol. 3, N. J. Advance Reports, page 637.

The Supreme Court, in its opinion, does not touch upon the use of the automobile at the time the accident occurred. Testimony shows that it was being used upon a pleasure trip and not for hire, and defendant-appellant argues that this apparently is the crux of this appeal.

Wherefore defendant-appellant prays that the judgment may be reversed.

WILLIAM CHARLTON,  
*Attorney for Defendant-Appellant.*