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Complaint.

(Filed Dec. 10, 1921.)

New Jersey Supreme Court.

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MOLLIE BESS, by next friend
ISRAEL GALENTER,
Plaintiff,

v.

COMMONWEALTH CASUALTY COM-
PANY of Philadelphia, a cor-
poration,
Defendant.

Action at Law.

20

The plaintiff, Mollie Bess, an infant, by next friend Israel Galenter and Israel Galenter, individually, say that:

1. On January 3, 1919, the defendant issued its automobile bus liability policy of insurance numbered A B 54566, in the sum of \$5,000.00, under the statute of the State of New Jersey, in such case made and provided, which policy covered Reo car numbered 22649. Said policy was duly filed in the office of the Treasurer of the City of Bayonne.

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2. From and after January 3, 1919, one Andrew Peti operated said auto bus over the public highways of the City of Bayonne.

3. On January 9th, 1919, the plaintiff, Mollie Bess, was injured by the negligent operation of the aforesaid bus while said bus was being operated by the said Andrew Peti.

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Complaint.

4. On December 11th, 1920, judgment was entered in favor of the above named plaintiffs against Andrew Peti hereinbefore mentioned for the injury aforesaid in the sum of \$6,000, \$5,000 being in favor of the plaintiff Mollie Bess, and \$1,000 in favor of the plaintiff, Israel Galenter.
10 The said Mollie Bess being formerly Mollie Galenter and having since married. Costs were also entered in the sum of \$57.74.

5. The defendant notwithstanding its liability on the policy of insurance aforesaid, has declined to pay the judgment recovered by the said plaintiffs, although requested to do so.

Judgment will be demanded for the sum of \$5,000 and lawful interest by both plaintiffs.

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ALEXANDER SECLOW,
Attorney for Plaintiffs.

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Answer.

(Filed Feb. 11, 1922.)

NEW JERSEY SUPREME COURT.

MOLLIE BESS, by next friend
ISRAEL GALENTER,
Plaintiff,

v.

COMMONWEALTH CASUALTY COM-
PANY of Philadelphia, a cor-
poration,
Defendant.

Action at Law.

10

Defendant, a corporation of the State of Penn-
sylvania, answering the complaint of the plain-
tiffs, says that:

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1. It denies all the allegations contained in
Paragraphs 1 to 4, inclusive, of the complaint.

FIRST SEPARATE DEFENSE:

1. This defendant did not, on January 3 or Jan-
uary 6, issue any policy of insurance to Andrew
Peti or Petit, and did not consent to the transfer
of any policy of insurance from any person to
Andrew Peti or Petit, and never assumed any
liability by any policy of insurance or transfer
thereof, or in any other manner, for the negli-
gence of the said Andrew Peti or Petit, for dam-
age or injury incurred as the result of said negli-
gence of the said Andrew Peti or Petit, and is,
therefore, not liable or responsible to the plaintiffs
or either of them upon any judgment procured by
them or either of them.

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LAZARUS & BRENNER,
Attorneys of Defendant.

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Reply.

(Filed Feb. 11, 1922.)

NEW JERSEY SUPREME COURT.

MOLLIE BESS, by next friend
ISRAEL GALENTER,
Plaintiff,

v.

COMMONWEALTH CASUALTY COM-
PANY of Philadelphia, a cor-
poration,
Defendant.

} Action at Law.

The plaintiffs join issue with the defendant on
its answer.

ALEXANDER SECLOW,
Attorney for Plaintiffs.

Agreed Facts Stipulated by the Parties.

(Filed Oct. 18, 1924.)

NEW JERSEY SUPREME COURT.

MOLLIE BESS by next friend
ISRAEL GALENTER and ISRAEL
GALENTER, individually,
Plaintiffs,

v.

COMMONWEALTH CASUALTY COM-
PANY, a corporation,
Defendant.

Action at Law

The parties hereto, by their respective counsel,
stipulate and agree as follows:

1. On January 3rd, 1919, the defendant issued to Patsy Pirozi, an automobile liability policy, with a limited amount of liability in the sum of \$5000 which policy was #AB54566. This policy purported to cover a Reo car #22649, which was a jitney bus owned by Andrew Petti. The policy of Insurance, however, was not issued to Andrew Petti, but to Pirozi, and was not transferred by Patsy Pirozi to Andrew Petti. The policy aforesaid was filed in the office of the City Treasurer of the City of Bayonne.

2. Prior and subsequent to January 3rd, 1919, Andrew Petti owned said auto and operated the same over the public highways of the City of Bayonne.

3. On January 9th, 1919, plaintiff, Mollie Bess was injured through the negligent operation of said

Agreed Facts Stipulated by the Parties.

automobile bus while it was owned and operated by said Andrew Petti. At the time of her injury, the bus was being used for the purpose of carrying passengers over the public streets and highways of the City of Bayonne.

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4. To recover for the injuries sustained by the plaintiff, Mollie Bess and the loss sustained by her father, Israel Gallenter, a suit was instituted in the Supreme Court, at the Hudson Circuit, such suit being brought by Molly Bess by Israel Gallenter her next friend and Israel Gallenter individually against Patsy Pirozi and Andrew Petti.

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6. At the first trial, a nonsuit was directed in favor of Patsy Pirozi and against the plaintiffs, on the ground that he being neither the owner or operator of the automobile he incurred no liability. The jury disagreed as to the liability of Andrew Petti and a mistrial resulted. At the second trial, a verdict was rendered against Andrew Petti and in favor of the plaintiff Mollie Bess in the sum of \$5000 and in favor of the plaintiff Israel Gallenter in the sum of \$1000 and judgment entered thereon, from which judgment an appeal was taken, but the judgments affirmed with costs.

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7. No payment has been made by the defendants on account of said judgment, the defendant contending at all times that it incurred no liability, because it had issued no policy of insurance to Andrew Petti and had never consented to transfer any policy of insurance held by Pirozi or any other person to Andrew Petti.

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8. It is further agreed that the policy of insurance issued by the defendant to Pirozi shall be produced at the trial of this case by the plaintiffs or their attorney, which policy of insurance shall

Supplemental Stipulation.

be considered as a part of this agreed state of facts.

ALEXANDER SECLOW,

Attorney of Plaintiffs.

LAZARUS, BRENNER & VICKERS,

Attorneys of Defendant.

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Supplemental Stipulation.

(Filed Oct. 18, 1924.)

NEW JERSEY SUPREME COURT.

MOLLIE BESS, by her next friend,
ISRAEL GALENTER and ISRAEL
GALENTER, individually,
Plaintiffs,

v.

COMMONWEALTH CASUALTY COM-
PANY, of Philadelphia, a cor-
poration,
Defendant.

Action at Law.

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The parties agree to the admission of the follow-
ing record of the City Treasurer of Bayonne, New
Jersey:

30

ANDREW PETTI

January 3, 1919. Bond \$5000, Commonwealth
Casualty Company, #AB54566 filed. Expires
April 3, 1919.

January 3, 1919. Power of Attorney filed.

January 10, 1919. Consent to transfer by Board
of Commissioners to Andrew Petti, 78 West
21st Street.

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Second Supplemental Stipulation.

The parties further stipulate that the following testimony given by Joseph Buckley, in charge of the records of jitney buses of the City of Bayonne, which testimony was given at a former trial, shall be considered part of the record in this trial:

10 "A. I have an application, an agreement of Patsy Parosi, dated July 5, 1918. It was passed by Director of Revenue and Finance July 19th, 1918, and also I have an application for a transfer from Patsy Parosi to Andrew Pati, presented to the Board of Commissioners January 6 and granted by the Board of Commissioners January 10, 1919.

ALEXANDER SECLOW,

Attorney for Plaintiffs.

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LAZARUS, BRENNER & VICKERS,

Attorneys for Defendant.

Second Supplemental Stipulation.

(Filed Oct. 18, 1924.)

NEW JERSEY SUPREME COURT,

HUDSON CIRCUIT.

30

MOLLIE BESS by next friend
ISRAEL GALENTER and ISRAEL
GALENTER, individually,
Plaintiffs,

v.

COMMONWEALTH CASUALTY COM-
PANY (of Philadelphia) a cor-
poration,

Defendant.

} Action at Law.

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Second Supplemental Stipulation.

IT IS FURTHER STIPULATED between the parties that:

1. Mollie Galenter is married and is the same person as Mollie Bess, one of the present plaintiffs.

2. The license to operate the bus in question as a jitney was issued by the Bayonne authorities in the name of Patsy Pirozi, and this license was transferred to the name of Andrew Peti by the Bayonne authorities the day after the accident. 10

3. Andrew Peti was the owner of the bus involved in the accident, and was operating the same as a jitney bus prior to, at the time of, and subsequent to, the occurrence of the accident.

4. The endorsement folded in the insurance policy as to change of ownership, dated January 15, 1919, is to be considered as a part of the policy offered in evidence. 20

5. The power of attorney from Andrew Peti and the statement of auto bus receipt for January, 1919, are about to be considered as part of the case.

ALEXANDER SECLOW,

Attorney for Plaintiff.

LAZARUS, BRENNER & VICKERS,

Attorneys for Defendant. 30

Automobile Liability Policy.

No. AB 54447

Limit, \$5,000

COMMONWEALTH CASUALTY COMPANY

PHILADELPHIA, PA.

10 IN CONSIDERATION of the Premium and the State-
ments as set forth in the attached Schedule, and
which Schedule the Assured makes and warrants
to be true by the acceptance of this Policy, the

COMMONWEALTH CASUALTY COMPANY

OF PHILADELPHIA, PENNSYLVANIA
(hereinafter called the Company),

DOES HEREBY AGREE

20 SECTION I.—To INDEMNIFY the person, firm, or
corporation named in the attached Schedule, here-
inafter called the Assured, AGAINST LOSS FROM
THE LIABILITY IMPOSED BY LAW UPON THE
ASSURED, for damages on account of bodily in-
juries or death (or both) accidentally suffered or
alleged to have been suffered by any person or
persons not employed by the assured by reason of
the ownership, maintenance or use of the Auto-
mobile or Automobiles enumerated and described
herein: provided such injuries or death (or both)
be the result of accidents occurring during the
30 period this Policy is in force.

SECTION II.—To DEFEND at its own cost and in
the name and on behalf of the Assured, any legal
proceedings, even though groundless, that might
be instituted against the Assured, to enforce a
claim covered by this Policy, for damages on ac-
count of injuries or death (or both) suffered by
any person or persons during the period this
Policy is in force.

Automobile Liability Policy.

SECTION III.—To PAY all expenses of the Company's investigation and adjustment of claims; all costs taxed against the Assured in any legal proceeding, irrespective of the Company's liability as stated in Item XVII hereof; and the interest accruing on that part of the verdict or judgment that is not in excess of the Policy limits.

10

SECTION IV.—To PAY for such immediate medical and surgical relief as is imperative at the time of the accident, except for injuries to the Assured.

THE FOREGOING AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS:

SECTION V.

EXCLUSIONS.

This policy does not cover loss arising from claims made on account of accidents resulting from the use of the Automobile or Automobiles covered hereby: (a) While used for any other purpose than that stated in Item V. of the attached Schedule; (b) while being manipulated or driven in any race or speed contest; (c) while being manipulated or driven by any person under the age of sixteen years; (d) while being used or maintained at any time that is not within the Policy period; (e) while being used or maintained elsewhere than within the borders of the United States and Canada.

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SECTION VI.

WORKMEN'S COMPENSATION.

This Policy does not cover any obligation assumed by or imposed upon the Assured, by any Workmen's Compensation Law, Plan, or Agreement, or portion thereof, unless so extended by an

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Automobile Liability Policy.

endorsement signed by the President or Secretary of the Company.

SECTION VII.

EXPENSE.

10 The Assured shall not voluntarily assume any liability; nor interfere in any negotiations or legal proceedings conducted by the Company on account of any claim; nor without written consent of the Company being previously given, incur any expense; except that the Assured may provide at the time of the accident and at the Company's expense, surgical and medical relief as provided in Section IV of the Insuring Agreements.

SECTION VIII.

BASIS OF PREMIUM.

20 The Premium is based upon the number and character of the Automobiles to be covered hereby, dependent upon the purposes for which they are to be used as stated in Item V of the Schedule.

SECTION IX.

INSPECTIONS.

30 The Company shall be permitted at all reasonable times to inspect any Automobile insured hereunder.

SECTION X.

CANCELLATION.

40 This Policy may be canceled by the Company at any time by giving written notice to the Assured, at least five days prior to the date that the cancellation takes effect, and stating when, thereafter, the cancellation shall be effective; it may also be canceled at the instance of the Assured, upon like notice to the Company, provided the premium

Automobile Liability Policy.

shall have been paid. If canceled by the Company the *pro rata* earned premium shall be charged. If canceled upon the motion of the Assured the Company shall be entitled to retain the earned premium computed according to the customary short rates. Notice of cancellation mailed to the Assured at the address stated herein shall be a sufficient notice, and the Company's check, similarly mailed, shall be a sufficient tender of any unearned premium, however, such notice of cancellation shall be without prejudice to any claim originating prior to the termination of this Policy.

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SECTION XI.

CO-OPERATION OF ASSURED.

Under the direction of the Company the Assured shall at all times render such reasonable and necessary co-operation and assistance as will enable the Company to effect settlements, or properly to defend suits or to prosecute appeals.

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SECTION XII.

CONCURRENT INSURANCE.

If the Assured carry the policy of any other insurer against a claim covered hereby, he shall not be entitled to recover, under this Policy, a larger proportion of the loss or expense (or both) than the sum hereby insured bears to the whole amount of valid and collectible insurance.

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SECTION XIII.

SUBROGATION OF RIGHTS.

In case of payment of loss or expense (or both) under this Policy, the Company shall be subro-

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Automobile Liability Policy.

gated, to the amount of such payment, to the Assured's rights of recovery against others for such loss or expense (or both) and the Assured shall execute all papers and render such co-operation as may be necessary in securing to the Company such rights.

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SECTION XIV.

TRANSFER OF INTEREST.

No assignment of interest under this Policy shall be binding upon the Company unless its ratification of such assignment, signed by the President or the Secretary, be endorsed hereon.

20

Upon the death of the Assured during the term of this Policy, if the Assured is an individual, this insurance shall continue in force for the benefit of the legal representatives of the Assured until noon, standard time, of the day following the date of the Assured's death and for twenty-nine consecutive days thereafter; provided that in no event shall this provision continue beyond the termination date of the Policy.

SECTION XV.

ASSURED'S RIGHT OF ACTION.

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No action under this Policy shall be brought by the Assured against the Company, in any court, after the expiration of the period, after the date of the accident, within which an action for damages might be brought against the Assured; provided, however, that in case a suit be pending against the Assured at the expiration of said period an action for indemnity under this Policy may be brought against the Company within sixty (60) days after final determination of such suit, and not afterwards.

40

Automobile Liability Policy.

SECTION XVI.

ALTERATIONS.

No agent has any authority whatsoever to change or waive any of the provisions or conditions of this Policy. Nor shall notice to any agent or the possession of any knowledge by him or any other persons be held to effect a waiver or change in this Contract or in any part of it. No modification of any of the provisions herein contained, or waiver thereof, shall be valid unless an endorsement, expressing such waiver or change, signed by the President or the Secretary of the Company, be attached hereto. The personal pronoun, as herein used to refer to the Assured, shall apply regardless of number and gender.

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SECTION XVII.

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LIMIT OF LIABILITY.

The Company's liability for loss on account of an accident entailing bodily injuries or death (or both) is limited to FIVE THOUSAND DOLLARS (\$5000).

In addition to the amount herein limited, however, the Company will pay, as provided in sections II., III., and IV. hereof.

COMMONWEALTH CASUALTY COMPANY

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ENDORSEMENT

In consideration of an additional premium of \$5.00, it is understood and agreed that the Insured hereunder is hereby permitted to carry in the car insured hereunder from 12 to 20 passengers and not as heretofore and not as heretofore.

Nothing herein contained shall be held to vary, alter, waive or extend any of the stipulations, pro-

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Automobile Liability Policy.

visions or conditions of the undermentioned policy
other than as above set forth.

Attached to and { Policy No. 54447
forms part of } Issued to Patsy Pirozzi

10 Dated at Newark, N. J. this
17th day of December 1918

Countersigned.....

I. N. STEVENS,
President.

E. S. COOK,
Secretary.

SECTION XIX.

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POLICY PERIOD.

The Policy Period shall be three months, beginning on the 13th day of July, 1918, at noon and ending on the 13th day of October, 1918, at noon, standard time at the place where this Policy is countersigned.

SECTION XX.

SCHEDULE OF STATEMENTS.

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Item I.—Name of Assured: Patsy Pirozzi.

Item II.—Address of Assured: Street, 209 Broadway, Town, Bayonne: County, Hudson: State, N. J.

Item III.—Business or Occupation of Assured: Jitneur.

Item IV.—Individual, copartnership, corporation, or estate: Individual.

Item V.—The purposes for which the Automobiles are to be used and will continue to be used

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Automobile Liability Policy.

during the period of this Policy are: Passenger service (5 to 12 passengers).

Item VI.—None of the Automobiles hereinafter mentioned will be rented to others or used to carry passengers for a consideration, except as follows: No exceptions.

Item VII.—The number of chauffeurs employed is: Varies. 10

Item VIII.—The Automobiles are maintained and principally used in the town named in Item II, except as follows: Bayonne, N. J.

Item IX.—The following Schedule contains a full description of the Automobiles to be covered by this policy and a full statement of the uses to which each is to be put. Automobiles equipped with trailers or other vehicles attached are not covered by this policy unless such equipment is specified herein. 20

Make	Style of Body	Year Built	Engine No.	Horse Power Ins.	Liability Premium
Reo	Bus	1918	1416	27	50.00
Total Liability Premium.....					\$50.00
Total Premium					\$50.00

Item X.—No. of Automobiles to be Insured: One. 30

Limit of Liability: \$5,000.

Date of Policy: July 13th, 1918.

Policy to be for a period of three months.

Terminating October 13th, 1918.

IN WITNESS WHEREOF, the COMMONWEALTH CASUALTY COMPANY OF PHILADELPHIA, PENNSYLVANIA, has caused these presents to be signed by its

Memorandum.

President and its Secretary this 13th day of October, 1918; but the same shall not be binding upon the Company until countersigned by a duly authorized Agent.

I. N. STEVENS,
President.

E. S. COOK,
Secretary.

Countersigned at Newark, N. J., on the 13th day of October, 1918.

F. C. SMITH,
Agent.

Memorandum.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

MOLLIE BESS, by her next friend
ISRAEL GALENTER and ISRAEL
GALENTER, individually,
Plaintiffs,

v.

COMMONWEALTH CASUALTY COM-
PANY (of Philadelphia), a cor-
poration,
Defendant.

Action at Law

CUTLER, J.

This case was tried by consent of both of the parties hereto before Judge Willard W. Cutler, at the Hudson Circuit upon an agreed state of facts together with certain exhibits, from which it ap-

Memorandum.

pears that one Patsy Pirozi obtained a license from the authorities of the City of Bayonne to operate the bus in question as a jitney in that City, and sold the bus prior to January 3rd, 1919, to Andrew Petti, who owned and operated it as a jitney in that City prior to, at the time of and subsequent to the accident in which Mollie Galenter was injured.

10

On January 3rd, 1919, the Commonwealth Casualty Company of Philadelphia, issued its automobile liability policy mentioned in the complaint, to Patsy Pirozi covering this bus to be operated as a jitney in Bayonne, limiting the liability to \$5000, although the bus was then owned and operated by Andrew Peti.

This policy contained among other things the following provisions,

20

“Notwithstanding any thing herein contained to the contrary, this Company will pay any final judgment within the terms and limits of this policy and as stipulated in endorsement attached hereto, 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, in accordance with the conditions of liability as described, in this policy, and it is further understood that this policy shall be for the benefit of every person suffering loss, damage or injury as described in this policy, or as described in the terms of an Act Entitled, “An Act concerning auto busses, commonly called ‘Jitneys’, their operation in cities” approved March 17, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey.”

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Memorandum.

This policy also contains the following:

"No assignment of interest under this policy shall be binding upon the Company unless its ratification of such assignment, signed by the President to Secretary, be endorsed herein."

10

This policy and a power of attorney executed by Andrew Peti was filed with the Treasurer of the City of Bayonne, the same day the policy was issued.

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On January 6th, 1919, an application to transfer this license from Patsy Pirozi to Andrew Peti was presented to the Board of Commissioners of Bayonne and the license was transferred to the name of Andrew Peti, on January 10th, of the same year.

On January 9th, 1919, Mollie Galenter was injured through the negligent operation of the said automobile bus while it was owned and operated by said Andrew Peti, and at the time of her injury, the bus was being used for the purpose of carrying passengers over the public streets and highways in the City of Bayonne.

30

On February 8th, of the same year, Andrew Peti filed with the Treasurer of the City of Bayonne a statement of the gross receipts from the business of auto-bus during the month of January, 1919.

To recover for the injuries so sustained by Mollie Galenter in this accident and the loss thereby suffered by her father, Israel Galenter, a suit was instituted in the Supreme Court, Hudson Circuit, by Mollie Galenter, by Israel Galenter her next friend and Israel Galenter, individually, against Patsy Pirozi and Andrew Peti.

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At the first trial a nonsuit was directed in favor

Memorandum.

of Patsy Pirozi and against the plaintiffs, on the ground that he being neither the owner or operator of the automobile at the time of the accident, incurred no liability.

The jury disagreed as to the liability of Andrew Peti and a mistrial resulted.

At the second trial, a verdict was entered against Andrew Peti in favor of Mollie Galenter for five thousand dollars, and in favor of Israel Galenter in the sum of One Thousand dollars and costs.

Judgment was entered on August 1st, 1921, as of December 11th, 1920.

An appeal was taken but the judgment was affirmed with costs.

This judgment not being paid Mollie Galenter, who is now married and whose married name is Mollie Bess, and her father Israel Galenter, the plaintiffs in the former suit, bring this suit to recover the amount of that judgment up to the sum of five thousand dollars, on this policy, against the company issuing it.

This Company, the present defendant, denies liability, on the ground that the policy was issued to Patsy Pirozi, and had not been assigned at the time of the accident, and that the defendant had not consented to the sale of the bus to Andrew Peti at that time, and therefore the plaintiffs cannot recover the said judgment or any part of it from this defendant.

The question before the Court is a legal one, viz.: Can these plaintiffs or either of them recover the judgment for damages resulting to them from the accident to Mollie Galenter, now Mollie Bess, from the negligence of Andrew Peti in operating this bus, under this policy of automobile liability issued by this defendant to Patsy Pirozi on

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Memorandum.

this bus while being operated as a jitney in the City of Bayonne.

In the case of *Grace Gillard v. Manufacturers Casualty Insurance Co.*, 92 N. J. Law, 141, the Court, referring to Chapter 136 of the Laws of 1916, held, among other things, that:

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"The Statute was passed only for the benefit of the injured person. The sole beneficiary of the statute is the person injured. The injured person is the only one who can sue under the policy."

20

In the case of *Boyle v. Manufacturers Liability Insurance Co.*, 96 N. J. Law, 380, it was, among other things, said in substance that even if the motor had been changed in the bus, it did not relieve the company from liability under its policy issued as provided for by the terms of this act, for it was the same bus mentioned in the policy.

In the case of *Charles Gillard v. Manufacturers, etc., Insurance Co.*, 93 N. J. Law, 220, it was, among other things held, referring to this act of 1916, that the only recovery can be for "bodily injury and death," under a policy issued under the provisions of this act.

30

It is evident, after carefully considering the provisions of this act, and these decisions, that the policy in question, was not for the benefit of the municipality nor for the benefit of the owner or operator of the bus, but for the protection of the public who may be injured by its operation.

On January 15, 1919, this defendant made this endorsement for this policy:

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"Interest of former owner having ceased, title of ownership now vests in Andrew Peti, of 78 West 21st Street, Bayonne, N. J.

Memorandum.

"Nothing herein contained shall be held to vary, alter, waive, or extend any of the stipulations, provisions or conditions of the undermentioned policy other than as above set forth. Attached to and forms part of policy No. A. B. 54566, issued to Patsy Pirozzi."

10

It cannot be successfully contended by this defendant that it was injured by an improper person owning and operating this bus at the time of the accident without its knowledge or consent, when it consented to the transfer to Andrew Peti a few days after the accident occurred.

The conclusion reached is that the plaintiff, Israel Galenter, not having been injured in the accident, cannot recover on this policy and the defendant in this suit is entitled to no cause of action against the plaintiff Israel Galenter.

20

The plaintiff Mollie Bess, formerly Mollie Galenter, having been injured in this accident, can recover in this suit upon this automobile liability policy mentioned in the complaint, her judgment of five thousand dollars, with interest from December 11th, 1920.

I will prepare a finding and postea to carry out this memorandum, computing the amount of principal and interest that the plaintiff Mollie Bess can recover up to date of such postea and finding.

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Postea.

NEW JERSEY SUPREME COURT.

10	MOLLIE BESS, by her next friend ISRAEL GALENTER and ISRAEL GALENTER, individually, Plaintiffs,	}	Action at Law.
20	<i>v.</i>		
30	COMMONWEALTH CASUALTY COM- PANY of Philadelphia, a cor- poration, Defendant.		

This case was tried by consent of both the parties hereto, before Judge Willard W. Cutler, without a jury, at the Hudson Circuit, upon an agreed state of facts, together with certain exhibits.

The facts so agreed upon are in writing and will be filed in this cause.

After considering these facts and the exhibits, the Court finds:

(1) That Patsy Pirozi obtained a license from the authorities of the City of Bayonne to operate the bus in question as a jitney in that City, and sold the bus prior to January 3rd, 1919, to Andrew Peti, who owned and operated it as a jitney in that City prior to, at the time of and subsequent to the accident in which Mollie Galenter was injured.

(2) On January 3rd, 1919, the Commonwealth Casualty Company of Philadelphia issued its Automobile Liability, mentioned in the complaint, to Patsy Pirozi covering this bus to be operated as a

Postea.

jitney in Bayonne, limiting the liability to five thousand dollars (\$5,000), although the bus was then owned and operated by Andrew Peti.

This policy contained, among other things, the following provisions:

“Notwithstanding anything herein contained to the contrary, this Company will pay any final judgment within the terms and limits of this policy and as stipulated in endorsement attached hereto, 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, in accordance with the conditions of liability as described in this policy, and it is further understood that this policy shall be for the benefit of every person suffering loss, damage or injury as described in this policy, or as described in the terms of an act entitled “An Act concerning auto busses commonly called ‘Jitneys,’ their operation in cities,” approved March 17, 1916, and known as Chapter 136 of the Laws of 1916, State of New Jersey.”

This policy also contained the following:

“No assignment of interest under this policy shall be binding upon the Company unless its ratification of such assignment, signed by the President or the Secretary, be endorsed hereon.”

3. This policy and a power of attorney executed by Andrew Peti was filed with the Treasurer of the City of Bayonne the same day the policy was issued.

Postea.

4. On January 6th, 1919, an application to transfer this license from Patsy Pirozi to Andrew Peti, was presented to the Board of Commissioners of Bayonne and the license was transferred to the name of Andrew Peti on January 10th, 1919.

10 5. On January 9th, 1919, Mollie Galenter was injured through the negligent operation of this automobile bus while it was owned and operated by the said Andrew Peti, and at the time of her injury the bus was being used for the purpose of carrying passengers over the public streets and highways of the City of Bayonne.

20 6. On February 8th, of the same year, Andrew Peti filed with the Treasurer of the City of Bayonne a statement of the gross receipts from the business of auto-bus during the month of January, 1919.

7. Mollie Galenter, who was then a minor, by her father Israel Galenter, as her next friend, and her father Israel Galenter instituted a suit in the Supreme Court against Andrew Peti or Petti and Patsy Pirozi, to recover the damages sustained by them by reason of the injuries received by Mollie Galenter in this accident.

30 8. At the first trial at the Hudson Circuit a non-suit was directed in favor of Patsy Pirozi and against the plaintiffs, on the ground that he being neither the owner or operator of this automobile at the time of the accident, incurred no liability. The jury disagreed as to the liability of Andrew Peti and a mistrial resulted.

40 9. At a second trial a verdict was rendered against Andrew Peti and in favor of Mollie Galenter in the sum of five thousand dollars, and in favor of Israel Galenter against the said Andrew

Postea.

Peti in the sum One Thousand Dollars and costs. This judgment was entered on August 1st, 1921, as of December 11th, 1920. An appeal was taken but the judgment was affirmed with costs.

10. On January 15th, 1919, this defendant made the following endorsement for this policy,

"Interest of former owner having ceased, title of ownership now vests in Andrew Petti or 78 West 21st Street, Bayonne, N. J.

10

Nothing herein contained shall be held to vary, alter, waive or extend any of the stipulations, provisions or conditions of the undermentioned policy other than as above set forth.

Attached to and forms part of Policy No. A. B. 54566 Issued to Patsy Pirozzi."

11. Mollie Galenter is now married and her married name is Mollie Bess, one of the present plaintiffs.

20

12. This policy had not been assigned to Andrew Peti at the time of the accident, neither had the defendant at that time consented to the sale of the bus to Andrew Peti.

13. This suit is brought to recover this judgment from the defendant upon this policy up to the amount of five thousand dollars.

30

14. The judgment recovered by Mollie Galenter, now Mollie Bess, was for bodily injuries received by her in this accident. Israel Galenter was not injured in the accident.

From these facts the Court determines,

A. That Israel Galenter, not having been bodily injured in this accident can not recover upon this

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Postea.

policy, and the Court finds in favor of the defendant and against the plaintiff Israel Galenter.

B. That Mollie Bess can recover upon this policy, her judgment of five thousand dollars with interest from December 11th, 1920, and the Court finds in favor of the said Mollie Bess and against the defendant the Commonwealth Casualty Company of Philadelphia, a corporation, for six thousand one hundred and fifty-five dollars (\$6155).

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Rule for Judgment.

(Filed Oct. 20, 1924.)

NEW JERSEY SUPREME COURT.

MOLLIE BESS, by next friend,
ISRAEL GALENTER and ISRAEL
GALENTER, individually,
Plaintiffs,

v.

COMMONWEALTH CASUALTY COM-
PANY of Philadelphia, a cor-
poration,
Defendant.

Action at Law.

10

Whereupon it is adjudged that the plaintiff Mol-
lie Bess, by next friend, Israel Galen-
ter, do recover of the said defendant
Commonwealth Casualty Company of
Philadelphia, a corporation, the sum
of six thousand one hundred and fifty-
five dollars damages together with her
costs which have been taxed at the
sum of forty-eight dollars and sixteen
cents, making in the whole the sum of
six thousand two hundred and three
dollars and sixteen cents.

20

\$6,155.00

48.16

\$6,203.16

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Judgment entered October 20, 1924.

WM. S. GUMMERE,
C. J.

40

Notice of Appeal and Grounds.

(Filed Nov. 12, 1924.)

NEW JERSEY SUPREME COURT.

10	MOLLIE BESS, by her next friend, ISRAEL GALENTER, and ISRAEL GALENTER, individually, Plaintiffs,	}	Action at Law.
	<i>v.</i>		
	COMMONWEALTH CASUALTY COM- PANY a corporation, Defendant.		

To Alexander Seclow, Esq.,
 Attorney for Plaintiffs:

20 TAKE NOTICE that the appellant, Common-
 wealth Casualty Company, appeals to the Court of
 Errors and Appeals, in the last resort in all causes
 in New Jersey, from the whole of the judgment
 entered in this cause on the following grounds:

1. Because the Trial Court erred in refusing to
 direct a verdict in favor of the defendant.
2. Because the Trial Court erred in deciding
 in favor of the plaintiff upon the stipulated and
 30 agreed state of facts.

LAZARUS, BRENNER & VICKERS,
 Attorneys of Appellant.

Supplement to
State of Case

**Bess vs. Commonwealth Casualty Co.
ADDITION TO STATE OF THE CASE.**

COMMONWEALTH CASUALTY COMPANY

Endorsement:

Interest of former owner having ceased, title
of ownership now vested in Andrew Pette, of 78
West 21st Street, Bayonne, N. J.

* * * *

Nothing herein contained shall be held to vary,
alter, waive or extend any of the stipulations,
provisions or conditions of the undermentioned
policy other than as above set forth.

	{	Policy No.	
		AB54566	20
Attached to and forms part of	{	Issued to Patsy	
		Pirozzi.	

Dated at Bayonne, N. J., this 15th
day of January, 1919.

(?) Stevens, President.

E. S. Cook, Secretary.

Countersigned D. C. McGovern (?)

30

KNOW ALL MEN BY THESE PRESENTS, that I,
ANDREW PETTI, the owner of an Auto-Bus, as
defined in Chapter 136 of the Laws of 1916, do
nominate, constitute and appoint the Director
of Revenue and Finance of the City of Bayonne,
my true and lawful attorney for the purpose of
acknowledging service for me and in my name of
any process out of any court of competent juris-
diction to be served against me by virtue of the

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indemnity granted under a certain policy of insurance, numbered AB54566 issued by Commonwealth Casualty Co. and filed with the said Director of Revenue and Finance of the City of Bayonne, in accordance with the provisions of Section 2, of said Chapter 136 of the Laws of 1916.

ANDREW PETTI. (L. S.)

10 Signed, sealed and delivered
in the presence of
David Lipschutz.

(Stamps.)

—o—
(Endorsement)

AUTO - BUS

No.

POWER OF ATTORNEY.

For the purpose of acknowledging service.

20 To the Director of Revenue and Finance of
the City of Bayonne.

Dated _____

Filed _____

CITY OF BAYONNE, N. J.

30 Statement of gross receipts for Auto Bus for
Jany. 1919.

Name of Owner, Andrew Petti.

Consent No. _____ Dated Feb. 8, 1919.

Amount of gross receipts from the business of
Auto Bus during month of Jany. 1919, \$75.00.

ANDREW PETTI,
Owner's Signature.

40

STATE OF NEW JERSEY, }
 County of Hudson. } ss.:

ANDREW PETTI,

Owner's Name.

being duly sworn, according to law, on his oath
 says that the foregoing statement is true.

Sworn to and subscribed before me
 this 8 day of Feb. 1919.

10

ANDREW PETTI.

Louis Littman,
 Notary Public of New Jersey.

—O—

Monthly Statement of Gross
 Receipts for Auto Bus.

Owner, A. Petti.

Consent No. _____

Amount of Receipts, \$75.00

5 per cent. tax 3.75

20

Paid Feb. 8, 1919.

CITY OF BAYONNE

Dep't of Revenue & Finance.

Received

Feb. 8, 1919 10.10 A. M.

John J. Lyons, Treasurer.

Littman.

30

40

State of New Jersey,
County of Hudson,
I, Andrew Pettit,
Owner's Name,
being duly sworn, according to law, on his oath
say that the foregoing statement is true.
Given to and subscribed before me
this 8 day of Feb. 1919.

100

Andrew Pettit

Louis Littman,
Notary Public of New Jersey.

Monthly Statement of Gross
Receipts for Auto Bus.

Owner, A. Pettit.
Consent No. _____
Amount of Receipts \$75.00
5 per cent tax 3.75
Paid Feb. 8, 1919.

20

CITY OF DAYTON
Dept of Revenue & Finance.

Received
Feb. 8, 1919 10:10 A. M.
John J. Lyons Treasurer.

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New Jersey Court of Errors and Appeals

MOLLIE BESS, by next friend,
Israel Galenter, and ISRAEL
GALENTER, individually,
Plaintiffs-Appellees,

v.

COMMONWEALTH CASUALTY COM-
PANY, a corporation,
Defendant-Appellant.

Action at Law
On Appeal.

BRIEF OF DEFENDANT-APPELLANT.

This case was tried on an agreed state of facts (Case, pp. 5-9) in which it was stipulated that on January 3, 1919, a policy of insurance was issued by the Commonwealth Casualty Company to one Patsy Pirozi in the amount of \$5,000 covering a Reo car which, it was admitted, did not belong to Pirozi, but was the property of Andrew Peti.

On January 9, 1919, the plaintiff Mollie Bess was injured by the Reo car owned and operated by Peti, and a judgment was secured against him in the Supreme Court at the Hudson Circuit in the sum of \$5,000 and a further judgment in favor of the plaintiff Israel Galenter, her father, she being an infant at the time that the accident occurred, in the sum of \$1,000 to cover the loss sustained by him. This judgment was affirmed on appeal, but the same remained unpaid.

At the time the accident occurred, January 9, 1919, no policy of insurance had been issued by

the Casualty Company to Peti, and no transfer was made to him by Pirozi, but subsequently, on January 15, 1919, an endorsement was annexed to the policy, changing the name of the assured to Peti.

The judgment remaining unpaid, suit was instituted in the Supreme Court against the Commonwealth Casualty Company by Mollie Bess and her father to recover the amount of the judgments secured by them. The case was tried before the Honorable Willard W. Cutler in the Supreme Court at the Hudson Circuit, without a jury, and a written memorandum filed (Case, pp. 18 to 23) holding the Casualty Company for the payment of *the judgment in favor*

of Mollie Bess

~~On January 9, 1919, the plaintiff, Mollie Bess, was~~ against Peti and absolving the company from liability for the payment of the judgment secured by her father against Peti, and judgment was thereupon entered in favor of the plaintiff Mollie Bess against the Commonwealth Casualty Company, with costs, in the amount of \$6,203.16.

From this judgment appeal was taken upon two grounds:

1. Because the Trial Court erred in refusing to direct a verdict in favor of the defendant.
2. Because the Trial Court erred in deciding in favor of the plaintiff upon the stipulated and agreed state of facts.

Both grounds of appeal involve the same legal situation and can, therefore, be argued and considered together.

Argument.

An examination of the policy (Case, pp. 10-18) will reveal the fact that in form it is a policy of indemnity under which the company agrees to

indemnify the assured Pirozi against loss or damage sustained by him by reason of the recovery of any judgment against him arising from the negligent operation of the bus by him or an authorized agent.

To conform, however, with the requirements of the Statute known by the designation Kates Act or Jitney Act (P. L. 1916, p. 283) and particularly in conformity with Section 2 thereof, there was endorsed upon the policy a provision giving a right to the person recovering a judgment to sue the company direct without exhausting any remedy against the judgment debtor. Through inadvertence, this endorsement does not accompany the policy in the printed case, but appears immediately thereafter in the Court's memorandum (Case, p. 19), and is in the following language:

"Notwithstanding anything herein contained to the contrary, this Company will pay any final judgment within the terms and limits of this policy and as stipulated in endorsement attached hereto, 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, in accordance with the conditions of liability as described, in this policy, and it is further understood that this policy shall be for the benefit of every person suffering loss, damage or injury as described in this policy, or as described in the terms of an Act entitled, 'An Act concerning auto busses, commonly called Jitneys, their operation in cities' approved March 17, 1916, and known as Chapter 136 of the Laws of 1916 of New Jersey."

Plaintiff, at the trial, contended that by virtue of this provision in or endorsement upon the policy, a right of recovery was procured by the plaintiff Mollie Bess against the Casualty Company because of the fact that in the policy was described

the bus owned by Peti, notwithstanding the fact that Peti's name did not appear as assured in the policy on January 9, 1919, when the accident occurred; and in this contention she was sustained by the Court, evidently upon the theory that regardless of the name of the assured appearing in the policy, a recovery could be had if the vehicle described therein was the one involved in the accident.

The legal question involved is not only a novel one in this State, there being no decision covering this exact situation, but appears to be without precedent in any other state, as an exhaustive examination of the cases has failed to reveal one squarely in point.

It, of course, cannot be questioned that the primary purpose of the Statute was to protect the public at large against the careless or reckless operation of jitneys by drivers or owners who might be financially irresponsible. We cannot conceive, however, that it was the intention of the Legislature to deprive insurance companies writing this class of insurance of the right of knowing the person whom it was insuring.

This company, like all other insurance companies, is engaged in business for gain and profit, and such profit is necessarily measured to some degree by the risk assumed, and in determining the character of such risk and the element of probable loss must be considered the moral hazard.

To hold that the insuring company assumes liability from the moment its policy issues to pay damages to any member of the public who might sustain injury through the operation of the bus described in the policy, regardless of the fact that the owner's name does not appear in the policy as assured, would take from the insuring company

every safeguard in permitting a determination by the company as to whether or not it desired to grant insurance to the owner of such bus. Such a finding, we respectfully submit, would permit the imposition of such a hardship upon companies granting jitney policies as to make it practically impossible to continue this line of insurance. This contention may be better illustrated by a concrete example of what it is our intention to convey.

Suppose that Peti had made application to this company for insurance covering this bus. The company, considering him a man of bad repute, reckless in the operation of an automobile, and generally a bad moral hazard, would have the right—under ordinary circumstances—to refuse the issuance of a policy to him. He, however, realizing that the Statute prohibits the operation of a bus without having first secured a policy of insurance, and being desirous of obtaining a permit for the operation of a bus and with the express purpose of circumventing the requirements of the insuring company, could procure a policy of insurance in the name of some other person known to be a careful driver and operator, and to whom there would be no hesitancy about issuing the policy, describing, however, the bus owned by him; and in that manner compel the company to assume a risk which it had refused or would refuse. If injury then came to a member of the traveling public through the recklessness of Peti, which the company had foreseen, the company—regardless of its desire to safeguard itself by refusing to issue a policy of insurance to this owner, because of its knowledge that he was a dangerous risk—would nevertheless be required to pay the damage which he, through his carelessness, had caused.

It cannot be doubted that it was the purpose of

the company to protect itself against just such a contingency, as the policy itself provides against a transfer of interest except upon the ratification of the company, the policy containing the following language:

“Transfer of Interest: No assignment of interest under this policy shall be binding upon the company unless its ratification of such assignment, signed by the President or the Secretary be endorsed hereon.”

It is our contention that not only has the company protected itself by this provision in the policy, but that the Statute itself clearly indicates that it was the legislative intent that the insurance company should not be stripped of the opportunity to safeguard itself in the issuance of these policies, and that this intention is revealed by an examination of the second section of the act previously cited.

This section prohibits the operation of a jitney along or upon the public streets of a city until consent shall be given by the governing body in control thereof, and such consent is predicated upon the filing of a policy of insurance in an amount of not less than \$5,000. It is not contemplated that such policy may be filed by any person, but directly requires the filing thereof by the owner of the bus, the language of the Statute being as follows:

“No such consent (consent of the governing body) shall become effective and no such operation shall be permitted until the OWNER OF SUCH AUTO BUS in any city shall have filed with the chief fiscal officer of the city in which said auto bus shall be licensed and operated, an insurance policy of a company duly licensed to transact business under the Laws of the State of New Jersey in the sum of \$5,000.”

The act further requires that the policy shall provide

“for the payment of any final judgment recovered by any person ON ACCOUNT OF THE OWNERSHIP, MAINTENANCE AND USE OF SUCH AUTO BUS, or any fault in respect thereto, and shall be for the benefit of every person suffering loss, damage or injury as aforesaid.”

It may be noticed that the Statute uses the language “such insurance policy,” meaning thereby an insurance policy filed by the owner and not by a stranger or some person having no interest in the bus. Again the language is used requiring the payment of final judgment recovered on account of the ownership, maintenance and use of “such auto bus”; again referring to the auto bus of which the city has permitted the operation by reason of the owner thereof having filed a policy written in his name.

At the time that the accident occurred, on January 9, 1919, the bus in question, although owned by Peti, was unquestionably being illegally operated by him, inasmuch as the stipulated facts show that no consent to the transfer of the permit to Peti was granted until January 10, 1919—a day after the accident occurred (Case, p. 7, line 40).

This stipulation is further corroborated by the testimony of Joseph Buckley, who was in charge of the records of the city (Case, p. 8), in which he says that a petition for transfer from Pirozi to Peti was presented to the Board of Commissioners on January 6, but was not granted until January 10, 1919,—the day after the accident occurred—and no change in ownership in the policy was permitted by the insuring company until January 15, 1919, as shown by the endorsement thereon (Case, p. 9, lines 19-22).

We therefore respectfully submit that as expressed in the policy itself, the company assumed no liability under the policy issued to Pirozi for injuries caused in the operation of the bus by Peti, admittedly neither the agent nor servant of Pirozi, and that such liability was not imposed by law by virtue of the endorsement placed upon the policy as required by the Statute, as it clearly appears that it was not the legislative intent to compel the payment of a judgment recovered against a person whom it did not by its agreement or policy insure, and that, therefore, the judgment should be reversed.

Respectfully submitted,

LAZARUS, BRENNER & VICKERS,
Attorneys of Defendant-Appellant.

ALFRED BRENNER
OF COUNSEL

[2601]

Appeal Printing Co., 22 Thames St., N. Y. City

49 49 JAN. 1. 1924

New Jersey Court of Errors and Appeals

MOLLIE BESS,
Plaintiff-Respondent,
vs.
COMMONWEALTH CASUALTY COM-
PANY OF PHILADELPHIA,
Defendant-Appellant.

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Appeal from
Supreme
Court.

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RESPONDENT'S BRIEF.

Statement of Facts.

On January 9, 1919, Mollie Bess was injured through the negligent operation of an automobile bus, while it was owned and operated by one Andrew Petti. At the time of her injury, the bus was being used as a jitney.

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On January 3, 1919, the defendant company had issued a policy under the statute, covering a Reo car No. 22649. It was this car that injured the plaintiff.

The plaintiff recovered judgment against Petti in the Supreme Court, for Five Thousand Dollars, which judgment was affirmed by the Supreme Court in banc. Plaintiff sued the Insurance Company to recover the amount of the Petti judgment and had judgment in the Supreme Court. The defendant company appeals.

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The policy in question was originally issued to one Pirozi. The notation of the change of owner-

ship of the car apparently was not made until after the accident (although the date of the change by endorsement on the policy shows an erasure). Three papers, mentioned in stipulation, p. 9 of State of Case, Pars. 4 and 5, are omitted from State of Case but printed by Respondent in Supplement to State of Case.

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Argument.

POINT I.

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Two things about the policy in suit are of prime importance. The first is that it is a purely statutory contract and can contain no provision affecting the interest of members of the public except those authorized by the statute; and secondly, it is a contract made for the benefit of parties other than the person named in the contract.

The statutory liability is as follows:

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(P. L. 1916, p. 284) "Against loss from the liability imposed by law upon the auto bus owner for damages on account of bodily injury or death suffered by any person or persons as a result of an accident occurring by reason of the ownership, maintenance or use of such auto bus upon the public streets of such city, and such consent shall continue effective and such operation be permitted only so long as such insurance shall remain in force; such insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and use of such auto bus or any fault in respect thereto and shall be for the benefit of every person suffering loss, damage or injury as aforesaid."

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Contracts made for the benefit of third parties

are familiar to the law. The 28th Section of the Practice Act of 1903 is still in force. (3 C. S., 4059) :

“Any person for whose benefit a contract is made, whether such contract be under seal or not, may maintain an action thereon in any court * * * notwithstanding the consideration of such contract did not move from him.”

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Perhaps the most familiar illustration of contracts made for the use of third parties is in the field of fire insurance, where the mortgagee clause protects the mortgagee in case of fire loss notwithstanding any act on the part of the owner. Not even a wilful burning by the owner is a defense against a mortgagee, although the entire consideration has been paid by the insured. These principles were applied to jitney insurance in *Gillard v. Manufacturers' Casualty Ins. Co.*, 92 N. J. L., 141, at 142 &c. one of the earliest cases arising under the statute, where Mr. Justice Black said:

“The first ground of attack is: The rights of the plaintiff are derivative and can be no more extensive than the rights of the insured.

“This is a false assumption. Its answer is, on the contrary, the rights of the plaintiff are original and primary, given by the statute, (Pamph. L. 1916, p. 283, §2) * * * The auto bus owner cannot sue on the statutory policy of insurance. * * *

30

“The insurance policy cannot contain any provisions except those authorized by the statute, so as to affect any person suffering loss as provided therein. Whatever other provisions the filed policy contains may be good as between the insurer and the insured auto bus owner, and may impose upon the latter certain duties and obligations toward

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the owner, for breach of which the insurer can maintain an action; but such provisions cannot deprive an injured person of the remedy given by the statute, nor can they in any way abridge the rights granted by the statute to such injured person. The policy of insurance is filed only for the benefit of persons who might suffer injury. It is not filed for the benefit of the city. The city is under no liability, which the policy indemnifies it against. The statute was passed only for the benefit of the injured person. The sole beneficiary of the statute is the person injured. The injured person is the only one who can sue under the policy, and cite the statute in support of the action. The injured person's rights in the policy of insurance are original and primary, not derivative and secondary. The first ground of attack, therefore, fails, because the premise on which the argument is based is not true in point of fact."

In the same case on appeal, this Court, speaking by Mr. Justice Minturn, (93 N. J. L. 215, at 218) held:

"It is insisted that the right of the plaintiff to sue is derivative in character and depends entirely upon the rights of the insured under the terms of the policy. The application of this argument is directed to the fact that since the insured failed to give notice of the accident, and of the pendency of the suit to the insurer, as required by him, by the provisions of the policy, the right of the plaintiff in this case to recover is to be determined by the status thus acquired by the insured, which, in effect, constitutes a breach of the agreement.

"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 here-

in contained to the contrary, this company will pay final judgment within the limits of this policy, recovered by any person or persons on account of the ownership, maintenance and use of automobiles; and the further provision, that 'this contract shall be for the benefit of every person suffering loss, damage or injury.'"

Speaking of the *Gillard* case, just quoted, Mr. Justice Minturn, in the Supreme Court, in the case of *Boyle v. Manufacturers Liability Ins. Co.*, 96 N. J. L. 380, at 381, said: 10

"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 may subsist as between the insured and insurer, by reason of any violation of the terms 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." 20

Whatever may be the provisions of the face of the contract, the policy contains the statutory rider, which says:

"Notwithstanding anything herein contained to the contrary, this Company will pay any final judgment within the terms and limits of this Policy and as stipulated in endorsement attached hereto, 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, in accordance with the conditions of liability as described in this Policy, and it is further understood that this Policy shall be for the benefit of every person suffering loss, damage or injury as described in this Policy, or as described in the terms of an Act entitled, 'An Act concerning busses, commonly called "Jitneys," their operation 30 40

in cities,' approved March 17, 1916, and known as Chapter 136 of the laws of 1916, State of New Jersey."

We have alluded to the analogy between the rights of the public under a jitney insurance policy and the rights of a mortgagee under the standard mortgagee clause in a fire insurance policy.

- 10 In each case, the principal contract is made by one person for the benefit of another, and nothing that the maker of the contract does, or fails to do, can defeat the rights of him for whose benefit the contract is made.

- 20 The situation presented in this case—if we are to assume that Pirozi owned the car, took out insurance, sold the car to Petti, transferred the policy to Petti, and in the interim between the transfer of the car and the transfer of the policy, Mollie Bess was injured—is, in legal effect, similar to a situation where an owner of property insures his property with a standard mortgagee clause in favor of a mortgagee, then transfers the property to a new owner, and before the transfer is consented to by the insurer, the property is destroyed. In such instance, neither the seller nor the buyer can recover under the policy, but the mortgagee is saved harmless by his insurance.
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- Perhaps the fairer construction of the facts in this case is that Petti himself negotiated the policy of insurance and through some inadvertence, Pirozi's name was inserted, and that the note of transfer was really only an endorsement made for the purpose of correcting the discrepancy in names. If that is the case, the situation is strictly analogous to the situation presented in the case of *Syndicate Insurance Co. v. Bohn*,
 40 65 Fed. 165. a Circuit Court of Appeals case. Opinion by Sanborn, Circuit Judge. In that

case, the sole owners of the capital stock of a corporation insured a building in their individual names, which building was actually owned by the corporation. A standard mortgagee clause was annexed. A fire occurred. Both the principals and the mortgagees brought suit and had judgment. The Circuit Court of Appeals held that the owners of the stock of the corporation were not the sole¹⁰ and unconditional owners of the property and could not recover, but that the mortgagee could recover. Judge Sanborn's conclusion is stated at p. 178:

"Our conclusion is that the effect of the union mortgage clause, when attached to a policy of insurance running to the mortgagor, is to make a new and separate contract between the mortgagee and the insurance company, and to effect a separate insurance of²⁰ the interest of the mortgagee, dependent for its validity solely upon the course of action of the insurance company and the mortgagee, and unaffected by any act or neglect of the mortgagor, of which the mortgagee is ignorant, whether such act or neglect was done or permitted prior or subsequent to the issue of the mortgage clause."

The same principle has been recognized by this court in *Kupfersmith v. Agricultural Insurance Co.* 80 N. J. L. 441, at 446; and in the Supreme Court in *Reed v. Firemen's Insurance Co.* 76 N. J. L. 11, at p. 14.

POINT II.

Whether, during the period between January 9, 1919, and January 15, 1919, Petti was operating the auto bus by the consent of Pirozi, or whether he was operating it by some tacit arrangement with the officials of the City of Bayonne on the day in question, we are not concerned. Any act of the insured or "the auto bus owner" mentioned in the statute, cannot affect the interest of this plaintiff. It was specifically held by this Court in *Connell v. Commonwealth Casualty Co.*, 96 N. J. L. 510, at 511 (115 Atl. 352):

"Any violation of the provisions of the Jitney Act was a matter between the operator and the municipalities 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, for whose benefit it was executed and exists, 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."

In view of these cases, what does it matter to the plaintiff whether the contract for her benefit was made by Pirozi, who apparently owned the car at one time, or by Petti, who was driving it? The statute governed the terms of the contract. Neither Petti nor Pirozi nor the Insurance Company could add one jot or tittle, one word or syllable, to diminish the protection afforded by the statute. The mismanagement of the car was the one thing insured against. In such a situation, it is a matter of no concern whether Petti or Pirozi negotiated the contract.

The statute provides that the owner of the auto bus shall file this policy with the city. Presumably if Pirozi was the auto bus owner, he was the person to file it. If Petti was the actual owner, he was the person to file it, but that is a matter between these two men and the city, and does not concern the public. The presumption of law is the presumption of regularity and that he filed it who should have filed it, and that the policy was written and filed with the intent that it should be effective. Defendant's contention in relation to it would make it a mere nullity, a fraud on the public and upon Pirozi and Petti, who depended upon it, and upon the city as well. 10

It is elementary and it was so held in the case of *Varick v. Crane*, 44 N. J. Eq. 128, at 133:

"That if a contract is susceptible of two constructions, that one should be accepted which would render it operative rather than the one which would render it void." 20

A reading of Chapter 136 P. L. 1916, page 284, readily discloses the fact that the ultimate and predominant purpose of the act was the protection of the public. It will be recalled that this mode of transportation was of recent origin and of mushroom growth. Persons without financial responsibility were operating dangerous instrumentalities upon the public highway, and in case of injury, as likely as not there would be no redress. It became a matter of vital concern to obtain a measure of protection for the public. The result was the so-called Kafes Act of 1916. Bearing in mind the ultimate object to be secured, protection for the public, consent to operate was made to depend upon the filing of a bond and power of attorney. The power of attorney was required for the purpose of insuring the injured 30 40

person that there would be a person answerable in case of suit, and the filing of the policy of insurance was required for the purpose of making effective any judgment that would be rendered "as a result of an accident occurring by reason of the ownership, maintenance or use of such auto-bus upon the public streets."

10 The power of attorney of Petti and the bond or policy were filed on January 3rd, 1919, six days before the injury (Case p. 7; Case p. 31). On February 8th, 1919, Petti filed statement of receipts for the month of January, 1919, for the purpose of paying five per cent franchise tax to the City of Bayonne (Case p. 32).

POINT III.

20

If Pirozi negotiated the contract and Petti was driving the car even wrongfully, the result would be the same.

30

"As the business is a hazardous one, and the right to engage in it a franchise, the owner of the car can be required to give assurances for the safety of the public, and it is neither unjust nor unlawful to make him responsible for injuries occurring while his franchise obligations are being complied with regardless of whether his servant or agent had authority to delegate the duty to the one who undertakes the performance.

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"The ordinance, in effect, provides that if the owner's servant puts another man in his place without authority from the owner, the owner shall suffer for substitute's negligence rather than the passengers and public, who have a right to assume that the car would not be entrusted to any one to carry on the business unless he was the employee of the owner."

Western Indemnity Co., et al. vs. Berry,
200 S. W. Rep. 245.

POINT IV.

At the trial, plaintiff offered to prove that Petti applied for the bond originally, and that Petti actually paid the original premium on the bond.

If these facts were proved, the entire force of defendant's argument would be lost. But, aside 10
from that, we submit that the authorities all point in one and the same direction, that is, that the public is insured against damage done by the car named in the policy, by whomsoever it may be driven and regardless of the observance of municipal requirements. The authorities from other states are to the same effect, and one, at least, comes closely to the question.

Bond vs. Holloway, 188 Pac. 577 (Cal.) 20
at p. 578.

"The particulars in which it is claimed that these special findings fail to support and are inconsistent with the general verdict and the judgment are: * * * (2) That at the date of the accident the original permit and license to defendant Holloway on his car bearing state license No. 150653 had expired, and the renewal under the new state number, 89377, dating back to January 1, 1916, 30
and covering the date of the accident was not made until February 3, 1916, after the accident: and (3) That at the time of the accident the agreement of extension of the insurance policy and its application to the new state number of defendant Holloway's machine, which was entered into before the accident, was not filed with the City Clerk. It is therefore argued that the defendant Holloway was at the time of the injuries complained of, operating in violation of the ordinances of the city as an outlaw on the public streets, and that, the insurance policy having been given under the ordinance to cover 40
the operation of a motorbus under and in conformity to the law, no liability existed under the policy."

These contentions were overruled.

POINT V.

Finally, in the preparation of this brief, we have discussed points that have occurred to us—not closely following the grounds of appeal.

The grounds of appeal are as follows:

10 “1. Because the Trial Court erred in refusing to direct a verdict in favor of the defendant.

 “2. Because the Trial Court erred in deciding in favor of the plaintiff upon the stipulated and agreed state of facts.”

In reference to the first ground of appeal, there was no jury to direct, and needless to say, no motion for a direction of a verdict was made or denied.

20 The second ground of appeal does not clearly define the precise point in respect to which the court below is assumed to have erred. It seems to be of the general character to which the court adverted in *Halliwell v. Trans-State Finance Corp.*, 98 N. J. L. 133, at 136, and in *Hintz v. Roberts*, 98 N. J. L. 768, at 771.

30 The same lack of precision exists in Appellant's brief. Appellant stresses the right of an insurer to select his assured. The argument has no great force in the present case, for the defendant accepted Pirozi as an assured on January 3, 1919, and, within less than two weeks, accepted Petti. The transfer of this relationship was couched in this significant language:

 “Interest of former owner having ceased, title of ownership now vested in Andrew Petti of 78 West 21st Street, Bayonne, N. J.”

40 (See supplement to State of Case.)

It would seem that this language was apt to

note a transfer of the car from one owner to another, and that the car was the subject of insurance. This view of the situation so happily expressed by the defendant in its own language, upon its own contract, conforms to the view repeatedly expressed by the courts of this State.

Respectfully submitted,

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