

Order.

ESSEX

10 GEORGE SCULTHORP

vs.

COMMONWEALTH CASTLE CO.  
Defendants.

20 This matter coming up on an application of Jacob Schneider, attorney of the defendant, to set aside and vacate the judgment heretofore entered in the above-entitled case, the execution issued thereon, and all other proceedings taken subsequent to said judgment, with the consent of Seymour & Smith, attorneys for the plaintiff, it is on this sixth day of July, in the year 1922, on motion of said Jacob Schneider, attorney of the said defendant,

ORDERED that the judgment heretofore entered in the above-entitled suit and the execution issued thereon and all other proceedings subsequent to judgment be and they hereby are vacated and set aside; and it is further

30 ORDERED that the said defendant shall be granted leave to file an answer to the complaint on or before July 8, 1922, and the plaintiff may apply to strike out said answer and enter peremptory judgment on July 15, 1922, or take any other steps that he may be advised; and it is further

ORDERED that the defendant shall pay to the plaintiff all his disbursements incurred in the entry of judgment and subsequent proceedings.

40 WORRALL F. MOUNTAIN,  
*Judge of the Essex County Circuit Court.*

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1920, recovered  
case against the  
County Circuit  
and plaintiff as the  
ason of the owner-  
of said auto bus.

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was for the sum of ten thousand  
s and no part thereof has been paid.

the terms of the policy of insurance of the  
ed as aforesaid, and under the provisions  
of the Legislature of New Jersey (Public Laws,  
e 283, entitled "An Act concerning auto busses  
y called jitneys and their operation in cities,")  
endant is indebted to plaintiff in the sum of five  
and dollars (\$5,000) and costs of court and legal in-  
st on said sum of five thousand dollars (\$5,000), from  
bruary 23, 1920, being part of the amount due plaintiff,  
pon said judgment, but defendant upon demand has re-  
fused and still refuses to pay plaintiff the said sum of  
five thousand dollars (\$5,000), and the court costs as  
taxed by our Monmouth County Circuit Court.

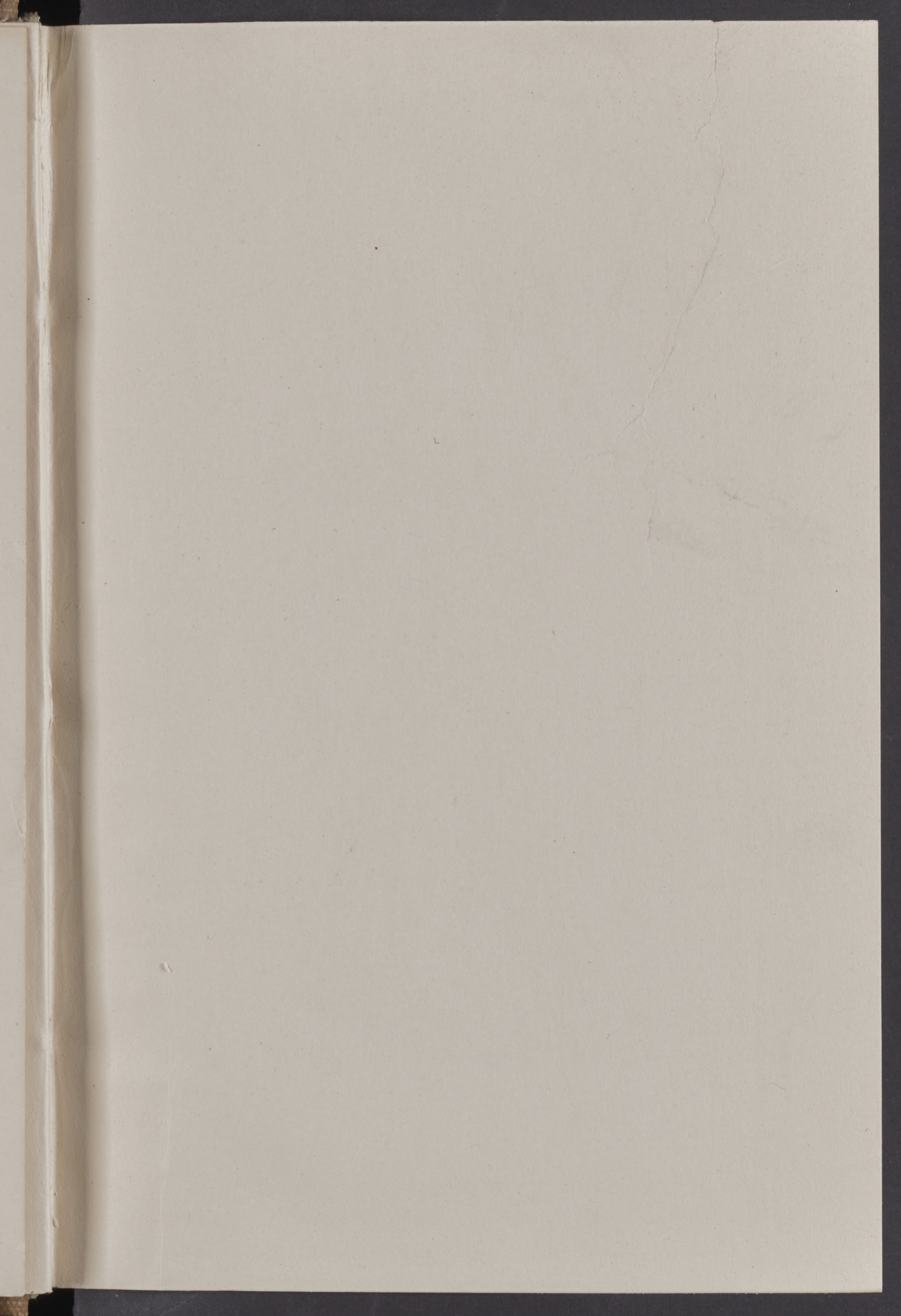
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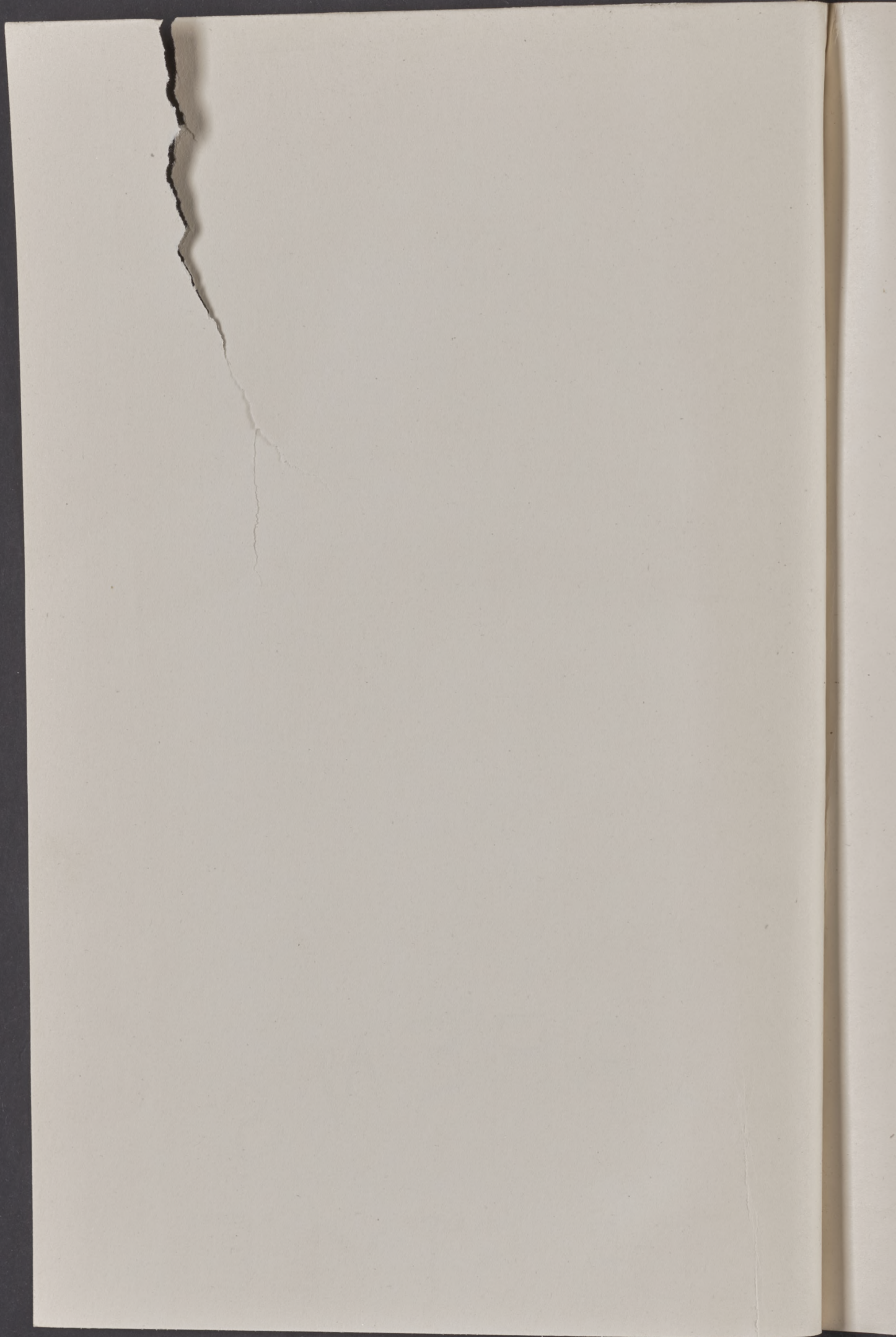
Plaintiff demands as damages the sum of five thousand  
dollars (\$5,000), or such other sum as he shall be entitled  
to by virtue of the provisions of the statute and the pro-  
visions of the insurance policy above referred to.

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SEYMOUR & SMITH,  
*Attorneys of Plaintiff.*

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*Summons.*

**SUMMONS AND COMPLAINT.**

THE STATE OF NEW JERSEY to Commonwealth Casualty  
Company. You are summoned to answer  
(SEAL) the annexed complaint of George Scul-  
thorpe in an action at law in the Essex  
County Circuit Court. And take notice that unless you 10  
file your answer to said complaint with the Clerk of the  
Essex County Circuit Court at Newark, within twenty  
days after service upon you of this writ and the annexed  
complaint, the plaintiff may proceed in the suit and judg-  
ment may be entered against you.

WITNESS, Nelson Y. Dungan, Judge of the Essex County  
Circuit Court, at Newark, this sixteenth day of February,  
nineteen hundred and twenty-two.

JOHN H. SCOTT,  
*Clerk.* 20

SEYMOUR & SMITH,  
*Attorneys.*

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40

*Complaint.*

## Essex County Circuit Court

10	GEORGE SCULTHORPE,  <div style="text-align: center;"><i>vs.</i></div> COMMONWEALTH CASUALTY COMPANY, <div style="text-align: right;"><i>Defendant.</i></div>	} <i>Plaintiff,</i>     } <i>Defendant.</i>	} <i>Action at Law.</i>     } <i>Complaint.</i>
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The plaintiff, George Sculthorpe, residing in the Township of Hamilton, in the County of Monmouth and State of New Jersey, says that:

20 1. Alexander Sirota was a duly licensed auto bus operator under and with the consent of the Board or body having control of the public streets, in the City of Asbury Park, and that under the terms of such a license or permit to operate an auto bus and in accordance with the statute in such case made and provided, the said Alexander Sirota on or about the fifteenth day of June, 1919, filed with the Chief Fiscal Officer of the City of Asbury Park, an insurance policy issued by the defendant, a foreign corporation duly licensed to transact business under the insurance laws of New Jersey against loss from

30 the liability imposed by law upon said Alexander Sirota for damages to the amount of five thousand dollars, 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 said auto bus upon the public highways on the route traversed by the said Alexander Sirota. The original of said insurance policy is in the possession of the said Chief Fiscal Officer of the City of Asbury Park and plaintiff makes said policy part of the complaint hereto, and same is made part here-

40 of as if incorporated at length.

*Complaint.*

2. On the first day of September, 1907, Alexander Sirota did so negligently operate a motor vehicle that he ran into and collided with a certain motor vehicle in which the said plaintiff was riding, and injured him, during the time that said plaintiff was riding in said

3. Plaintiff, on or about February 1908, obtained a final judgment upon the merits in favor of the said Alexander Sirota in the Circuit Court of the District of Columbia for the injuries sustained by the said plaintiff as a result of an accident occurring on the said ship, maintenance and use of said

4. Said judgment was for the sum of \$10,000 dollars, and costs

5. Under the said judgment the said defendant, filed a writ of habeas corpus of an act of Congress, approved March 3, 1916, page 100, of the Statutes at Large, commonly known as the "Act to amend the defendant's liability for damages in cases where the defendant is liable for damages in excess of ten thousand dollars, and to amend the Federal Rules of Civil Procedure, and for other purposes."

**ORDER.**

July 11, 1922.

TY CIRCUIT COURT.

Plaintiff,

*Action at Law.*

*Order.*

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*Answer.*

We consent to the making of the above order.

SEYMOUR & SMITH,  
*Attorneys of Plaintiff.*

JACOB SCHNEIDER,  
*Attorney of Defendant.*

10

**ANSWER.**

Filed July 8, 1922.

ESSEX COUNTY CIRCUIT COURT.

GEORGE SCULTHORPE,

*Plaintiff,*

*vs.*

COMMONWEALTH CASUALTY COMPANY,

*Defendant.*

*Action at Law.*

*Answer.*

20

The defendant, a corporation of the State of Pennsylvania, duly authorized to conduct business in the State of New Jersey, answering the complaint filed herein, says that:

1. The defendant admits that Alexander Sirota was a duly licensed auto bus operator under and with the consent of the Board or body having control in the City of Asbury Park, and that under the terms of such a license or permit to operate an auto bus and in accordance with the statute in such case made and provided, the said Alexander Sirota on or about June 15, 1919, filed with the Chief Fiscal Officer of the City of Asbury Park, an insurance policy issued by the defendant corporation against loss from the liability imposed by the law upon said Alexander Sirota for damages on account of bodily

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40

*Answer.*

10 injuries or death accidentally suffered or alleged to have been suffered by any person or persons not employed by the said assured by reason of the ownership, maintenance or use of the automobile described in said policy of insurance to the amount of five thousand dollars. Defendant, however, specifically denies that said insurance covered and protected said Alexander Sirota "on the route transversed by the said Alexander Sirota," but specifically insists that said policy of insurance by its terms included only the City of Newark, in the County of Essex and State of New Jersey, and no other place excepting the City of Asbury Park, New Jersey. It admits that the original of said insurance policy is in possession of the Chief Fiscal Officer of the City of Asbury Park.

20 2. He admits that on September 1, 1919, the said Alexander Sirota ran into and collided with a certain horse-drawn vehicle in which the said plaintiff was driving, thereby injuring him, but denies that the said Alexander Sirota was operating his auto bus at said time in a negligent manner. Defendant admits that the said policy of insurance or bond was in force at said time, but insists that it did not cover or protect the said Alexander Sirota by virtue of said accident on account of the fact that at the time when the accident occurred to plaintiff the said Alexander Sirota was operating his bus outside of Asbury Park and outside the limits prescribed by the policy of insurance; he was, in fact, operating said 30 jitney bus between the Cities of Asbury Park and Freehold, said Freehold being at considerable distance from Asbury Park, to wit, eighteen miles. In fact said accident occurred at the Town of Hamilton while said jitney bus was returning from Freehold to Asbury Park. Said Village of Hamilton is situated in the Township of Wall, being a distance of three miles from Asbury Park.

40 3. Defendant admits that the plaintiff recovered the judgment as set forth in paragraph three, but denies

*Answer.*

specifically that said accident was covered by said policy of insurance of the said defendant.

4. Defendant admits that said judgment was for the sum of ten thousand dollars and has no knowledge or information sufficient to form a belief as to whether the whole or any part thereof has been paid.

5. The defendant denies all the contents of paragraph five, excepting that the defendant admits that it has refused and still refuses to pay the plaintiff any sum of money whatsoever. 10

#### FIRST SEPARATE AND DISTINCT DEFENSE.

One Alexander Sirota mentioned in the complaint was the owner and operator of a motor vehicle commonly known and designated as a jitney bus which he was operating in the City of Newark, in the County of Essex and State of New Jersey. On or about June 15, 1919, he applied to the defendant company for a policy of insurance commonly known and designated as a jitney bus insurance policy to enable him to operate the same jitney bus which he had been operating in the City of Newark, in the City of Asbury Park. Thereupon the said defendant issued to the said Alexander Sirota a policy of insurance or bond to cover his operation of said jitney bus in Asbury Park, New Jersey, as well as in the said City of Newark. By a provision of said policy of insurance the coverage of said policy was specifically confined to said City of Newark and said City of Asbury Park, New Jersey. 20 30

Subsequent to the issuance of said policy on September 1, 1919, the plaintiff in this cause sustained injuries through a collision with said jitney bus while being operated by the servant and agent of the said Alexander Sirota. This accident, however, occurred in the Village of Hamilton, in the Township of Wall, three miles distant from Asbury Park and did, moreover, occur while 40

*Answer.*

the said Alexander Sirota was operating and maintaining the said jitney bus for the carriage of passengers between Asbury Park and Freehold, which is situated about eighteen miles from said Asbury Park.

10 Defendant insists that said policy or bond mentioned above did not cover or protect the said Alexander Sirota in his operation and maintenance of said jitney bus between Asbury Park and Freehold but was, in fact, specifically confined to the operation of his bus in Asbury Park, New Jersey.

In fact, the premium or price to be paid by the said Alexander Sirota for the operation of the jitney bus in both the Cities of Asbury Park and Freehold would have been greater than that for operation in Asbury Park alone.

20 Therefore, defendant insists that it is not liable in any respect by reason of the matters set up in the complaint.

JACOB SCHNEIDER,  
*Attorney of Defendant.*

30

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*Notice of Motion for Summary Judgment.*

**NOTICE OF MOTION FOR SUMMARY JUDGMENT.**

Filed October 25, 1922.

ESSEX COUNTY CIRCUIT COURT.

GEORGE SCULTHORPE,  <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>Action at Law.</i>	10
<div style="text-align: center;"><i>vs.</i></div> COMMONWEALTH CASUALTY COMPANY, a corporation,  <div style="text-align: right;"><i>Defendant.</i></div>			
		<i>Notice of Motion for Summary Judgment.</i>	

To Jacob Schneider, Esq., attorney of defendant:

PLEASE TAKE NOTICE, that on Saturday, July 29, 1922,  
 at 10:00 A. M., or as soon thereafter as we can be heard,  
 we shall move before the Honorable Worrall F. Moun-  
 tain, Judge of the above-named court, at the Essex County  
 Court House, for summary judgment against the defend-  
 ant, Commonwealth Casualty Company, a corporation, in  
 the above-entitled cause, basing such motion on the fact  
 that the answer filed therein is sham and without founda-  
 tion in law.

SEYMOUR & SMITH,  
*Attorneys of Plaintiff.* 30

*Order for Summary Judgment.*

**ORDER FOR SUMMARY JUDGMENT.**

Filed October 31, 1922.

ESSEX COUNTY CIRCUIT COURT.

10	GEORGE SCULTHORPE,  <div style="text-align: center;"><i>vs.</i></div> COMMONWEALTH CASUALTY COMPANY, a corporation,	<i>Plaintiff,</i>   <i>Defendant.</i>	} <i>Action at Law.</i> } <i>Order for</i> } <i>Summary</i> } <i>Judgment.</i>
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20 This cause coming on to be heard on a motion of the plaintiff to strike out the defendant's answer on the ground that the same was sham and frivolous, and the Court having heard the argument of George F. Seymour, Jr., counsel for the plaintiff, and Jacob Schneider, counsel for the defendant, and being of the opinion that said answer is sham, and the defendant corporation has failed to show such facts as entitle it to defend, it is on this twenty-seventh day of October, nineteen hundred and twenty-two,

30 ORDERED, that the defense be struck out and that final judgment be entered for the plaintiff for the sum of fifty-four hundred sixty dollars and sixty-one cents (\$5,460.61) and costs.

WORRALL F. MOUNTAIN,  
*Judge.*

*Assessment of Damages.*

ESSEX COUNTY CIRCUIT COURT.

GEORGE SCULTHORPE,  vs.  COMMONWEALTH CASUALTY COMPANY, a corporation,	Plaintiff,    Defendant.	}    }	Action at Law.  Assessment of Damages.	10
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Amount of Liability under Policy.....	\$5,000.00
Taxed Costs—Sculthorpe vs. Sirota....	56.12
Interest, Mar. 23, 1921 to July 29, 1922..	404.49
	\$5,460.61

Certified copy of judgment, also copy of taxed bill of costs in the case of Sculthorpe vs. Sirota attached hereto. 20

SEYMOUR & SMITH,  
*Attorneys of Plaintiff.*

*Taxed Bill of Costs.*

NEW JERSEY SUPREME COURT.

GEORGE SCULTHORPE,  vs.  10 ALEXANDER SIROTA (or Siddta),	Plaintiff,   Defendant.	} Action at Law. } On Postea. } Costs of } Plaintiff.
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COSTS.

Before Notice of Trial (plaintiff) .....	\$12.00
After Notice of Trial .....	5.00
Trial Fee, Issue of Fact .....	15.00
	\$32.00
20 Total Disbursements .....	24.12
	\$56.12

DISBURSEMENTS.

Clerk's Fees, Filing and Docketing.....	\$ 2.00
Clerk's Fees, Entering Judgment <i>nisi</i> .....	1.10
Clerk's Fee, Entering Judgment Final.....	5.00
Serving Process or Other Proceedings .....	2.96
Transcript .....	.56
30 Postea Fee .....	3.50
Attendance of Witnesses as follows:	
13 Dom. 1 day .....	6.50
3 " 1 " .....	1.50
Notice of Trial .....	1.00
	\$24.12
Total Disbursements .....	
Taxed at fifty-six dollars and twelve cents.	

ENOCH L. JOHNSON,  
*Clerk.*

40 March 23, 1921.

*Judgment.*

NEW JERSEY SUPREME COURT.

(L. S.)

GEORGE SCULTHORPE,

*Plaintiff,*

*vs.*

ALEXANDER SIROTA (or Siddta),

*Defendant.*

*Action at Law.*

*On Postea.*

10

DURANT, IVINS & CARTON,

*Attorneys.*

Judgment entered this twenty-third day of  
 \$10,000.00 March, A. D. nineteen hundred and twenty-  
 56.12 one, in favor of plaintiff and against the de-  
 ——— defendant for the sum of ten thousand dollars  
 \$10,056.12 damages and fifty-six dollars and twelve cents  
 costs.

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WM. S. GUMMERE,

*C. J.*

I, ENOCH L. JOHNSON, Clerk of the Supreme Court of  
 the State of New Jersey, do certify that the foregoing is  
 a true copy of the judgment entered in above-stated cause  
 which said judgment is recorded in this office in Vol. 13  
 of Judgments, page 196.

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IN TESTIMONY WHEREOF I have hereunto set my hand  
 and the seal of said Court at Trenton, this twenty-fifth  
 day of August, A. D. one thousand nine hundred and  
 twenty-two.

ENOCH L. JOHNSON,

*Clerk.*

(SEAL)

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*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed December 2, 1922.

ESSEX COUNTY CIRCUIT COURT.

10	GEORGE SCULTHORPE, <i>Plaintiff-Respondent,</i>  <i>vs.</i>  COMMONWEALTH CASUALTY COMPANY, a corporation,  <i>Defendant-Appellant.</i>	}	<i>Notice of Appeal.</i>
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20 Please take notice that Commonwealth Casualty Company, a corporation, the defendant-appellant, hereby appeals to the Court of Errors and Appeals of last resort of the State of New Jersey, from the whole of the judgment rendered in the above-entitled case in the Essex County Circuit Court.

JACOB SCHNEIDER,  
*Attorney of Defendant-Appellant.*

To Seymour & Smith, attorneys of plaintiff-respondent.

Dated November 28, 1922.

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Due service of a copy of the within notice of appeal is hereby acknowledged this twenty-eighth day of November, 1922.

SEYMOUR & SMITH,  
*Attorneys of Plaintiff-Respondent.*

*Grounds of Appeal.*

**GROUNDS OF APPEAL.**

Filed February 3, 1923.

ESSEX COUNTY CIRCUIT COURT.

GEORGE SCULTHORPE, <i>Plaintiff-Appellee,</i>  <i>vs.</i>  COMMONWEALTH CASUALTY Co., <i>Defendant-Appellant.</i>	}	<i>Action at Law.</i> 10  <i>On Appeal.</i>  <i>Grounds of Appeal.</i>
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The defendant-appellant states the following grounds of appeal from the judgment of the Essex County Circuit Court to the Court of Errors and Appeals of New Jersey:

1. Because the Essex County Circuit Court ordered that the defense of the defendant be stricken out and that final judgment be entered for the plaintiff in the sum of fifty-four hundred and sixty dollars and sixty-one cents and costs. 20

2. Because the Court adjudicated that the answer of the defendant was sham and that, therefore, the defendant had failed to show such facts as entitled it to defend this cause and thereupon entered judgment in favor of the plaintiff for the sum mentioned above. 30

3. Because the defendant was not permitted by the Court to proceed to trial in this case and was thus deprived of its day in court.

4. Because the defendant was deprived of its constitutional rights of due process of law in that its answer was stricken out and judgment was entered against the defendant for the sum mentioned above.

5. Because the Court adjudicated that the answer filed by the defendant was sham and ordered that judgment 40

*Grounds of Appeal.*

be entered in the sum of fifty-four hundred and sixty dollars and sixty-one cents without giving said defendant an opportunity to proceed to trial in this case before the Court and a jury.

10 6. Because the Court adjudicated that the answer of the defendant was sham and ordered judgment to be entered against the defendant in favor of the plaintiff for fifty-four hundred and sixty dollars and sixty-one cents although the answer in fact did set up a meritorious defense on the facts and the defendant should have been allowed to proceed to trial before the Court and a jury in order to have the issues of fact determined according to law.

JACOB SCHNEIDER,  
*Attorney of Defendant.*

20 Due service of a copy of the within grounds of appeal is hereby acknowledged this second day of February, 1923, and consent is hereby given to the filing of the same as of time.

SEYMOUR & SMITH,  
*Attorneys of Plaintiff-Appellee.*

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*Exhibit P. 1.***EXHIBIT P. 1.****AUTOMOBILE LIABILITY POLICY**

No. AB54309

Limit, \$5,000

**COMMONWEALTH CASUALTY COMPANY**  
Philadelphia, Pa.

10

IN CONSIDERATION of the Premium and the Statements 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

SECTION I. To INDEMNIFY the person, firm or corporation named in the attached Schedule, hereinafter called the Assured, AGAINST LOSS FROM THE LIABILITY IMPOSED BY LAW UPON THE ASSURED, for damages on account of bodily injuries 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 Automobile or Automobiles enumerated and described herein: provided such injuries or death (or both) be the result of accidents occurring during the period this Policy is in force. 20

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 may be instituted against the Assured, to enforce a claim covered by this Policy, for damages on account of bodily injuries or death (or both) suffered by any person or persons during the period this policy is in force. 30

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. 40

*Exhibit P. 1.*

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:

10 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.

20 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 endorsement signed by the President or Secretary of the Company.

SECTION VII. EXPENSE.

30 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.

*Exhibit P. 1.*

## SECTION VIII. BASIS OF PREMIUM.

The Premium is based upon the number and the 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.

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

## SECTION X. CANCELLATION.

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 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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*Exhibit P. 1.*

## 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 subrogated, 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.

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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 pend-

*Exhibit P. 1.*

ing 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.

## 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. 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 (\$5,000).

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

[This space is intended for the attachment of such endorsements as may be executed as in the Policy provided, and, when so executed and attached, they are to be construed as part of the policy.]

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*Exhibit P. 1.*COMMONWEALTH CASUALTY COMPANY OF  
PENNSYLVANIA

Philadelphia, Penna.

10 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.

20 Notice of occurrence of an accident, claim of injury or legal suit when served upon the Company by the Fiscal Officer of the city wherein the Insured is licensed, as specified in the Policy, shall be deemed and taken to be a notice as required to be given by the Insured under the terms of this Contract, provided, however, that the failure to give the notice required by any provision of this policy by either the insured or the fiscal officer of *Asbury Park, N. J.*, shall not operate to relieve the Company from liability hereunder, to pay any final judgment obtained against the insured within the limits or coverage of this policy as set forth in the preceding clause.

30 For the Company to cancel this Contract prior to date of expiration, it will be necessary to notify the Fiscal Officer of the city wherein the Insured is licensed as specified in the Policy, and the Insured, at least five (5) days before said cancellation is to become effective.

*Exhibit P. 1.*

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

This endorsement attached to and forming a part of Policy No. AB54309 of the Commonwealth Casualty Company of Philadelphia, Pennsylvania.

J. N. STEVENS,  
President.

E. S. COOK,  
Secretary.

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## SECTION XVIII. POLICY PERIOD.

The Policy Period shall be *three* months, beginning on the *15th* day of *June*, 1919, at noon and ending on the *15th* day of *September*, 1919, at noon, standard time, at the place where this Policy is countersigned.

## SECTION XIX.

## SCHEDULE OF STATEMENTS.

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Item I.—Name of Assured *Alexander Sirota*.

Item II.—Address of Assured, Street *186 Ridgewood Ave.*, Town *Newark*, County *Essex*, State *N. J.*

Item III.—Business or Occupation of Assured *Jitney Owner*.

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 during the period of this Policy are *passenger service*.

30

Item VI.—None of the Automobiles hereinafter mentioned will be rented to others or used to carry passengers for a consideration, except as follows: *Jitney*.

Item VII.—The number of chauffeurs employed is *varies*.

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

40

*Exhibit P. 1.*

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.

- 10 Make—*Reo*. Model or Type..... Style of Body—*Bus*. Year Built—*1917*. Engine No.—*#17189*. Horse Power, Adv..... Ins..... Kind of Power—*Gas*. Catalogue Value..... Liability Premium—*53.13*. *Designed to seat not more than 12 passengers.*

Item X.—No. of Automobiles to be Insured *one*. Limit of Liability, \$5000. Date of Policy *June 15th, 1919*. Policy to be for a period of *three* months. Terminating *September 15th, 1919*. Total Liability Premium \$*53.13*. Total Property Damage Premium \$.... Total Premium \$*53.13*.

- 20 IN WITNESS WHEREOF the Commonwealth Casualty Company of Philadelphia, Pennsylvania, has caused these presents to be signed by its President and its Secretary this *15th* day of *June 1919*; but the same shall not be binding upon the Company until countersigned by a duly authorized Agent.

J. N. STEVENS,  
President.

E. S. COOK,  
Secretary.

- 30 Countersigned at *Newark, N. J.*, on the *15th* day of *June, 1919*.

.....Agent.

Exhibit P. 1.

Short Rate Cancellation Table

For the Term of One Year

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

When Policy is written for shorter period than one year, cancellation is figured on basis of annual premium charged.

*Exhibit P. 1.*

Automobile Liability Policy  
No. AB 54309

Commonwealth Casualty Company  
Philadelphia, Pa.

Issued to  
*Alexander Sirota*  
186 Ridgewood Ave.,  
Newark, N. J.

10

Premium  
\$53.13

Expires *Sept. 15th, 1919.*

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Read Your Policy Carefully

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20

SMITH CASE Co.  
State Managers  
New Jersey Office  
Kinney Bldg., Newark, N. J.

30

40

## New Jersey Court of Errors and Appeals

GEORGE SCULTHORPE,

*Plaintiff-Appellee,**vs.*

COMMONWEALTH CASUALTY COMPANY,

*Defendant-Appellant.**Action at Law.***BRIEF OF THE ARGUMENT OF  
PLAINTIFF-APPELLEE.**

The argument is limited in this case to only one point, *i. e.*, whether or not the Trial Judge erred in striking out the answer of the defendant-appellant, and entering summary judgment.

The only question necessary to be determined by the Trial Court was whether the defendant had a *bona fide* defense, one which it may be able to establish; a plausible ground of defense, something fairly arguable, and of a substantial character. The question is, on a motion for judgment over answer, whether the answer exhibits a possible and plausible defense. *Meyer v. Nickelsburg Bros. Co.*, 37 N. J. L. 36; 95 Atl. 993.

The only defense claimed by the defendant is that it is not liable under its policy of insurance and therefore it becomes purely a question of construction and not a question of fact, which question is properly adjudicated by the Court upon motion to strike out the answer.

The defendant-appellant bases its claim of no liability upon the theory that the policy by the words in Item "8" of the Schedule of Statements (see p. 23, l. 20), that the automobiles are maintained and *principally* used in the town named in Item "2" (meaning Newark) excepting as follows: Asbury Park, N. J., limits the coverage to the

operation of this jitney bus to within the territorial limits of the municipalities named.

The word *principally* as used in the policy of insurance is synonymous with *chiefly* and can by no means be construed to be a positive limitation of the use of this automobile bus to Newark and Asbury Park. There are no other words in the policy that restrict or limit the use of the jitney bus in question. The use of this automobile bus not being expressly limited to the City of Newark, N. J., and the City of Asbury Park, N. J., the defendant company is liable under its policy of insurance particularly in view of the fact that by a "rider" attached to the policy (see p. 22, l. 1), the defendant company expressly undertakes to insure against loss, damage, or injury arising out of the use of this automobile, as a "jitney" under the term 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.

In the case of *Connell v. Commonwealth Casualty Co.*, 115 Atl. 352, the Court held that the benefit of any doubt arising from provisions of an insurance policy is to be given to insured.

In this case, as well as the case of *Edna Devlin, administratrix ad pros. v. Charles F. Herr, Receiver, &c.*, opinion by Justice Trenchard in the New Jersey Supreme Court, filed March, 1923, and not yet reported, the "jitney" bus in question was not being operated on its prescribed route when the accident arose, whereas in the case *sub jud.*, the jitney was being lawfully operated over its regular route.

In the Devlin case, the Court said: "and the defendant's contention is that as soon as the jitney bus was operated outside of the locality known as Port Newark, or off the route designated by the city, the insurance policy ceased to be of any benefit to the traveling public. This contention is without merit and is in entire disregard of the express terms of the policy to the effect that, the policy does not

cover loss while the jitney is being used or operated outside the limits of the State of New Jersey, or in any municipality where consent to operate as a jitney has not been obtained.”

In the case *sub jud.* there are no words of limitation as to where this bus can be operated, and in their absence it is contended that liability under this policy arises regardless of the place where the accident actually happens.

As to the defendant-appellant's contention (see p. 8, ll. 14, *et seq.*), that the premium would have been greater for the operation of the jitney bus between Freehold and Asbury Park than for operation in Asbury Park alone, once again the terms of the policy are binding upon the defendant as Section VIII (see p. 19, l. 1) reads as follows: “Basis of Premium: The premium is based upon the number and character of the automobiles to be covered hereby, dependent upon the purpose for which they are to be used, as stated in Item V of the Schedule.”

Item V of the Schedule (see p. 23, l. 30), reads as follows: “Item V. 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.*”

Therefore, by the very terms of their own contract of insurance they are estopped from interposing as a defense, as against this plaintiff, that their premium is based upon facts or usages other than those enumerated in the policy as written.

### Conclusion.

It is therefore respectfully submitted that the judgment of the Trial Court should be affirmed.

Respectfully submitted,

SEYMOUR & SMITH,  
*Attorneys for and of Counsel*  
*with Plaintiff-Appellee.*

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No. 77  
MAR. T. 1923

Arthur W. Cross, Law Printer. 243 Market Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

GEORGE SCULTHORPE,

*Plaintiff-Appellee,*

*vs.*

COMMONWEALTH CASUALTY COMPANY,

*Defendant-Appellant.*

*Action at Law.*

### BRIEF OF DEFENDANT-APPELLANT.

#### Statement of the Case.

This suit was brought by George Sculthorpe on the following state of facts: On September 1, 1919, while driving a horse-drawn vehicle, he was struck by a motor vehicle operated by one Alexander Sirota; he instituted suit against the said Sirota in the Monmouth County Circuit Court and recovered judgment for ten thousand dollars (\$10,000.00) and costs on February 23, 1920. The plaintiff alleges that said Alexander Sirota's motor vehicle was a duly licensed auto bus which was being operated as a jitney bus, to use popular parlance, under a license issued by the Municipality of Asbury Park after the said Sirota had filed with the chief fiscal officer of said City an insurance policy issued by the Commonwealth Casualty Company in the maximum sum of five thousand dollars (\$5,000.00) to cover accidents resulting in bodily injuries or death sustained by any person on account of the operation of said bus, in accordance with the terms of said policy. The plaintiff then recites the Act of the Legislature of New Jersey, commonly called "The Kates Act," and insists that by virtue of this act and the premises the plaintiff is entitled to recover five thousand dollars (\$5,000) from the defendant.

The defendant filed an answer in which it was admitted that the said Sirota had filed an insurance policy of

the defendant company with the Municipality of Asbury Park, that he was a duly licensed auto bus operator under and with the consent of said City. Defendant specifically denied that said policy protected Sirota "on the route traversed by the said Alexander Sirota," but specifically insisted that said policy of insurance by its terms included only the City of Newark in the County of Essex, and no other place excepting the City of Asbury Park, New Jersey. The defendant admitted in the answer the accident alleged, the recovery of the judgment, but insisted that the said Alexander Sirota, at the time of the accident, whereby the plaintiff sustained his injuries, was operating his jitney bus outside of Asbury Park and outside of the limits prescribed in the policy of insurance, and that he was in fact operating said jitney bus between the Cities of Asbury Park and Freehold, Freehold being about eighteen miles from Asbury Park, and that in fact the accident occurred at the Town of Hamilton while the bus was returning from Freehold to Asbury Park, Hamilton being about three miles outside of Asbury Park.

The first separate defense in addition to the above, sets out that on June 15, 1919, Sirota, who held a policy from the defendant company covering Newark, applied for a policy of insurance to cover him in his operations in Asbury Park; and this policy was issued, limiting the coverage specifically to Newark and Asbury Park. The defendant insists that said policy did not cover Sirota at the time of the accident because he was operating between Freehold and Asbury Park and the accident in fact occurred on a return journey from Freehold, three miles outside of Asbury Park.

It also alleges that the premium or price that Sirota would have been obliged to pay for operating his jitney bus on this route, viz, between Asbury Park and Freehold, would have been greater than the premium paid on the policy as it was.

Plaintiff, after the filing of the answer, served notice of an application for the entry of summary proceedings

on the pleadings. A hearing was had on this notice and the Court made an order for summary judgment for fifty-four hundred and sixty dollars and sixty-one cents (\$5,460.61) on the ground that the answer was sham. The defendant appeals from this judgment on the ground that the defense was not sham but real.

It should be added that on the hearing of the motion to enter judgment, it was agreed that the policy of insurance in question should be marked "Exhibit P. 1," offered in evidence and considered as part of the record. It has therefore been made part of the state of the case. The following excerpt is important (see p. 23, ll. 20, *et seq.*).

#### SCHEDULE OF STATEMENTS.

- Item 2.—Address of assured, street, 186 Ridgewood Avenue; town, Newark; County, Essex; State, N. J. \* \* \*
- Item 8.—The automobiles are maintained and principally used in the town named in Item "2" excepting as follows: Asbury Park, N. J.

#### BRIEF OF THE ARGUMENT.

The argument on this case is necessarily circumscribed to very narrow limits as a very similar case was passed upon by this Court in the November, 1921, Term.

*Connell v. Commonwealth Casualty Co.*, 115 Atl. Rep. 353.

In this case a jitney bus was licensed to operate in "Passaic, N. J., Garfield, N. J., Lodi, N. J., and vicinity." While the bus was being driven from its accustomed route to Brooklyn to be used for passenger service there, it struck and killed a pedestrian in Newark. In that case two arguments were advanced, viz: firstly, that the bus was not in the passenger service at the time and did not therefore come under The Kates Act, and secondly, that it was not in a place or on a route covered by the policy

of insurance. The first point does not figure in the case *sub jud.*, as it is admitted that the Sirota bus was being operated in passenger service at the time when Sculthorpe was injured. It is the second point, however, that does arise in this present case.

In the Connell case, the Court held that the jitney bus was covered by the policy of insurance on account of the following reasons:

1. It was held specifically that the Court would take judicial notice that Newark was in the vicinity of Passaic, Garfield and Lodi, and was therefore covered by the policy. This point does not apply in any respect to the case *sub jud.*, as the words "and vicinity" do not appear in the policy of insurance, but only the Cities of Newark and Asbury Park are specified without qualification. Therefore this case does not come within the ruling of *Connell v. Commonwealth*, as to this point.

2. The policy in the Connell case furthermore contained the following provision: "This policy does not cover loss arising from claims made on account of accident resulting from the use of the automobile elsewhere than within the borders of the United States and Canada." The Court held therefore, that the policy defined its own territorial limitations to include Canada and the United States of America. *The policy of insurance, however, in the case sub jud., does not contain this provision or any provision whatsoever of a similar nature. The operation of the automobile insured is limited to Newark and the subsequent exception applies to Asbury Park only.* The reasoning of the Connell case, therefore, does not apply to this present case.

It may possibly be argued that the policy reads in Item "8" of the Schedule of Statements that the automobiles are maintained and *principally* used in the town named in Item "2" (meaning Newark) excepting as follows: Asbury Park, N. J., and that therefore the coverage extends to other places, including the place of the accident. In other words, it may be argued that the word "*prin-*

*cially*'' extends the scope of the territorial limitation. The very fact, however, that it was considered necessary to make a specific exception in favor of Asbury Park, would eliminate the inference that the jitney bus could have been operated in Freehold or the Town of Hamilton. Moreover, it would at least be a question of fact for the jury as to whether the automobile in question was or was not principally operated according to the territorial limitations of the policy of insurance, and such a defense could not be termed a sham defense. The answer, moreover, sets forth specifically, by way of addition (see p. 8, ll. 14, *et seq.*), *that the premium would have been greater for the operation of the jitney bus between Freehold and Asbury Park than for operation in Asbury Park alone.*

*It is very evident, therefore, that the facts set forth in this present case have not been adjudicated by Connell v. Commonwealth.*

It is urged that the defendant company had a right in issuing this policy of insurance to Sirota to circumscribe the limits of the operation of the automobile covered thereby, even though it was designed for passenger service under The Kates Act. Otherwise, insurance companies like the defendant could not run or regulate their business in any sane or fairly safe manner. *This company had a right, firstly, to regulate its premium in accordance with the territory to be covered, and, secondly, it had a right to select and choose the territory which it desired or cared to cover.* It might very well have been that the company would not cover certain territory for various considerations; in fact such cases often arise in the operation of insurance companies, and they will frequently refuse to cover jitney busses in certain territories in this State. To hold that the policy of insurance would follow the jitney bus driver wherever it traveled, would be unfair to these companies as it would not permit them to operate their business according to their own best judgment, which, of course, they should have a right to do.

*In other words, in order to hold the defendant liable in this case, the Court must squarely say that the policy follows the bus wherever it goes. And it is respectfully submitted that this would really be depriving the company of the right to properly safeguard its funds and resources.*

For these reasons it is urged that the answer was not sham and should not have been stricken out.

**Conclusion.**

It is therefore respectfully submitted that the judgment should be reversed, set aside and vacated.

Respectfully submitted,

JACOB SCHNEIDER,  
*Attorney for and of Counsel with  
Defendant-Appellant.*

