

INDEX

	PAGE
Writ of Certiorari	1
Allocatur and Back of Writ of Certiorari	2
Proof of Service	3
Reasons	5
Return by the District Court of the City of Orange	7
State of Demand	9
District Court Summons	11
Judge's Notes	13
Copy of Docket	14
Copy of Jacket	16
Rule to Show Cause	17
Notes on Rule to Show Cause	19
Order Discharging Rule to Show Cause	19
Opinion of Supreme Court.....	21
Order for Affirmance of Judgment of Orange District Court	23
Notice of Appeal and Grounds.....	24

Writ of Certiorari.

Writ of Certiorari.

ESSEX COUNTY, ss.

The State of New Jersey to the
Judge of the District Court of the
(SEAL) City of Orange, GREETING: We being
willing for certain reasons to be cer- 10
tified of a judgment, order and pro-
ceedings given and made in the said Orange Dis-
trict Court of the City of Orange in a certain
action brought by Benjamin Sodowich, against
Henry Heimert, Jr., defendant, No. 36041,

We command you that you send under your
seal to our New Jersey Supreme Court at Tren-
ton, on the 15th day of September, 1930, the
judgment, order and proceedings aforesaid, with
all things attached concerning the same, as fully 20
and entirely as they remain in said court before
you, together with this writ, that we may further
cause to be done thereupon what of right should
be done.

Witness, WILLIAM S. GUMMERE, Esquire, Chief
Justice of our Supreme Court at Trenton, this
25th day of August, in the year of our Lord, one
thousand nine hundred and thirty.

FRED L. BLOODGOOD, 30
Clerk.

RICHARD SPITZ,
Attorney for Prosecutor.

RICHARD STOCKTON,
Of Counsel.

Allocatur.

Allocatur.

NEW JERSEY SUPREME COURT.

HENRY HEIMERT, JR.,

Prosecutor,

10

vs.

BENJAMIN SODOWICH,

Respondent.

Writ of Certiorari.

Richard Spitz,
Attorney for Prosecutor,
31 Clinton St.,
Newark, N. J.

20

Allocatur.

I allow the within writ; let it be sealed.

WM. S. GUMMERE,
Chief Justice of the Supreme Court.

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*Proof of Service.***Proof of Service.**

NEW JERSEY SUPREME COURT.

HENRY HELMERT, JR., <i>Prosecutor,</i> <i>vs.</i> BENJAMIN SODOWICH, <i>Respondent.</i>	}	<i>On Certiorari.</i> <i>Proof of Service.</i>	10
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.:

FRANK C. JOHNSTON, of full age, being duly sworn upon his oath according to law, deposes and says: 20

I am a clerk employed in the law offices of Richard Spitz, attorney for the prosecutor herein,

On August 29, 1930, at about 1:50 P. M., I served the original of the writ of certiorari, a copy of which is attached hereto and made a part hereof, personally upon his Honor, Daniel A. Dugan, Esquire, Judge of the District Court of the City of Orange, making known to him the contents thereof at his law offices in the National Bank Building, Main and Day streets, Orange, New Jersey. 30

I inadvertently failed to ask for an acknowledgment of service of the said writ and left the original with his Honor, and for that reason this affidavit of service is filed.

FRANK C. JOHNSTON.

Sworn and subscribed to before me
 this 1st day of September, 1930.

OTTO E. RIEMENSCHNEIDER, 40
 An Attorney at Law of New Jersey.

Proof of Service.

ESSEX COUNTY, ss.

The State of New Jersey to the
 Judge of the District Court of the
 (SEAL) City of Orange, GREETING: We being
 willing for certain reasons to be cer-
 tified of a judgment, order and pro-
 10 ceedings given and made in the said Orange
 District Court of the City of Orange in a certain
 action brought by Benjamin Sodowich, against
 Henry Heimert, Jr., defendant, No. 36041,

We command you that you send under your
 seal to our New Jersey Supreme Court at Tren-
 ton on the 15th day of September, 1930, the
 judgment, order and proceedings aforesaid, with
 all things attached concerning the same, as fully
 and entirely as they remain in said court before
 20 you, together with this writ, that we may fur-
 ther cause to be done thereupon what of right
 should be done.

Witness, WILLIAM S. GUMMERE, Esquire, Chief
 Justice of our Supreme Court at Trenton this
 25th day of August, in the year of our Lord
 one thousand nine hundred and thirty.

FRED L. BLOODGOOD,
 Clerk.

30 RICHARD SPITZ,
 Attorney for Prosecutor.

RICHARD STOCKTON,
 Of Counsel.

A true copy,

RICHARD SPITZ,
 Attorney.

Reasons.

Reasons.

NEW JERSEY SUPREME COURT.

HENRY HEIMERT, JR., <i>Prosecutor,</i> <i>vs.</i> BENJAMIN SODOWICH, <i>Respondent.</i>	} <i>On</i> } <i>Certiorari.</i> } <i>Reasons.</i>
	10

The judgment of the District Court of the City of Orange, in a suit wherein Benjamin Sadowich is plaintiff and Henry Heimert, Jr., is defendant, is illegal, erroneous and unlawful, for the following reasons:

20

1. Because the District Court of the City of Orange was without jurisdiction to hear said cause, and to make and enter judgment therein.

2. Because the said Court took cognizance and heard said cause, notwithstanding that judgment for the same cause of action was rendered by the said Court in an action entitled similarly concurrently with the judgment rendered herein.

3. Because the lower court gave judgment in favor of the plaintiff below, and respondent herein, and against the defendant below and the prosecutor herein the sum of two hundred and twenty dollars (\$220.00) and costs, in the suit wherein the prosecutor desires to be certified, and in another suit embracing the same cause of action, in the sum of five hundred dollars (\$500.00) and costs.

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4. For the reason that this judgment was not warranted by the evidence, facts or law, in that

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Reasons.

no claim in the sum of two hundred and twenty dollars (\$220.00) was claimed or proven.

5. Because judgment in the same cause had been previously entered in another suit between the same parties, and by the same court.

10 6. Because the prior judgment referred to was for damages sustained by the plaintiff below, for personal injuries, and this suit was also for damages resulting from the personal injury alleged to have been sustained by the plaintiff below, arising out of the same act.

7. Because the lower court refused to reverse the judgment rendered on application for rule to show cause why same should not be reversed.

20 8. Because the said judgment is illegal, erroneous and unlawful for divers other reasons.

RICHARD SPITZ,
Attorney for Prosecutor.

Service of a copy of the within Reasons is hereby acknowledged this 19th day of September, 1930.

WM. L. GREENBAUM,
Attorney for Respondent.

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Return to the Writ.

Return to the Writ.

NEW JERSEY SUPREME COURT.

HENRY HEIMERT, JR.,	} <i>Prosecutor,</i>	<i>On Certiorari.</i>	10
<i>vs.</i>			
BENJAMIN SODOWICH,	} <i>Respondent.</i>	<i>Return to the Writ.</i>	

I, DANIEL A. DUGAN, Esq., Judge of the District Court of the City of Orange, do herewith send to the Supreme Court of the State of New Jersey the judgment, order and proceedings had before the said District Court of the City of Orange, in the County of Essex and State of New Jersey, wherein the said Court heard and determined the original suit on the issue joined, and the rule to show cause, wherein a judgment rendered on behalf of the respondent and against the prosecutor was entered and application for rule to show cause dismissed, together with all papers and things touching and concerning the same, as by the writ of certiorari sealed the 25th day of August, 1930, before the Honorable William S. Gummere, Chief Justice of the Supreme Court, I am commanded to do.

I certify that I am the Judge of the Orange District Court, in the County of Essex and State of New Jersey, and that the following are true copies of all proceedings, judgments, rules, orders, etc., of the said Court, and that together they constitute the entire record of the proceedings in the above-entitled action.

Return to the Writ.

Signed this 17th day of September, 1930, and sealed with the seal of the District Court of the Judicial District of the City of Orange, Essex County, N. J.

DANIEL A. DUGAN.

10 Attest:

HAROLD J. TRABOLD,
Clerk.

A true copy.

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State of Demand.

State of Demand.

DISTRICT COURT OF THE CITY OF
ORANGE.

BENJAMIN SODOWICH,

Plaintiff,

vs.

HENRY HEIMERT, JR.,

Defendant.

In Tort.

*State of
Demand.*

10

Plaintiff, residing in the City of Newark,
County of Essex and State of New Jersey, says
that:

1. On or about the 22nd day of June, 1929,
plaintiff was crossing Fourth avenue, a public
highway in the City of East Orange, County of
Essex and State of New Jersey, in a lawful, care-
ful and cautious manner. 20

2. On the day and date aforesaid, the de-
fendant was the owner of a certain automobile
which he, his servant or agent was driving in a
northerly direction along South 19th street, a
public highway in the City of East Orange,
New Jersey, in a reckless, careless and negligent
manner, at a high and excessive rate of speed,
without due regard to the rights of pedestrians
on the said highway and generally in a reckless,
careless and negligent manner. 30

3. When the said automobile owned by the
defendant reached the intersection of South 19th
street and Fourth avenue, public highways as
aforesaid, it was being driven in such a careless,
reckless and negligent manner that it ran into 40

State of Demand.

and struck the plaintiff, while he was lawfully crossing the street aforesaid.

10 4. As a result of the negligence and carelessness of the defendant, his servant or agent, the plaintiff sustained severe injuries to his head, arms, legs, back and divers part of his body.

5. As a further result of the defendant's carelessness, recklessness and negligence, the plaintiff was confined to his bed and home for a long period of time and suffered great physical pain and mental anguish and was compelled to expend large sums of money for medical aid and attention in an endeavor to cure himself of the injuries as aforesaid, which may be permanent in nature.

20 6. As a further result of the defendant's carelessness and negligence, the plaintiff was compelled to expend a large sum of money to purchase a new suit to replace the one damaged by the carelessness, recklessness and negligence of the defendant.

For all of which facts, the plaintiff demands of the defendant the sum of five hundred dollars (\$500.00) plus costs of this suit to be taxed.

30

WM. L. GREENBAUM,
Attorney for Plaintiff.

*District Court Summons.***District Court Summons.**

ESSEX COUNTY,
THE STATE OF NEW JERSEY. } ss.:

To any Constable of said County or
to the Sergeant-at-Arms of the Dis- 10
(L. s.) trict Court of the City of Orange
SUMMON Henry Heimert, Jr., to ap-
pear before the District Court of the
City of Orange, to be held at the City Hall, No.
29 North Day street (third floor), in the said
City, on the 25th day of September, 1929, at ten
o'clock in the forenoon to answer unto Benjamin
Sodowich, in an action in Tort the damage of
plaintiff.

Five hundred dollars. Hereof fail not. 20

WITNESS, DANIEL A. DUGAN, Esq., Judge of said
Court at Orange, aforesaid the 12th day of Sep-
tember, in the year one thousand nine hundred
and twenty-nine.

HAROLD J. TRABOLD,
Clerk.

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District Court Summons.

35 Oakwood Avenue
Glen Ridge, N. J.

#36041

10 DISTRICT COURT
City of Orange

Summons in an action in Tort

Benjamin Sadowich, plaintiff,

vs.

Henry Heimert, Jr., defendant.

COSTS.

20	Demand	\$500.00
	Summons	2.10
	Mileage	.32
	Listing Fee	1.50
	Attorney's Fee	

Returnable September 25, 1929.

William L. Greenbaum, 164 Market
street, Newark, N. J., attorney for plain-
tiff.

30 The said defendant not being found, I served
this summons September 17, 1929, by leaving a
copy thereof at his place of abode in the presence
of his sister a person of the family of the age
of fourteen years, who was informed of the con-
tents thereof.

ANTHONY RAO,
Sergeant-at-Arms or Constable.

*Judge's Notes.***Judge's Notes.**

Sodowich vs. Heimert, 6/27/30, Greenbaum &
Soladar.

Benjamin Solowich, S. T.

Dr. Robert Bauman, S. T.

Benjamin Sodowich, S. & T.

10

Harry Zuckerman, S. & T.

Dr. Samuel Hirschberg, S. & T.

P. Rests.

Motion for non-suit denied.

Henry Heimert, Jr., S. & T.

#37457 Vol. Non-suit.

Motion to adjourn in order to get Dr. for Deft.

Attorney granted for one hour, Dr. Daniel R.

Mischell, S. & T. for Deft.

D. Rests. P. Rests.

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J. P. \$500.00 PERSONAL

J. P. PROPERTY DAMAGE \$220.00

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Copy of Docket.

True Copy of Docket.

#36041

ORANGE DISTRICT COURT.

10	BENJAMIN SODOWICH, <i>Plaintiff,</i> <i>vs.</i> HENRY HEIMERT, JR., <i>Defendant.</i> } <i>Action</i> <i>In Tort.</i> <i>On Contract.</i> <i>Demand \$</i>
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Summons issued September 12, 1929.

Returnable September 25, 1929.

20

William L. Greenbaum, plaintiff's attorney.

Summons returned as follows:

The said defendant not being found, I served this summons September 17, 1929, by leaving a copy thereof at his place of abode in presence of his sister, a person of the family, of the age of fourteen years, who was informed of the contents thereof.

30

ANTHONY RAO,
Constable.

PLAINTIFF'S COSTS.

Summons	\$ 2.10
Mileage	.32
Listing Fee	1.50
Attorney's Fee	11.00
Total Cost	\$14.92

40

Copy of Docket.

1930

June 27. Trial Had. Benjamin Sodowich, Dr. Robert Berman, Harry Zuckerman and Dr. Samuel Hirschberg sworn and testified. Plaintiff rests. Motion for non-suit denied. Henry Heimert sworn and testified. Motion for voluntary non-suit in case No. 37457 granted. Dr. Daniel R. Mischell sworn and testified. Judgment was rendered for the plaintiff against the defendant for two hundred twenty dollars damages and fourteen dollars ninety-two cents costs. 10

July 25. Rule to show cause granted.

Aug. 8. Rule discharged.

Aug. 8. Order discharging rule filed. 20

A true copy.

HAROLD J. TRABOLD,
Clerk.

30

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Copy of Jacket.

Expenditures and property damages	\$2.10
	.32

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ORANGE DISTRICT COURT.

BENJAMIN SODOWICH,

Plaintiff,

vs.

HENRY HEIMERT, JR.,

Defendant.

On Contract.

20

W. L. GREENBAUM, Pltff's Att'y
Defdt's Att'y

	Ret'ble	9/30 A.R.	
	Sept. 25	Dec. 6	Apr. 17
	Oct. 2	11	May 2
	11	20	23
	18	Jan. 3	June 13
	25	24	27
30	Nov. 1	Feb. 7	
	8	21	
	22	March 7	\$220 Pltff.
		14	
		28	

*Rule to Show Cause.***Rule to Show Cause.**DISTRICT COURT OF THE
CITY OF ORANGE.

BENJAMIN SODOWICH,

Plaintiff, *In Tort.**vs.**Rule to
Show Cause.*

HENRY HEIMERT, JR.,

Defendant.

10

Judgment having been rendered for the plaintiff and against the defendant in the above-entitled cause and application made for an order to show cause why a new trial should not be granted in this matter on the grounds that same was contrary to law and fact, in that the plaintiff's contributory negligence was apparent from his own testimony, which would thus bar him from a recovery, and that the finding of the jury for the plaintiff was the result of passion, prejudice or mistake;

20

Secondly, it being urged that the judgment was contrary to law, SAME BEING IN THE SUM OF \$220.00 FOR PERSONAL LOSS. THIS SUM BEING ASSESSED IN ADDITION TO THE \$500.00 ALLOWED FOR PERSONAL INJURIES ALLEGED TO HAVE ARISEN OUT OF THE SAME ACCIDENT. This judgment was contrary to law, in that being rendered at the same time the judgment for personal injuries was rendered, and arising out of the same accident, the allowances were contrary to law in that ONLY \$40.00 FOR A SUIT WAS ACTUALLY BASED ON PERSONAL PROP-

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Rule to Show Cause.

ERTY LOSS, AS THE REMAINDER WAS
BASED ON ALLEGED LOSS OF WAGES,
WHICH SHOULD HAVE BEEN INCORPO-
RATED IN THE PERSONAL INJURY
CLAIM. This thus violated the provisions of
the District Court Act relative to \$500.00 juris-
10 diction.

Thirdly, that this judgment was excessive, in
that an allowance of \$220.00 was made and the
only loss shown was for a suit previously pur-
chased for \$40.00. Medical bills were not proven.
LOSS OF WAGES WAS IMPROPERLY A
PART OF THIS SUIT, and even then all claims
together are less than the aggregate of \$220.00
allowed in this suit. It being claimed that this
verdict was the result of prejudice, passion or
20 mistake.

It is, therefore, ordered on the 25th day of
July, 1930, that the plaintiff show cause before
this court, at Orange, New Jersey, on the 8th
day of August, 1930, or as soon thereafter as
counsel can be heard, why the verdict rendered
should not be set aside and a new trial granted;
and it is hereby further ordered that the attorney
for the defendant serve a true copy of this rule
to show cause upon the attorney for the plaintiff,
30 within three days from the date hereof, and that
judgment be stayed until the disposition of this
rule to show cause.

DANIEL A. DUGAN,
Judge of the District Court
of the City of Orange.

Order discharging Rule to Show Cause.

Notes on Rule to Show Cause.

8/8/30

Rule dismissed. EX GRANTED

10

Order Discharging Rule.

DISTRICT COURT OF THE
CITY OF ORANGE.

BENJAMIN SODOWICH,

Plaintiff, *In Tort.*

vs.

HENRY HEIMERT, JR.,

Defendant.

*Rule to
Show Cause.*

20

This matter being opened to the Court by William L. Greenbaum, attorney for the plaintiff, and in the presence of Richard Spitz, attorney for the defendant, it is on this 8th day of August, 1930,

ORDERED that the rule heretofore issued in this cause on the 26th day of July, 1930, be and the same is hereby discharged. 30

DANIEL A. DUGAN,
Judge.

Order discharging Rule to Show Cause.

36041

DISTRICT COURT OF THE
CITY OF ORANGE.

10	BENJAMIN SODOWICH, <i>vs.</i> HENRY HEIMERT, JR., <i>Plaintiff,</i> <i>Defendant.</i>
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Order discharging rule to show cause.

20	WM. L. GREENBAUM, Attorney for Plaintiff, 164 Market St., Newark, N. J.
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Opinion of Supreme Court.

Opinion of Supreme Court.

NEW JERSEY SUPREME COURT.

No. 215, January Term, 1931.

BENJAMIN SODOWICH, <i>Respondent,</i>	}	10
<i>v.</i>		
HENRY HEIMERT, JR., <i>Prosecutor.</i>	}	

Submitted January 30, 1931; decided May 5, 1931.

Where one suffers injuries to his person and also to his property from the same negligent act of the defendant, two distinct causes of action exist, and a recovery for injury to the property is not a bar to an action for the injury to the person. 20

On certiorari to District Court of the City of Orange.

Before Justices Parker, Campbell and Bodine.

For the prosecutor, Richard Stockton. 30

For the respondent, William L. Greenbaum.

The opinion of the Court was delivered by PARKER, J.

The writ brings up the record of a damage suit growing out of the fact the respondent, plaintiff below, was struck by prosecutor's automobile, while crossing a street. There was a judgment for plaintiff based on injuries to property, including damage to clothing, medical ex- 40

Opinion of Supreme Court.

penses and loss of wages. The state of demand contained a claim for personal injury and pain and suffering, but this was not considered in the present suit and was passed upon in another suit between the same parties, in the same court, tried at the same time, on the same evidence, and resulting in a judgment for \$500. In that suit there was no award for property damage.

The first point now made is that the other suit was *res judicata* and that the Court was thus without jurisdiction to determine this action. But the case of *Ochs v. Public Service Railway Co.*, 81 N. J. L. 661, is to the contrary, and hold that separate actions may be maintained.

The next point is that the present judgment of \$220 was not warranted by the proofs. These, however, are not laid before us, and so there is no basis for a determination of this point.

The third point is identical in substance with the first.

The judgment will be affirmed with costs.

*Order for Affirmance of Judgment.***Order for Affirmance of Judgment.****NEW JERSEY SUPREME COURT.**

BENJAMIN SODOWICH, <i>Respondent,</i> <i>vs.</i> HENRY HEIMERT, JR., <i>Prosecutor.</i>	}	<i>On Certiorari.</i> <i>Order for</i> <i>Affirmance</i> <i>of Judgment.</i>	10 20 30
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This appeal coming in to be heard at the January, 1931 Term of this court, on brief of William L. Greenbaum, Esq., attorney for the respondent, and on brief of Richard Stockton, Esq., attorney for the prosecutor, and the Court having inspected the record and judgment below, and considered the causes assigned for error, and the grounds for appeal therein,

It is thereupon on this 16th day of May, 1931,
 ORDERED:

That the judgment of the said District Court of the City of Orange be in all things affirmed; and the costs to be taxed; and that the record and proceedings of this cause be remitted to the said District Court of the City of Orange, to be proceeded with, in accordance with this judgment and the practice of the said Court.

Entered May 16, 1931.

On motion of

WILLIAM L. GREENBAUM,
 Attorney for Respondent.

Filed: June 24, 1931.

24

Notice of Appeal and Grounds.

Notice of Appeal and Grounds.

NEW JERSEY SUPREME COURT.

10	HENRY HEIMERT, JR., <i>Prosecutor,</i>	} <i>On Certiorari.</i> <i>Notice of</i> <i>Appeal and</i> <i>Grounds.</i>
	<i>vs.</i>	
	BENJAMIN SODOWICH, <i>Respondent.</i>	

To William L. Greenbaum, Esq., attorney for respondent, or to whom it may concern:

SIR:

20 PLEASE TAKE NOTICE that the prosecutor in the above-entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following ground, to wit:

(1) Because the Supreme Court erred in giving judgment to the respondent instead of to the prosecutor in that

30 (a) Because the District Court of the City of Orange was without jurisdiction to hear said cause, and to make and enter judgment therein.

(b) Because the said Court took cognizance and heard said cause, notwithstanding that judgment for the same cause of action was rendered by the said Court in an action entitled similarly concurrently with the judgment rendered herein.

40 (c) Because the lower court gave judgment in favor of the plaintiff below, and respondent herein, and against the defendant

Notice of Appeal and Grounds.

below and the prosecutor herein the sum of two hundred and twenty dollars (\$220.00) and costs, in the suit wherein the prosecutor desires to be certified, and in another suit embracing the same cause of action, in the sum of five hundred dollars (\$500.00) and costs.

10

(d) For the reason that this judgment was not warranted by the evidence, facts or law, in that no claim in the sum of two hundred and twenty dollars (\$220.00) was claimed or proven.

(e) Because judgment in the same cause had been previously entered in another suit between the same parties, and by the same court.

(f) Because the prior judgment referred to was for damages sustained by the plaintiff below, for personal injuries, and this suit was also for damages resulting from the personal injury alleged to have been sustained by the plaintiff below, arising out of the same act.

20.

(g) Because the lower court refused to reverse the judgment rendered on application for rule to show cause why same should not be reversed.

(h) Because the said judgment is illegal, erroneous and unlawful for divers other reasons.

30

Respectfully yours,

RICHARD SPITZ,
Attorney for Prosecutor.

Service of the within notice and grounds of appeal are hereby acknowledged this 22nd day of June, 1931.

WM. L. GREENBAUM,
Attorney for Respondent.

40

THE
HUMAN
NATURE
OF
THE
UNIVERSE
AND
THE
LIFE
OF
THE
HUMAN
MIND
BY
W. J. CHURCHMAN
LONDON
1880

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

HENRY HEIMERT, JR., <i>Prosecutor-Appellant,</i> <i>vs.</i> BENJAMIN SODOWICH, <i>Respondent-Appellee.</i>	}	<i>On Certiorari. On Appeal from Supreme Court.</i>
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BRIEF OF PROSECUTOR-APPELLANT.

Richard Spitz, attorney for prosecutor-appellant.

William L. Greenbaum, attorney for respondent-appellee.

The Facts.

Two suits were instituted on the behalf of Benjamin Sodowich the respondent, against Henry Heimert Jr., the prosecutor, for damages arising out of an accident, whereby the pedestrian respondent was struck and injured by the automobile of the prosecutor, each of the suits claiming damages in the jurisdictional limit of \$500.00.

The first suit alleged, as a gravaman, personal injuries and resultant pain and suffering; the second suit, which this writ reviews, also alleges personal injuries, resultant pain and suffering, medical expenses and ruination of clothing as a gravaman.

Judgment was rendered against the prosecutor for the sum of \$500.00 in the first suit, in compensation for the personal injuries (pain and suffering) sustained by the plaintiff-respondent. Judgment in the second suit, now under review,

was rendered in the sum of \$220.00; this amount covered medical expenses calculated to be about \$25.00, loss of wages the injured alleged as a result of the accident, and estimated to be about \$180.00, and for the ruination of clothing value at about \$40.00.

The both cases were tried together by consent, and the judgments thus rendered totaled \$720.00.

A Rule to Show Cause why these judgments should not be reversed, and why a new trial should not be granted on the grounds that the judgments so rendered were contrary to law and fact, being beyond the jurisdiction of the Court, was argued, and the Rules in both cases were dismissed to which action exceptions were duly noted.

The judgment rendered in the first suit for the sum of \$500.00 has since been satisfied.

The parties being unable to agree on a State of Facts, the Judge of the District Court rendered a statement of facts, copy of which is attached hereto and made a part hereof.

The State of Demand upon which the judgment of \$220.00 was rendered alleged damage to clothing, and medical expense, but there was no allegation of any wage loss. The record does not indicate any amendment in this respect.

The New Jersey Supreme Court affirmed the judgment of the District Court, and from this prosecutor-appellant appeals.

THE ARGUMENT.

First reason for reversal:

**BECAUSE THE SUPREME COURT ERRED
IN GIVING JUDGMENT FOR THE RESPON-
DENT.**

A. Because the District Court of the City of Orange was without jurisdiction to hear said cause, and to make and enter judgment therein.

The Court having rendered a judgment of \$500.00 covering damage as a result of personal injury in the one proceeding, the Court was without jurisdiction to render a judgment in the second proceedings for loss suffered by way of medical expense or loss of wages, as these two items of damage materially and proximately flowed from injury to a personal and not a property right.

The Supreme Court overlooked the question in issue, as to whether or not medical expense or loss of wages, arising out of a personal injury, are recoverable as a part of the personal injury action, or whether each and every item of wage loss and medical expense arising out of a personal injury gives rise to a separate and distinct property damage, which seems to be the effect of the decision rendered herein.

The rendition of the judgment of \$220.00 including these items of damage (*i. e.*, medical expense and loss of wages), after the Court had rendered a judgment for \$500.00 for personal injury and damage proximately resulting therefrom. The personal injury action was rendered *res adjudicata*, and the Court being bound by the jurisdictional limitation of \$500.00, could not render a verdict in a greater amount for personal damage and injury.

It being contended by the prosecutor that the medical expense and loss of wages was attendant to the personal injury action and was not the subject matter of an action for property damage.

The argument under "B" and "C" is identical to that argued under "A."

D. For the reason that this judgment was not warranted by the evidence, facts or law, in that no claim in the sum of two hundred and twenty dollars (\$220.00) was claimed or proven.

It was stipulated by counsel for the respective parties that the case now under review was a suit in which only property damage was to be claimed.

The two suits having been tried together, there was proof of medical expense in the sum of \$25.00, and the fact that the respondent-plaintiff was unable to work due to the personal injuries he suffered for a period of time, and as a consequence he was unable to pursue his usual occupation, and he could not earn \$180.00 based upon his earning power prior to the time of injury.

The testimony also indicated that the plaintiff-respondent did not work for four weeks, and at the rate of his earning power, could have earned \$180.00, had he not been disabled as the result of personal injury.

There was no allegation in the State of Demand in the case now under review, for loss of wages, and no amendments are noted on the record. No objection was made to such testimony, however, as the two matters were tried together.

The measure of damage has been fixed by legal precedent, and defined with respect to damage proximately flowing from an action founded upon personal injury, and also an action founded upon the invasion of a property right.

The rule as to personal injury actions has been laid down, that recovery may be had for injury and damage proximately flowing from such an injury. *Oehler v. L. Bamberger & Co.*, 135 Atlantic 71, 137 Atlantic 425. *Feldmesser v. Lemberger*, 127 Atlantic 815, 101 N. J. L. 184, 41 A. L. R. 1153. *Gorman v. Elizabeth-Union-Irrigation Line*, 147 Atlantic 402, etc., etc.

It is urged that medical expense and estimated wage loss are items of damage naturally and proximately flowing from the injury to the person. However, the rule as to damages in actions involving property rights is the difference in value of the property before the damage and after the infliction of the damage. Needless to say, medical expenses do not come within this rule, nor does estimated wage losses come within the same.

The rules set forth are based upon the character of the action, rather than the character of the proof.

These two rules as to damages were promulgated to prevent a multiplicity of suits. In the instant case the judgment of \$500.00 is for personal injury and damage; hence, the theory that a separate right of action for medical expense and calculated wage loss is another separate and distinct cause of action, would give rise to a multiplicity of suits and directly violate the existing rules of damages.

E is argued under D.

F. Because the prior judgment referred to was for damages sustained by the plaintiff below, for personal injuries, and this suit was also for damages resulting from the personal injury alleged to have been sustained by the plaintiff below, arising out of the same act.

G. The same argument as set forth under "A" and "D" is urged under this reason.

H. Because the said judgment is illegal, erroneous and unlawful for divers other reasons.

An action founded upon an injury to the person is not an assignable right. On the other hand, an injury to a property right is assignable.

The medical expense which was proven in this case at the time of trial, is not capable of assignment, having directly and proximately resulted as a consequence of a personal injury. The loss of wages claimed to have resulted from the injury which the defendant received in the accident, was based upon an estimation of the defendant's earning capacity prior to the accident.

The defendant did not work during the period of four weeks following the personal injury he sustained. There was no earning of wages during this time, hence, there was no creation of a property right subject to possible assignment.

While there is no suggestion of an assignment of any rights, either personal or property in this case, assignment is one of the characteristics of a property right, and is a means of testing the character of the cause of action for practical and legal purposes.

It is therefore respectfully urged that the judgment of the Supreme Court is erroneous and should be reversed.

RICHARD SPITZ,
Attorney for Prosecutor-Appellant.

RICHARD STOCKTON,
Of Counsel.

OTTO E. RIEMENSCHNEIDER,
On the Brief.

DISTRICT COURT OF THE CITY OF
ORANGE.

BENJAMIN SODOWICH, <i>vs.</i> HENRY HEIMERT, JR., <i>Plaintiff,</i> <i>Defendant.</i>	}	<i>In Tort.</i> <i>On</i> <i>Certiorari.</i> <i>State</i> <i>of Case.</i>
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Richard Spitz, attorney for prosecutor.

William L. Greenbaum, attorney for respondent.

Two suits were instituted on the behalf of Benjamin Sodowich, the respondent-plaintiff against Henry Heimert, Jr., the prosecutor-defendant, for damages arising out of an accident wherein the pedestrian plaintiff-respondent was allegedly struck and injured by the automobile of the defendant-prosecutor, each of the suits claiming damages in the jurisdictional limit of \$500.00.

The first suit, alleged as a gravaman, personal injuries and resultant pain and suffering, and a judgment was rendered against the defendant-prosecutor in the sum of \$500.00. This was case No. 36472.

The second suit, the one under review, alleged personal injuries, pain and suffering, medical expense and ruination of clothing. Immediately before the trial of both cases, it was stipulated by counsel that the evidence taken in one of the cases was to be used as evidence in the other case and be binding upon the parties concerned. It was stipulated further by counsel for the respective parties that case No. 36041 the one under

review, was a suit in which only property damage was to be claimed.

The respondent-plaintiff in the suit under review proved medical expenses expended to cure him of the injuries which he sustained, the value of the clothing which was destroyed and loss of wages. After hearing the evidence, the Court, considering only the evidence tending to show property damage and excluding any personal injury claim, entered judgment in the sum of two hundred and twenty dollars (\$220.00) in favor of the plaintiff-respondent against Henry Heimer, Jr., the prosecutor-defendant.

A rule to show cause was issued in this case why the judgment should not be reversed and a new trial granted on the ground that the judgment rendered was contrary to law and fact. After hearing the argument of counsel, the rule in this case was discharged.

Counsel for the respective parties to this suit having been unable to agree on a state of facts in the above-entitled matter, I, the undersigned, Judge of the Orange District Court, hereby set forth the above mentioned facts as a true state of facts in this matter.

DANIEL A. DUGAN,
Judge of the Orange District Court.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

HENRY HEIMERT, JR., Prosecutor-Appellant,	} <i>On Certiorari.</i> <i>On Appeal</i> <i>from</i> <i>Supreme</i> <i>Court.</i>
<i>vs.</i>	
BENJAMIN SODOWICH, Respondent-Appellee.	

BRIEF OF RESPONDENT-APPELLEE.

William L. Greenbaum, attorney for respondent-appellee.

Richard Spitz, attorney for prosecutor-appellant.

The Facts.

The following are the facts in the case as found by the Honorable Daniel A. Dugan, Judge of the District Court of the City of Orange, New Jersey.

Two suits were instituted on behalf of Benjamin Sodowich, the plaintiff-respondent, against Henry Heimert, Jr., the defendant-prosecutor, for damages arising out of an accident wherein the pedestrian plaintiff-respondent was struck and injured by the automobile of the defendant-prosecutor, each of the suits claiming damages in the jurisdictional limit of \$500.00.

The first suit, alleged as a gravaman, personal injuries and a judgment was rendered against the defendant-prosecutor in the sum of Five Hundred Dollars (\$500.00). This was Case No. 36472.

The second suit, the one under review, contained a demand for damages covering loss of

wages, medical expense and ruination of clothing. Immediately before the trial of both cases, it was stipulated by counsel that the evidence taken in one of the cases was to be used as evidence in the other case and be binding upon the parties concerned. It was stipulated further by counsel for the respective parties that Case No. 36041, the one under review, was a suit in which only property damage was to be claimed.

The respondent-plaintiff in the suit under review proved medical expenses expended to cure him of the injuries which he sustained, the value of the clothing which was destroyed and loss of wages. After hearing the evidence, the Court, considering only the evidence tending to show property damage and excluding any personal injury claim, entered judgment in the sum of Two Hundred and Twenty Dollars (\$220.00) in favor of the plaintiff-respondent, against Henry Heimert, Jr., the prosecutor-defendant.

A rule to show cause was issued in this case why the judgment should not be reversed and a new trial granted on the ground that the judgment rendered was contrary to law and fact. After hearing the argument of counsel, the rule in this case was discharged.

See State of Case attached to Brief of Prosecutor.

THE ARGUMENT.

The Supreme Court did not err in affirming the judgment rendered in the Orange District Court.

A. The suits as set forth in the State of Facts arose out of an accident wherein the respondent was struck by an automobile driven by the prose-

cutor with resulting damages to his person, as well as damages sustained by the respondent in medical expenses, loss of wages and loss of clothing. In the suit in which a verdict was rendered for Five Hundred Dollars (\$500.00) as set forth in the State of the Case, the Court took into consideration only the personal injuries and resulting pain and suffering sustained by the respondent.

The second suit in which a judgment for Two Hundred and Twenty Dollars (\$220.00) was rendered, included loss of wages, medical expenses and loss of clothing. The District Court was within its rights in entering a judgment in each of these suits.

“Where one suffers injuries to his person and also to his property from the same negligent acts of the defendant, two distinct causes of action exist and a recovery for the injury to the property is not a bar to a subsequent action for injury to the person.”

Ochs v. Public Service, 81 New Jersey Law 661.

The Supreme Court did not overlook the question in issue as to whether or not medical expenses and loss of wages arising out of a personal injury are recoverable as part of the personal injury action, or whether each and every item of wage loss and medical expenses arising out of a personal injury gives rise to a separate and distinct property damage.

The Honorable Justice Parker in rendering the opinion for the New Jersey Supreme Court, in disposing of the writ of certiorari sued out by the prosecutor-appellant, rendered the following opinion:

“The writ brings up the record of a damage suit growing out of the fact the re-

spondent, plaintiff below, was struck by prosecutor's automobile while crossing a street. There was a judgment for plaintiff based on injuries to property including damage to clothing, medical expenses and loss of wages. The state of demand contained a claim for personal injury and pain and suffering, but this was not considered in the present suit and was passed upon in another suit between the same parties, in the same court, tried at the same time, on the same evidence, and resulting in a judgment for \$500. In that suit there was no award for property damage.

The first point now made is that the other suit was *res adjudicata* and that the court was thus without jurisdiction to determine this action. But the case of *Ochs v. Public Service Railway Co.*, 81 N. J. L. 661, is to the contrary, and holds that separate actions may be maintained."

B and C. Upon the reading of this opinion, it seems very clear that the Honorable Justice Parker did consider the different items of damage and determine that loss of wages, damage to clothing and medical expenses are property damage and are recoverable in a separate suit from that of a suit for personal injuries. The answers to arguments B and C of prosecutor-appellant are identical to that argued under A by plaintiff-appellee.

D. The judgment herein rendered by the District Court of the City of Orange and affirmed by the New Jersey Supreme Court was warranted by the evidence, in that a claim in the sum of \$220 was claimed and proven.

The Court's attention is directed to a stipulation entered into between counsel of the respective parties, a copy of which stipulation is filed with this cause and is entitled "Amendment

to the State of the Case." This amendment shows a demand for damages as a result of the respondent's inability to attend to his usual occupation, more specifically set forth in the Amended State of the Demand and designated as paragraph seven in the Amended State of Demand, a copy of which Amended State of Demand is annexed hereto. It is respectfully submitted that the objection raised by the prosecutor that there were no allegations in the State of Demand for loss of wages is not in order since the records specifically show that such a demand was made.

The cases presented by the prosecutor, in his brief, under the fourth reason for reversal, have absolutely no bearing to the case at bar. The respondent has no quarrel with the rules of law set forth in these cases but respectfully submits that they are not applicable to the issue involved. The only point made under the fourth reason for reversal which the respondent desires to answer is the point wherein the prosecutor alleges that medical expenses and estimated wage loss claim are not property damage.

It is elementary that in a suit where an infant under the age of twenty-one years is injured and a suit is instituted by the infant and parent, the infant is allowed damages to the person while the parent is enabled under the rules of law in this state to recover damages for an interference with his property rights in the said infant, which includes loss of wages and medical expenses expended by the parent to effect the cure of the infant.

WAGES ARE A PROPERTY RIGHT.

"A teacher's salary is property so that he has a right under the Constitution to use it for his own benefit. A law deducting part

of his salary, for a pension fund, deprives him of his right of property." *Hubbard v. Ohio*, 65 Ohio 574, 58 L. R. A. page 654.

In the case of *Jones v. Leslie*, 112 Pacific Reporter, page 81, the Court held:

"Every man's trade or profession is his property because it is his means of livelihood, because through its agency, he maintains himself, his family and is enabled to add his share towards the expense of maintaining the government."

People v. Warden of City Prison, 130 New York Supp. page 698, in this case, the defendant was charged with extortion. The defendant obtained a position for X as a painter, without consideration. When X started work, the defendant demanded fifty cents (\$.50) per hour, threatening that if this was not paid, the defendant would see that the painter would be discharged. The question was whether employment or the right to labor was property. The Criminal Statute provides:

"The obtaining of property from another with his consent, induced by fraud or fear, or under the color of official light is extortion."

It was held in this case:

"That the word 'property' here used is intended to embrace every species of valuable right and interest, and whatever tends, in any degree, no matter how small, to deprive one of the right, deprives him of his property. There are numerous cases holding that labor constitutes property. If labor constitutes property, then the right to labor must also constitute property and whatever deprives him of his right, deprives him of his property."

"Property is everything which has an exchangeable value. Labor is property and the

right to make it available is next in importance to the right to life and liberty."

C. C. 1 Fed. 481, *in re Tiburcia Parrot*.

There are a number of cases in New Jersey which hold that the right to labor is a property right.

In the case of *Driver v. Smith, et als.*, reported in 104 A. R. page 717, 89 New Jersey Equity page 339, the Court held:

"Employers of labor at will have a property right in the services of their employees, and are entitled to protection against interference."

It is urged on the part of the respondent by the same token that since employers have a property right in the services of their employees, the services rendered by such employees, must, of course, be property.

In addition to the loss of wages and medical expenses, there was testimony that there was loss of some clothing, and it seems to the respondent that the only question to be resolved is whether or not loss of wages, doctors' bills and loss of clothing are to be considered a property right or are to be considered as part of the personal injury claim.

In view of the citations hereinabove given, it is respectfully urged that the items above set forth are property rights, and in accordance with the case of *Ochs v. Public Service*, 81 N. J. L. 661, the respondent had the right to two causes of action and the Court was within its jurisdiction in rendering two judgments, one for personal injuries and one for loss of property.

E. The answer to argument E of the prosecutor-appellant is identical to that argued under D by respondent-appellee.

F. It is submitted that ground H advanced by the prosecutor-appellant for reversal is answered in the arguments set forth under D by respondent-appellee.

G. The Court's attention is directed to the fact that a rule to show cause was issued in this case why a new trial should not be granted on the same grounds exactly as are now being advanced for the issuance of this writ of certiorari. Upon hearing the arguments of counsel in this matter, the Court, on the 8th of August, 1930, entered an Order Discharging the Rule to Show Cause entered in this matter.

It is respectfully urged on the part of the respondent that where a rule to show cause has been issued and discharged, and subsequently an appeal is taken, the appellate court will not consider any of the reasons urged in the lower court on the rule to show cause.

Faragasso v. Intraccasso, 121 Atl. 773;

Goeckel v. Erie, 126 Atl. 445;

Cleaves v. Yeskel, 141 Atl. 814.

H. The present judgment should be affirmed because the prior judgment referred to was for damages sustained by the plaintiff below for personal injuries and this present suit is a separate and distinct action for property damage sustained by the plaintiff below arising out of the same act.

The same arguments as set forth under arguments A and B for affirmance, are urged under this reason.

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

WILLIAM L. GREENBAUM,
Attorney for Respondent-Appellee.

ISADORE ZUCKERMAN,
On the Brief.

NEW JERSEY SUPREME COURT.

HENRY HEIMERT, JR., <i>Prosecutor,</i> <i>vs.</i> BENJAMIN SODOWICH, <i>Respondent.</i>	}	<i>On Certiorari.</i> <i>Amendment</i> <i>to State of</i> <i>Case.</i>
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It is hereby stipulated and agreed by and between counsel for the respective parties hereto that the State of Case heretofore filed in this cause should be amended by adding the following amended state of demand which was filed on February 17, 1930, in the Orange District Court.

DISTRICT COURT OF THE
CITY OF ORANGE.

BENJAMIN SODOWICH, <i>Plaintiff,</i> <i>vs.</i> HENRY HEIMERT, JR., <i>Defendant.</i>	}	<i>In Tort.</i> <i>State of</i> <i>Demand.</i>
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Plaintiff, residing in the City of Newark, County of Essex and State of New Jersey, says that:

1. On or about the 22nd day of June, 1929, plaintiff was crossing Fourth avenue, a public highway in the City of East Orange, County of Essex and State of New Jersey, in a lawful, careful and cautious manner.

2. On the day and date aforesaid, the defendant was the owner of a certain automobile which he, his servant or agent, was driving in a northerly direction along South 19th street, a public highway in the City of East Orange, New Jersey, in a reckless, careless and negligent manner, at a high and excessive rate of speed, without due regard to the rights of pedestrians on the said highway and generally in a reckless, careless and negligent manner.

3. When the said automobile owned by the defendant reached the intersection of South 19th street and Fourth avenue, public highways as aforesaid, it was being driven in such a careless, reckless and negligent manner that it ran into and struck the plaintiff, while he was lawfully crossing the street aforesaid.

4. As a result of the negligence and carelessness of the defendant, his servant or agent, the plaintiff sustained severe injuries to his head, arms, legs, back, chest, throat and divers other parts of his body.

5. As a further result of the defendant's carelessness, negligence and recklessness, the plaintiff was confined to his bed for a long period of time and was compelled to expend large sums of money for medical aid and attendance in an endeavor to cure himself of the injuries sustained.

6. As a further result of the defendant's recklessness, carelessness and negligence, the plaintiff was compelled to expend a large sum of money to purchase a new suit to replace the one damaged by the carelessness, recklessness and negligence of the defendant.

7. As a further result of the defendant's negligence, carelessness and recklessness, the plaintiff

was confined to his bed and home for a long period of time and was unable to attend to his usual occupation thereby losing large sums of money which he otherwise would have acquired.

For all of which facts, the plaintiff demands of the defendant the sum of Five Hundred Dollars (\$500.00) plus costs of this suit.

WILLIAM L. GREENBAUM,
Attorney for Plaintiff.

We hereby consent to the above amendment.

RICHARD SPITZ,
Attorney for Prosecutor.

WILLIAM L. GREENBAUM,
Attorney and of Counsel
with Respondent.



