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WITNESSES.

*Plaintiffs':*

Catherine Bryne,	
Direct .....	10
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Re-direct .....	19
Mary Waldron,	
Direct .....	20
Joseph William Gardam,	
Direct .....	23
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William A. Tansey,	
Direct .....	24
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James J. Waldron,	
Direct .....	29
Sadie C. Dervelly,	
Direct .....	30

New Jersey  
Court of Errors and Appeals

**Summons and Complaint.** 10

*(Filed, June 20, 1924)*

ESSEX COUNTY CIRCUIT COURT

New Jersey, ss:

The State of New Jersey to William H.  
Butterworth, 26 North Arlington  
(Seal) Avenue, East Orange, N. J. 20

You are hereby summoned to answer the  
annexed complaint of Catherine Byrne and  
Peter Byrne, her husband, in an action at  
law in the Essex County Circuit Court. And  
TAKE NOTICE, that unless you file your answer to  
said complaint with the Clerk of the Essex  
County Circuit Court, at Newark, within twenty  
days after the service upon you of this writ and  
the annexed complaint, the plaintiff may proceed 30  
in the suit and judgment may be entered against  
you.

WITNESS, WILLIAM S. GUMMERE, Esq., Chief  
Justice and Judge of said Court, at Newark,  
N. J., June 18, 1924.

MICHAEL J. TANSEY,  
Attorney.

John H. Scott,  
Clerk.

40

Complaint

ESSEX COUNTY CIRCUIT COURT

10	CATHARINE BYRNE and PETER BYRNE, her husband,	}	Plaintiffs,
	vs.		
	WILLIAM H. BUTTERWORTH,		Defendant.

Action  
at Law.  
Complaint.

Catharine Byrne, of the City of Newark, in the County of Essex and State of New Jersey, complains of William H. Butterworth, of 26 North Arlington Avenue, East Orange, and says:

1. On Sunday, September 30, 1923, defendant was in the operation and control of a certain automobile and driving same on North Arlington Avenue aforesaid, and it was the duty of said defendant to use reasonable care to keep same in control and not drive same so as to endanger persons in and upon said street, which is a public highway. Defendant did not use reasonable care or any care in driving said car, but on the contrary thereof so drove same and at unlawful speed, that it struck plaintiff Catharine Byrne, who was lawfully in said street, and caused her severe and permanent bodily injuries, bruises and contusions.

2. Plaintiff was confined to her bed and house for five weeks thereafter under medical care and still does suffer and in the future will continue to suffer from said injuries.

3. She demands \$5,000 damages.

Complaint

Peter Byrne, the husband of said Catharine Byrne, complains that by means of the premises he was deprived of the society and services of his said wife for a long time and was obliged to and did spend large sums of money in and about her cure and still is deprived and still does spend and will in the future be deprived as aforesaid and will be obliged to spend as aforesaid, in and about the cure of his said wife's injuries incurred as aforesaid.

He demands damages in the sum of \$1,000.

MICHAEL J. TANSEY,  
Attorney for Plaintiff.

I hereby appoint and depute Charles F. Hummell to serve the within writ.

Witness my hand and seal this 21st day of June, 1924.

HARRY B. O'CONNELL,  
Sheriff,  
By Alfred C. Walker,  
Under Sheriff,

(L. S.)  
Sheriff Fees, \$4.10.

Attorney for Plaintiffs.

Served the within summons and complaint June 21, 1924, upon William H. Butterworth, the within-named defendant, at his usual place of abode, 26 North Arlington Avenue, East Orange, N. J., by leaving a true copy thereof with his wife.

HARRY B. O'CONNELL,  
Sheriff,  
By Chas. F. Hummell,  
Special Deputy.

**Answer.**

ESSEX COUNTY CIRCUIT COURT

(Filed, June 28, 1924)

10	CATHARINE BYRNE and PETER BYRNE, her husband,  vs. WILLIAM H. BUTTERWORTH, Defendant.	}	Plaintiffs,  Answer.	}	Action at Law. Reply.	10
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20 The answer of William H. Butterworth, of East Orange, New Jersey, to the plaintiffs' complaint:

1. Defendant denies the allegations of the complaint.

FIRST SEPARATE DEFENSE

30 Defendant says that the said plaintiff, Catharine Byrne, was guilty of contributory negligence at the time and place of the alleged accident charged in the complaint.

SECOND SEPARATE DEFENSE

Defendant says that the said alleged accident charged in the complaint was caused by the sole negligence of the plaintiff, Catharine Byrne.

FRANK G. TURNER,  
Attorney of Defendant.

**Reply.**

(Filed, December 8, 1924)

CATHARINE BYRNE and PETER BYRNE, her husband,  vs. WILLIAM H. BUTTERWORTH, Defendant.	}	Plaintiffs,  Defendant.	}	Action at Law. Reply.	10
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Plaintiffs in reply to the answer of the defendant filed herein say:

1. Plaintiffs deny every allegation in said answer of said defendant that is not in the nature of an admission of the allegations in the plaintiffs' complaint. 20

In answer to the first separate defense filed by the said defendant herein, plaintiffs deny the said allegations and say that Catharine Byrne was not guilty of contributory negligence, which was the proximate cause of her alleged injuries, or that she exposed herself to any risk of an accident, or neglected to take proper precaution, or exercise proper care to guard and protect herself, and she denies that she was in any way guilty of contributory negligence, or in any way by her acts contributed to the injury which she sustained, as alleged in said first defense of said answer. 30

In answer to the second separate defense filed by the said defendant herein, plaintiffs deny the matter and allegation contained therein.

MICHAEL J. TANSEY, 40  
Attorney of Plaintiffs.



**Notice of Appeal.**

*(Filed, May 12, 1926)*

ESSEX COUNTY CIRCUIT COURT

10	CATHERINE BYRNE and PETER BYRNE, her husband, Plaintiffs,  vs.  WILLIAM H. BUTTERWORTH, Defendant.	}	Action at Law. On Appeal. Notice.
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TAKE NOTICE that the plaintiffs, Catherine  
20 Byrne and Peter Byrne, her husband, appeal  
from the whole of the judgment entered in this  
cause to the Supreme Court of New Jersey.

Dated, May 11, 1926.

MICHAEL J. TANSEY,  
Attorney for Plaintiffs.

To Frank G. Turner, Esq., attorney for defend-  
ant; William H. Butterworth or whom it may  
30 concern.

Sat below:  
Nelson Y. Dungan,  
Judge.

Receipt of copy of within notice hereof ac-  
knowledged this 11th day of May, 1926.

FRANK G. TURNER,  
Attorney for Defendant.

Filed, May 12, 1926.  
40 John H. Scott,  
Clerk.

**Grounds of Appeal.**

*(Filed June 11, 1926)*

NEW JERSEY SUPREME COURT

CATHERINE BYRNE and PETER BYRNE, her husband, Plaintiffs-Appellants, vs. WILLIAM H. BUTTERWORTH, Defendant-Appellee.	}	Action at Law. 10 On Appeal. Grounds of Appeal.
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Plaintiffs-Appellants, Catherine Byrne and  
Peter Byrne, her husband, appeal to the above 20  
court from the judgment entered in the Essex  
County Circuit Court on the following grounds:

The Court erred in entering an involuntary  
nonsuit in the cause.

Dated, June 9, 1926.

MICHAEL J. TANSEY,  
Attorney for Plaintiffs-Appellants.

To Frank G. Turner, Esq., attorney for defend- 30  
ant; William H. Butterworth, or whom it may  
concern.

Service of grounds of appeal hereof acknowl-  
edged this 9th day of June, 1926.

FRANK G. TURNER,  
Attorney for Defendant-Appellee.

Catherine Byrne—Direct

Testimony.

ESSEX COUNTY CIRCUIT COURT

Tuesday, May 12, 1925.

10

CATHERINE BYRNE and PETER BYRNE	}	Action at Law.
vs.		
WILLIAM H. BUTTERWORTH,		

20 For the plaintiff appears Michael J. Tansey, Esq.

For the defendant appears Frank G. Turner, Esq.

(A jury is called and sworn.)

CATHERINE BYRNE, sworn in behalf of the plaintiffs.

30 Direct-examination by Mr. Tansey:

Q. You are the plaintiff in this case? A. Yes, sir.

Q. Where do you live? A. I live in New York.

Q. Where did you live in September, 1923?  
A. I lived in New York and I came to visit my brother and on my way home—

Q. Where does he live? A. 99 Smith Street.

40 Q. Is that far, Smith Street? A. In Vailsburg.

Catherine Byrne—Direct

Q. Near South Orange Avenue? A. Quite a distance from South Orange Avenue.

Q. Smith Street runs into South Orange Avenue? A. Yes, sir.

Q. Where were you on the evening of September 30th when an accident happened? A. I was leaving my brother there, Smith Street, coming down South Orange Avenue, coming toward Hillcrest Terrace. 10

Q. Is that an easterly direction? A. Coming towards Market Street, coming towards New York.

Q. That is, traveling in an easterly direction? A. Yes, sir.

Q. On which side of South Orange Avenue were you traveling? A. On this side (indicating). 20

Q. That is, on the north side? A. Yes.

Q. Traveling in an easterly direction? A. Yes, sir.

By the Court:

Q. You are indicating the left-hand side. A. I suppose it must have been. I don't know what you call it—toward Market. 30

Q. You are moving your left hand. A. I was coming down Smith Street, coming down to Newark.

Q. On the north side? A. I was coming this way, down.

By Mr. Tansey:

Q. The left-hand side? A. I was coming east, that side. I don't understand Newark.

Q. Is it on your right or left-hand side? A. 40

*Catherine Byrne—Direct*

I was going on the left-hand side of the street.

Q. That is coming east? A. Yes, on the north side of South Orange Avenue, coming toward Hillcrest Terrace.

10 Q. You were walking? A. Yes, I was walking right on the sidewalk.

Q. When you got to Smith Street what happened? A. When I was just in the middle of the crosswalk from one curb to the other I got hit on the back and on the right side, and that is all I know. I couldn't know any more; it knocked me unconscious, and they picked me themselves from the fender. The crack I got in the head, right on the side of the head, what I  
20 am suffering today from.

Q. You were struck by something and you lost your consciousness? A. Yes, I was knocked unconscious.

Q. Where were you when you came to? A. On the car and on the ground. They picked me from the fender. I was on the ground.

Q. Did you know you were on the fender? A. I didn't know anything about it until they told me about it.

30 Q. Where? A. Right at about the car door, and two ladies picked me up and put me into their car.

Q. Where did you go? A. They wanted to take me to the hospital and I asked them to take me to my brother's house to die.

Q. And that is where you remained? A. Yes, sir.

40 Q. How long did you remain there? A. Six weeks. I asked them to take me to my brother's. I didn't want to die in the hospital.

*Catherine Byrne—Direct*

Q. Before this accident did you hear any horn or whistle? A. No, sir; no horn, no whistle or no warning whatever.

Q. Did you see any jitney standing there? A. I didn't take notice of anything. I was on my way down to my other brother. I took no notice  
10 of any jitney or nothing. I crossed from one curb to the other and I didn't notice anything.

Q. You were midway on the crosswalk? A. That is the only thing I knew, when they had me laying on the ground. They hit me on the head.

Q. When you were struck you were midway on the crosswalk? A. I was right in the center of the crosswalk, right from this curb to this  
20 curb and in the center of the crosswalk I was hit.

Q. What time of day was it? A. It was about ten minutes after seven in the evening.

Q. It was dark? A. It was after 7:00. It was the same night that our regular daylight was put back.

By the Court:

Q. You say this was Clinton Street? A. I was  
30 on South Orange Avenue—

Q. What was the crosswalk? A. The crosswalk is on Clinton Street.

Q. Was it in Newark? A. Right in Newark. It belongs to Newark. I was on South Orange Avenue crossing, going along, coming north on South Orange Avenue.

The Court: Is the line in the middle of the street? 40

*Catherine Byrne—Direct*

Mr. Tansey: The line is on the north side of South Orange Avenue. The line is East Orange one side and Newark the other.

10 The Court: I notice in the pleadings that it is North Arlington Street, but it is Clinton Street.

Q. Was it daylight saving time or standard time? A. It was put back that night. It was about 7:10 in the evening, the regular time, and the daylight saving time.

Q. Was there a light near the corner? A. A gaslight.

20 Q. How were you hurt, in what part of your body? A. I am hurt in the back and in my limbs. My heart was bad. I am perfectly suffering.

Q. At that time was there any evidence of your injuries? A. Yes, my back and side and other parts of my body, and not alone my head.

Q. Which side of you was hurt? A. In my back and the whole right head, all the way down the back.

30 Q. What kind of injury was done to you? A. My leg was all swollen up and I am suffering from internal injuries since.

Q. I ask you whether your leg and hip was hurt? A. My leg was all bruised and blackened up, swelled up twice as big as both of them together.

Q. And your hip? A. My hip.

Q. And on your right side? A. Yes, sir.

40 Q. And was your head hurt? A. Yes, sir; there was a cut; it was cut on the side of me here, on the right side.

*Catherine Byrne—Cross*

Q. During the six weeks that you were there you were treated for your injuries at your home?

A. Yes, sir.

Q. And after you left your brother's place and went to your other brother's home— A. I have been doctoring since. 10

Q. What symptoms or indication of injuries have you had since? A. I have injuries of a woman that I don't like to say.

Q. Have you any outward evidence of the injury on your leg? A. Yes, I am lame. I can't do my housework; I have to hire a woman to do my work. I can't even get up on a chair even to dust a mantle; I can't do no washing.

Q. Is that because of the back or leg? A. My 20 leg and back, and I can't stoop. This shoulder was dislocated; the shoulder was put out, the collarbone; that bone is even pushed out of its place.

Q. Have you been suffering with your head? A. Yes, terrible headaches and pain and dizziness in my head; I have to stand still. I feel as if I am just going to drop.

CROSS-EXAMINATION by Mr. Turner: 30

Q. Were you familiar with this neighborhood; had you been there many times before? A. I certainly was; I was very familiar.

Q. Do you remember on the night in question whether the lights were turned on? A. Yes, sir; there was plenty of lights there.

Q. They were turned on before the accident? A. I didn't notice any particular light with the 40

*Catherine Byrne—Cross*

exception of the gaslight; I know there was a gaslight.

Q. The street lights were turned on? A. Yes, sir.

Q. How many blocks had you walked? A. I  
10 presume from South Orange Avenue to Smith  
Street; that must be four or five blocks; I  
couldn't tell you; I couldn't positively count how  
many blocks from Smith Street to Clinton Street.

Q. Had you taken a jitney bus or trolley car  
that night before the accident? A. No, I walked  
on the sidewalk.

Q. How many blocks had you walked beyond  
the place of the accident? A. Do you know the  
20 street called Hillcrest Terrace?

Q. Had you stopped any place along there?  
A. No, I hadn't stopped anywhere.

Q. Do you remember when you started to cross  
Clinton Street? A. I remember well when I left  
the curb until I got in the middle of the street.

Q. You remember starting to cross Clinton  
Street? A. I certainly do.

Q. Do you remember automobiles passing back  
and forth along South Orange Avenue? A. No,  
30 sir.

Q. You didn't see any automobile? A. No  
automobile passed.

Q. And this was a Sunday night? A. Yes, sir;  
about ten minutes after seven.

Q. And no automobile on South Orange Ave-  
nue? A. No automobile at that time until the  
automobile that hit me.

Q. You looked for automobiles and you saw  
40 there were none passing? A. No, sir.

*Catherine Byrne—Cross*

Q. There were not any automobiles on Clinton  
Street, were there? A. Not as I seen. I didn't  
look for them crossing the crossing. I looked to  
protect myself.

Q. You say you didn't look for them? A. I  
looked to protect myself. 10

Q. You say you didn't look for automobiles;  
is that right? A. I didn't look for an automobile  
until it hit me. I looked for danger.

Q. You say you were not looking for automo-  
biles? A. I am after telling you I didn't look  
for an automobile to hit me. I take care of my-  
self, that I didn't want an automobile to hit me.

Q. Where were you when you were looking for  
automobiles? A. I was crossing South Orange 20  
Avenue and Clinton Street to go from one curb  
to the other.

Q. At that time you were not looking for auto-  
mobiles? A. I wasn't looking for an automobile  
to hit me.

Q. You didn't look for automobiles at all? A.  
I looked to protect myself.

Q. I say, you didn't look for automobiles? A.  
Yes, I did. I see the place was clear that I had  
to go across. 30

Q. You didn't look to see whether a jitney was  
standing there? A. No, sir.

Q. You didn't see it? A. No, sir.

Q. You didn't see any other automobile on  
that street that night? A. No, I didn't see no  
automobile.

Q. You didn't see Mr. Butterworth's automo-  
bile before the accident? A. Certainly not. 40

*Catherine Byrne—Cross*

Q. So you don't know where it came from, do you? A. No, I don't know where it came from.

Q. You don't know anything about that; you just know there was an accident? A. I know there was an accident. I got hit by it. I didn't  
10 see Mr. Butterworth coming with his automobile.

Q. Did you know that you had an accident with an automobile? A. No, not when I was hit, because it knocked me unconscious when it carried me so many feet from the crosswalk; it hit me and threw me across and when he hit me he must have turned this way (indicating).

Q. You were unconscious all that time? A. I wasn't unconscious at all—I was conscious  
20 when he hit me, but not after he hit me.

Q. How long were you unconscious? A. I am sure I couldn't tell you, haven't any idea.

Q. You are sure you lay on the ground? A. Yes, they put me on the ground.

Q. You remember that? A. I do when I came to.

Q. How did you get to Mr. Butterworth's automobile? A. By his wife and a lady that assisted me.

30 Q. Did they lift you in? A. They certainly did. They had to clap my hand and bring me to.

Q. They lifted you in? A. Yes, sir.

Q. Two ladies? A. Yes, sir; they brought me to my brother's house.

Q. When you say they assisted you in the automobile, were you lying on the ground when the two ladies lifted you in? A. I must have been if I was laying on the ground.

*Catherine Byrne—Re-direct*

Q. About how much did you weigh at that time? A. I couldn't tell you. I hadn't weighed myself.

Q. Just as heavy as you are now? A. Just as heavy. I may have been heavier. I gained no  
10 flesh.

Q. And after these two ladies lifted you up from the ground and put you in the automobile and you were taken to your brother's house by Mr. Butterworth? A. Yes.

RE-DIRECT EXAMINATION by Mr. Tansey:

Q. When you went to cross Clinton Street did you see any automobiles ahead of you? A. No; 20 there wasn't any automobiles.

Q. Ahead of you? A. Not as I saw.

Q. Were you looking? A. I was looking if my way was clear so as to cross the crossing, to see if there were any automobiles passing, and this must have come down the avenue quick—

The Court: That part will be stricken out.

The Witness: I got hit anyways. 30

Q. Mr. Butterworth's car you didn't see? A. No, sir.

Q. Would you have seen Mr. Butterworth's car if it had been ahead of you in Clinton Street?

Objected to.

Objection sustained.

*Mary Waldron—Direct*

MARY WALDRON, sworn in behalf of plaintiffs.

Direct-examination by Mr. Tansey:

Q. Are you a sister-in-law of Mrs. Byrne? A. 10 Yes, sir.

Q. Do you remember the Sunday that Mrs. Byrne was hit? A. Yes, sir.

Q. You live at 99 Smith Street, Newark? A. Yes, sir.

Q. You remember Mrs. Byrne leaving your home that day? A. Yes, sir.

Q. Do you remember when she got back there? A. Yes, sir.

20 Q. Who was with her, if anybody? A. Coming back with Mr. and Mrs. Butterworth and another lady and gentleman.

Q. How do you know it was Mr. and Mrs. Butterworth? A. Mr. and Mrs. Butterworth told us who they were; they gave us their names.

Q. Did they tell you what happened? A. They said that—

Objected to.

30 Q. Did Mr. Butterworth tell you what happened? A. Yes, sir; he said that when he was turning in on Clinton Street he never saw Mrs. Byrne until he saw her on the fender and Mrs. Butterworth said that she thought—

Objected to.

Q. Was it in the presence of Mr. Butterworth when she said that? A. Yes, she said she

40

*Mary Waldron—Direct*

thought it was a little girl because her hair was hanging around her.

Q. Was Mrs. Byrne with them when they came to your house? A. Yes, sir.

Q. What was Mrs. Byrne's condition? A. 10 They carried her in from the automobile and they laid her on the couch in the parlor, and she wasn't able to move, and she was hollering about her arm and her head and her hip, her side. I took care of her in my house.

By the Court:

Q. She was visiting at your house? A. Yes, 20 sir; she was there in the afternoon and she left my house to go to her brother's on Hillcrest Avenue.

Q. What time of day was she at your place? A. She came over in the afternoon from New York to my house.

Q. And stayed at your house until when? A. Around 7:00 o'clock in the evening.

Q. She never lived in Newark? A. No, sir.

By Mr. Tansey:

Q. Did you examine Mrs. Byrne's leg at that 30 time? A. She had a doctor that night.

Q. Did you examine it before the doctor came? A. No, sir.

Q. But you say that she was complaining about the hurt in her arm and her shoulder and her head? A. Yes, sir.

Q. What doctor did she have? A. The first doctor she had was Dr. Gardam, but she had Dr. Tansey the next morning because Dr. Gardam turned her over to Dr. Tansey. 40

*Mary Waldron—Direct*

Q. How long did she remain at you place? A. Six weeks.

Q. How long was she confined to her bed? A. Going on three weeks.

Q. Did you take care of her during that time?

10 A. Yes, sir.

Q. Can you tell us what injuries she was suffering from? A. Her right side; she couldn't raise her right arm to her head to comb her hair.

Q. Which hand? A. Her right hand.

Q. Were there any evidence of any bruises? A. She was black and blue on her right side.

Q. Was there any mark or injury on her arm?

A. Yes, on her shoulder, and she was cut on the 20 side of her head; she was bleeding when she was brought in.

Q. Which side of her head? A. The right side of her head.

Q. Was there any swelling? A. The doctor bandaged up her arm and all through her body and her whole hip was all swollen, and her whole shoulder.

Q. She remained at your home for six weeks?

A. Yes, sir.

30 Q. And then she went home? A. Her husband took her home in a taxi.

The Court: I notice the residence of both plaintiffs is given as Newark, New Jersey.

Mr. Tansey: She lived in New York at the time of the accident and we had to file a bond for costs.

*Joseph William Gardam—Direct, Cross*

JOSEPH WILLIAM GARDAM, sworn in behalf of plaintiffs.

Direct-examination by Mr. Tansey:

Q. Are you practicing in Newark? A. Yes, 10 sir.

Q. Do you remember the case of Mrs. Byrne?

A. I remember that I took care of her just the once.

Q. What did you do then? A. I gave her whatever first aid was necessary to the extent of her injuries, which I have forgotten.

Q. That was the first time you had attended her? A. I attended her just the once, and Dr. Tansey, he had looked after the rest of the fam- 20 ily, was her regular doctor, and I turned her over to him.

Q. All you know is that you rendered first aid? A. That is it.

Q. You don't remember the nature of the first aid? A. I don't remember exactly; no, sir.

CROSS-EXAMINATION by Mr. Turner:

Q. Where was it that you rendered that first 30 aid? A. It was at the home of some of Mrs. Byrne's relatives.

Q. You don't remember where it was? A. No, sir.

Q. There was nothing about the case that impresses itself on your mind, is there? A. Just the woman.

Q. There is not anything that recalls to you as to where you treated her and what it was for? 40

*William A. Tansey—Direct*

A. I know it was somewhere in the Vailsburg district and she had supposedly been hit by an automobile and they called me in a hurry and I went up, and I gave her whatever first aid was necessary, and I left her home because I felt she  
10 didn't need hospital care.

Q. Do you recollect the case or is it just a matter that has been refreshed? A. When I was called down here as a witness I had something to hitch it on.

By the Court:

Q. Any broken bones? A. I don't remember.

Q. Any bruises? A. There were multiple  
20 bruises, but just the exact location I can't say.

---

WILLIAM A. TANSEY, sworn in behalf of the plaintiffs.

Direct-examination by Mr. Tansey:

Q. Dr. Tansey, where is your office? A. 524 Sanford Avenue.

30 Q. You have done some medical work for Mrs. Byrne's relatives in Smith Street? A. Yes, for several years I have been their physician.

Q. Do you remember the case of Mrs. Byrne, September 30, 1923? A. Very well.

Q. When were you called in? A. October 1st.

Q. The next day? A. Yes, sir.

Q. Where did you find yourself? A. At Mrs. Waldron's home, 96 Smith Street, Newark.

40 Q. Did you examine her? A. I did.

*William A. Tansey—Direct*

Q. And you treated her? A. I did.

Q. Can you tell what your examination disclosed? A. The examination showed that she had been bruised and lacerated from her head to her feet on the right side, including her back. The injury to her back ran from the right to the  
10 left side. She had a very severe cut—or, I should say, a very large cut, an inch and a half long and about a half an inch deep, behind her right ear. She had a very great bruise around her right shoulder and her collarbone, which indicated at first a fractured collarbone, and then she had a very severe bruise to her back; there was an area, probably four by six inches, just  
20 black and blue, in that region, just across the back, including down to the buttocks, and she had some lacerated areas on her right thigh and bruises on her leg.

Q. No bones broken? A. No, sir.

Q. How long did you treat her? A. I treated her every day for three weeks and then I saw her two or three times for the balance of the month.

Q. About four weeks? A. About four weeks,  
30 yes, sir.

Q. What was her condition when you ceased your treatment? A. Her condition was probably improved. She had a severe traumatic neuritis following the injuries, and that is more or less prolonged.

Q. From the injuries that you saw at that time, would there be any continuation of the trouble? A. There could be; yes, sir.  
40

*William A. Tansey—Direct*

Q. And from the bruise on the head might there be some—

Objected to.

Objection sustained.

10 Q. What would be the probability of a continuation of the injury? A. Very probable. She would have a neurotic condition, various pains in her body, especially along the right side, and with the injury to her head a condition might develop later on. There is no question about it that she had a concussion of the brain, and in concussion of the brain there is always a possibility of a brain laceration.

20 Q. Did you notice indications of concussion of the brain? A. There was no question about it.

Q. What would be the probability of continuing injuries from that hurt to the head? A. There is a probability of that.

Q. What would the result be? A. Well, she could have a lacerated brain tissue. She might have other conditions develop—

Objected to.

30 The Court: That will be stricken out.

Q. I mean the condition that you observed at that time.

The Court: There is no testimony of a lacerated brain condition.

The Witness: At that time I observed a lacerated scalp or skull.

40 Q. I am talking about a concussion of the brain. You said there was no doubt there was a

*William A. Tansey—Direct*

concussion of the brain. A. With a severe smash in the head, with a lacerated scalp such as she had, there would have to be a concussion of the brain.

Q. Were there any indications of concussion of the brain at that time? A. Yes. 10

Q. If there was concussion of the brain at that time would there be any continuing after effects with concussion of the brain? A. There could be.

Q. What is the probability of it continuing? A. There was a probability of its continuing.

Q. What would be the symptoms? A. She would have severe pains in her head; she could have a little disturbance with her gait; in her 20 manner of walking.

Q. Would it affect her ability to walk and move about? A. Yes, it would affect her.

Q. Mrs. Byrne says that she has not been able to do her housework since that time. Might her injuries that you noticed indicate that she might be so inconvenienced or incapacitated? A. I would think that her functions would be somewhat limited, yes. 30

Q. During the time that you took care of her she wasn't able to do any housework, was she? A. None whatever.

Q. Did you make a charge for your services? A. I did.

Q. What was it? A. Fifty dollars.

*William A. Tansey—Cross*

CROSS-EXAMINATION by Mr. Turner:

Q. What was the last date that you treated the lady? A. I think it was October 30th or 31st.

Q. Nineteen twenty-three? A. Yes, sir.

Q. You didn't go to New York to treat her  
10 after she went home? A. No, sir; I didn't.

Q. She went home about October 30th, did she?  
A. I believe she did.

Q. Of course, you have been familiar with the case since that time, have you not? A. No, I can't say—

Q. You have known that there was such a case?

A. I knew it was pending.

Q. The plaintiff's attorney is your brother?

20 A. Yes, sir.

Q. So you knew the case was pending? A. Yes, sir.

Q. But you have never treated her since October 30, 1923? A. Never; no, sir.

By the Court:

Q. Never examined her since that time? A. Never examined her. I never saw her until this  
30 morning.

By Mr. Turner:

Q. You spoke about concussion of the brain. What is that? A. Concussion of the brain is a shaking up of the brain tissue.

Q. And any blow on the head, no matter how slight, causes a concussion of the brain? A. No, not particularly.

Q. How much of a blow do you say there would  
40

*James J. Waldron—Direct*

have to be in order to have concussion of the brain? A. Well, you would have to have a pretty severe blow.

Q. What are the symptoms? A. You mean of a concussion?

Q. Yes. A. It all depends. There are differ-  
10 ent degrees of concussion. It may be a mild, moderate, severe or very severe.

Q. Was the lady unconscious at any time that you treated her? A. No, sir.

Q. You never saw her when she was unconscious? A. No, sir.

By the Court:

Q. Did you ever see her nauseated? A. I saw  
20 her nauseated.

By Mr. Turner:

Q. Where you have a concussion of any degree the patient is always unconscious? A. Of a severe degree, yes, but not of any degree.

Q. It was a slight degree of concussion that she had? A. Yes, I should say that she had a slight degree of concussion.  
30

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JAMES J. WALDRON, sworn in behalf of plaintiffs.

Direct-examination by Mr. Tansey:

Q. Did you take the number of the license that was on the car that night? A. Yes, sir.  
40

*Sadie C. Dervelly—Direct*

Q. Did you see Mr. Butterworth? A. Yes, sir.

Q. Where did you see him? A. I saw him in my home.

10 The Court: There is no dispute about whose car it was. It was the defendant's car.

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SADIE C. DERVELLY, sworn in behalf of plaintiffs.

Direct-examination by Mr. Tansey:

20 Q. Have you produced the record of the East Orange Police Court? A. I have.

Q. In reference to this case? A. Yes, sir.

Q. In response to a subpoena? A. Yes, sir.

Q. Will you please read the record?

Objected to as incompetent.

Objection sustained.

Plaintiff's counsel prays an exception to this ruling of the Court.

30 Exception noted as ground of appeal.

Cross-examination waived.

Plaintiffs rest.

Mr. Turner: If the Court please, I move for a non-suit on the ground that no negligence has been shown on the part of the defendant and on the ground that the plaintiff was guilty of contributory negligence.

40

*Motion for a Nonsuit*

The Court: I have understood that the doctrine of *res ipsa loquitur* applies to a case of this kind, and all that we have in this case is that the accident happened to this lady and that it was the defendant's automobile that was implicated in the collision with her. There is absolutely no proof in the case which will warrant the jury in deciding that the defendant was in anyway negligent except such as has been suggested, such inferences as may arise from the happening of the accident, and there is no such inference in this case, and a non-suit will be granted.

10

Plaintiff's counsel prays an exception to this ruling of the Court.

20

Exception noted as ground of appeal.

**Notice of Appeal.**

NEW JERSEY SUPREME COURT

10 CATHERINE BYRNE and PETER  
 BYRNE, her husband,  
 Plaintiffs,  
 vs.  
 WILLIAM H. BUTTERWORTH,  
 Defendant.

*To the Plaintiffs and Michael J. Tansey, their attorney:*

20 TAKE NOTICE that the defendant hereby appeals to the New Jersey Court of Errors & Appeals from all the judgment entered herein by the New Jersey Supreme Court, reversing the judgment of the Essex County Circuit Court.

Yours respectfully,

30 FRANK G. TURNER,  
 Attorney of Defendant-Appellant.

**Grounds of Appeal.**

NEW JERSEY COURT OF ERRORS & APPEALS

CATHERINE BYRNE and PETER  
 BYRNE, her husband,  
 Plaintiffs,  
 vs.  
 WILLIAM H. BUTTERWORTH,  
 Defendant.

10

*To Michael J. Tansey, Attorney of Plaintiffs:*

Take Notice that the defendant, William H. 20 Butterworth, states the grounds of his appeal to the New Jersey Court of Errors & Appeals from the whole of the judgment in this cause, as follows:

1. The Supreme Court erroneously decided in favor of the plaintiffs and against the defendant.
2. The Supreme Court erroneously reversed the judgment of the Essex County Circuit Court, ordering a nonsuit in favor of the plaintiffs and 30 against the defendant.
3. The judgment of the Supreme Court is erroneous.

FRANK G. TURNER,  
 Attorney of Defendant.



*Order on Reversal of Judgment*

left to proceed beyond the center of the intersection before making the contemplated turn. There was also evidence of negligence in the failure of the defendant to observe the plaintiff until she was actually on his fender.

10 The judgment is reversed and *venire de novo* awarded.

**Order on Reversal of Judgment.**

## NEW JERSEY SUPREME COURT

20 \_\_\_\_\_  
 CATHERINE BYRNE and PETER  
 BYRNE, her husband,  
 Plaintiffs-Appellants,

vs

WILLIAM H. BUTTERWORTH,  
 Defendant-Appellee.

30 This cause having been duly submitted on Briefs at the October Term, 1926, of this Court by Michael J. Tansey, of Counsel for the Appellant, and Frank G. Turner, of Counsel for the Appellee, and the Court having inspected the Record and Judgment below, and considered the causes assigned for error and the grounds of appeal therein;

It is thereupon, on this Eighth day of April,  
 40 1927, ORDERED that the Judgment of the Essex

*Order on Reversal of Judgment*

County Circuit Court be in all things reversed, set aside and for nothing holden, and that the record and proceedings be remitted to the said Essex County Circuit Court to be proceeded with in accordance with this Judgment and the practice of the said Court. 10

Entered April 8th, 1927, on motion of

MICHAEL J. TANSEY,  
 Of Counsel for Appellant.

A true copy  
 Edward J. Kelleher,  
 Clerk. 20

CASE No. ....

MAY 1927 TERM.

### New Jersey Court of Errors and Appeals

CATHERINE BYRNE and PETER  
BYRNE, her husband,  
Plaintiffs-Appellees,

v.

WILLIAM H. BUTTERWORTH,  
Defendant-Appellant.

On Appeal  
from Supreme  
Court.

#### BRIEF OF DEFENDANT-APPELLEE.

##### Facts.

The plaintiffs appealed from a judgment of non-suit entered against them on a trial at the Essex Circuit Court. The Supreme Court reversed the judgment of the Circuit Court. The defendant appeals from the judgment of the Supreme Court. Plaintiff Catherine Byrne lives in New York. On September 30, 1923, she was on the north side of South Orange Avenue (Case, p. 11); she was in the middle of the cross-walk from one curb to another when something struck her and she became unconscious and two ladies picked her up and put her in their car and took her to her brother's home. She did not hear a horn or warning (Case, p. 12). It was 7 P. M. and dark (Case, p. 13); she did not look for automobiles (Case, p. 16); she did not know she was struck by an automobile

(Case, p. 17); she did not see Mr. Butterworth's automobile (Case, p. 19).

On the foregoing facts the learned Trial Judge granted a motion for nonsuit.

There is absolutely no proof of negligence in the case on the part of the defendant.

There is no proof from which the jury might infer negligence.

#### POINT I.

**Assuming, for the argument, that there had been proof in the case that plaintiff had been in contact with defendant's automobile, there is no proof of negligence.**

Negligence will not be presumed.

"The mere fact that there is a collision between an automobile and a pedestrian on the highway, does not raise a presumption of negligence" (Flanigan v. McLean, 110 Atl. 370).

"A mere collision between an automobile and a pedestrian or vehicle does not raise any presumption of negligence." (McAvoy et al. v. Kromer et al., 120 Atl. 762.)

"Negligence is never presumed, but must be proved, and the burden of proving it rests upon the party alleging it." (Tobias v. People's Ry. Co., 80 Atl. 359.)

"Negligence is a fact which must be shown. It will not be presumed. There is always a presumption against negligence and in favor of innocence. The doctrine or *maxim res ipsa loquitur* is not applicable to the facts of this case." (Alvina v. Public Service Ry. Co., 117 Atl. 709.)

"Negligence is a fact which must be proved. It will not be presumed." (McCombe v. Public Service Ry. Co., 112 Atl. 255.)

"The mere fact of any injury will not raise a presumption of negligence." (Nelms v. Pennsylvania R. Co., 109 Atl. 673.)

"Negligence is a fact which must be shown. It will not be presumed. There is always a presumption against negligence." (Ryan v. Public Service Ry. Co., 128 Atl. 158.)

"To sustain a cause of action based on negligence, the testimony must be such that negligence may be reasonably inferred. Negligence is a fact which must be shown. It will not be presumed." (Donus v. Public Service Ry. Co., 133 Atl. 196.)

"From the mere happening of an automobile accident no presumption of negligence arises." (Ferrell v. Solski, 123 Atl. 494.)

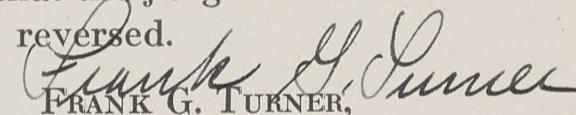
#### POINT II.

**Plaintiff was guilty of contributory negligence.**

She admits she did not look while crossing the street. This leaves no question for the jury to consider. The judgment of nonsuit was correct.

"Griffith v. Phila. R. T. Co., 110 At. 76; Burns v. Rhode Island Co., 110 At. 378; Palmer v. Spencer, 115 At. 82."

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

  
FRANK G. TURNER,

Attorney and of Counsel  
with Defendant-Appellant.

112MAY.T.1927

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

## New Jersey Court of Errors and Appeals

CATHERINE BYRNE and PETER  
BYRNE, her husband,  
*Plaintiffs-Respondents,*

*vs.*

WILLIAM H. BUTTERWORTH,  
*Defendant-Appellant.*

*Action  
at Law.*

*On Appeal.*

### RESPONDENTS' BRIEF.

Catherine Byrne, an elderly lady, living in New York and returning after visiting her brother, Thomas Waldron, on Smith street (Vailsburg), Newark, walked easterly on the north side of South Orange avenue on September 30, 1923, about 7:10 P. M., Standard Time. She had gotten to Clinton street, East Orange, which intersects South Orange avenue from the north and ends there, and there was a gas light there. She looked to protect herself but did not notice any automobile coming into Clinton street from South Orange avenue, and heard no horn, whistle or other signal. She saw the place was clear that she had to cross. She was in the center of the crosswalk when struck by defendant's car, which turned north into Clinton street from South Orange avenue; became unconscious and was carried some distance on the fender; the defendant saying to witness at the time of the accident, that "when he was turning in on Clinton street he never saw Mrs. Byrne until she was on the fender."

She was badly bruised on her right side and back and could not raise her right arm to comb her hair; she was badly cut on her right shoul-

der and the right side of her head, and had a slight concussion of the brain, also a traumatic neuritis developed; she was under medical treatment for four weeks and gave testimony of continuing effects of the injury.

An involuntary non-suit was entered on motion of defendant's counsel, the Court saying:

"I have (not) understood that the doctrine of *res ipsa loquitur* applies to a case of this kind; and all that we have in this case is that the accident happened to this lady and that it was the defendant's automobile that was implicated in the collision with her. There is absolutely no proof in the case which will warrant the jury in deciding that the defendant was in any way negligent, except such as has been suggested, such inferences as may arise from the happening of the accident, and there is no such inference in this case."

#### ARGUMENT.

It is quite apparent that plaintiff used reasonable care in observing possible danger when about to enter upon the crosswalk, for she said she looked to protect herself and saw nothing in the street she was about to cross. That there was nothing at the time in Clinton street fully appears from the evidence, as defendant's car was running on South Orange avenue, and turned into Clinton street, which is sixty-six feet wide, in time to strike plaintiff, who had gotten midway of the crosswalk on Clinton street. The car, therefore, must have been a considerable distance from Clinton street on South Orange avenue at the time she started to cross, and even if she had seen it, there was

nothing to indicate that it was going to leave South Orange avenue and turn into Clinton street, and there was no signal of any kind given of its approach. Reasonable caution requires a car turning from one street into another to slacken its speed and give audible signals of its approach so that pedestrians and others may know its intention to change its direction and street in time to avoid injury to themselves in crossing. If an automobile on one street suddenly turns into another without giving a signal or slackening speed, it is common knowledge that persons crossing the latter street at the intersection are greatly and unnecessarily endangered by such conduct. Any observation which they could have made would not tell them in time whether an auto on one street would turn into another and endanger them at the crossing.

Plaintiff made all the observations reasonable prudence required her to make. That she was struck on the back and right side shows that she was well across the street towards the easterly side and did not walk into the car but was struck by it.

"The driver of an automobile must take reasonable care to so exercise his right to use the highway as not to injure pedestrians, such care as an ordinarily prudent person would exercise under like circumstances. The duty to exercise reasonable care between persons using the highway is mutual, and each person may assume that others travelling on the highway will comply with this obligation. Hence the plaintiff had a right to assume that the driver of the automobile would exercise proper caution in respect to speed and control in approaching the crossing."

*Tischler v. Steinholtz*, Err. & App., 122 Atl. 880.

The plaintiff had the right of way, having reached the crosswalk first, even aside from the provisions of the statute (Laws 1916, page 49). But under the statute, she plainly had the right of way. This case is very like that of *Minarseik v. Blank*, 4 N. J. Adv. Rep. 515. There was a motion for non-suit denied, and on appeal the Court said:

"On these facts, it was clearly for the jury to say whether or not the defendant was negligent in failing to see the boy in time to avoid running over him; or, if he did see him, in failing so to operate his truck as to avoid running the boy down, the boy having the right of way over the truck at this point and defendant being under a statutory duty to observe that right."

See also

*Venghtis v. Nathanson*, 127 Atl. 175;

*Thomas v. Metzendorf*, 128 Atl. 162.

There was evidence offered by plaintiff from which the jury could have found negligence on the part of the defendant; the Court should have refused to grant the motion to non-suit.

*Carero v. Breslin*, Err. & App., 128 Atl. 883.

In the case of *Carero v. Breslin* (above), it was held by this Court, evidence of negligence that a car in making a left turn kept close to the left side of the road instead of keeping to the right side of the road and making a wide turn. In this case defendant-appellant's car in making a right turn, should have kept close to the right side of the road instead of going wide to the center of the crossing.

The failure to give a signal of intention to turn into another street has been held negligent on the part of a truck driver by this Court, in

the case of *Jackson v. Geiger*, 126 Atl. Rep. 438, the Court saying:

"The plaintiff's decedent was in a place where he was lawfully entitled to be and which was one not of obvious danger but was one made dangerous through the failure of the driver of the truck to give a signal or warning of his intention to turn down Pennsylvania Avenue so that on coming drivers of vehicles might have an ample opportunity to control their speed and thus avoid collision with the truck or other vehicles on the highway. The plaintiff's decedent in the exercise of ordinary care was under no legal duty to anticipate that the truck driver would fail in his duty to indicate by proper signal or warning in ample time that instead of proceeding ahead, he intended to make a turn down Pennsylvania Avenue."

In the absence of any signal or warning that a turn was to be made the decedent would have been warranted in believing that the truck driver was going straight ahead. Citing

*Traction Co. v. Haight*, 59 Law 577, in this Court,

Which holds,

"That a vehicle using public streets and approaching a vehicle or pedestrian must be kept in such control as will enable it without wilful negligence on the part of others to avoid collision and damage; and that no vehicle can without reasonable notice of its approach (what is reasonable notice is a question for the jury), violently run into or force from its way another vehicle (or pedestrian) having a legitimate right upon the street without becoming liable for any damage which may result."

Turning without warning and crossing the road was held evidence of negligence in the Su-

preme Court; Case of *Winter v. N. J. Bus Company*, 135 Atl. 473.

The plaintiff was on a cross walk where she had the right of way, which the defendant-appellant was under a statutory duty to observe (Laws 1916, page 49). That defendant-appellant did not control his speed or give signals of his approach was evidence of negligence, which was for the jury to consider, and not the Court to decide.

*Minarseik v. Blank*, 4 Adv. Rep. 515; 132 Atl. 251.

The judgment of the Supreme Court should be affirmed.

Respectfully submitted,

MICHAEL J. TANSEY,  
Of Counsel with Plaintiffs-Respondents.