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covery if a physical ill followed.[33] Many courts have given relief when the act was willful or wanton.[34] The doctrine of foreseability is still applied occasionally in some jurisdictions.[35] All courts have not yet adopted this modern spirit and a few insist on clinging to the old rule of necessity of impact.[36] The majority of the cases certainly indicate that the trend is liberal and spreading in its scope. The old restrictions laid down in *Victorian Railways Commissioners v. Coultas* and *Lehman v. Brooklyn City Railway* have been impliedly overruled by numerous courts and expressly by others,[37] and they should be considered as no longer valid in modern law.

The instant case would seem to have been correctly decided in view of the modern tendencies to award a redress for every actionable wrong regardless of the source or cause of the injury. All the necessary elements of recovery were found to exist in the present litigation. Certainly no sound reason can be given why injuries resulting from an impact should be held to permit recovery and those not so resulting be precluded from the same consideration. The courts have a duty to provide redress for every actionable wrong and cannot be said to be properly ministering justice while yet espousing falacious reasoning established by a few tribunals over a half a century ago. The reasoning set down at that time was clearly erroneous and can certainly have no just application in modern law. Courts should rid themselves of these shackles and afford a remedy for fright cases whenever the merits of the particular case warrant such.

JOHN R. KOCHEVAR

SUBROGATION UNDER THE FEDERAL TORTS CLAIMS ACT

An army plane crashed into a building insured by plaintiff insurance company. The owner brought suit against the United States under the Federal Torts Claims Act.[1] Plaintiff insurance company having paid for the loss, moved for leave to intervene as a subrogee to the insured's rights. The District Court denied on the grounds the act does not expressly grant consent to suit by subrogees, and that the act being a relinquishment of sovereign immunity, it must be strictly construed. *Held,* the claim exists on account of damage to the property and there is no need to resort to the rule of strict construction of statutes in derogation of sovereign immunity where a statute contains a clear and sweeping waiver of immunity from suit on all claims with certain well defined exceptions. *Employers Fire Insurance Company v. United States,* 167 F. (2d) 655 (C. A. 9th 1948).

33. Hines v. Evans, 5 Ga. App. 829, 105 S. E. 59 (1920).
34. Janvier v. Sweeney, 2 K. B. 316 (1919), 88 L. J. K. B. 1231 (1919); Johnson v. Sampson, 167 Minn. 203, 208 N. W. 814, 46 A. L. R. 772 (1926); Continental Casualty Co. v. Garrett, 173 Miss. 676, 161 So. 753 (1935); Marcelli v. Teasley, 72 Ga. App. 421, 33 S. E. (2d) 836 (1945).
35. Orlo v. Connecticut Co., 128 Conn. 231, 21 Atl. (2d) 402 (1941); Houston Electric Co. v. Dorsett, 145 Tex. 95, 194 S. W. (2d) 546 (1946).
36. State ex. rel. & to Use of Renz v. Dickens, 95 S. W. (2d) 847 (1936).
37. Spearman v. McCrary, 4 Ala. App. 473, 58 So. 927 (1912); Alabama Fuel & Iron Co. v. Baldoni, supra; Simone v. Rhode Island Co., supra.

1. 60 Stat. 842, 28 U. S. C. Sec. 921 (1946), as amended, 61 Stat. 722 (1947), 28 U. S. C. Sec. 931 (Supp. 1948).

Since this decision, two similar cases have been considered by Federal Courts of Appeal, one in which an insurance company had paid workman's compensation when insured was injured by an employee of the Post Office Department,[2] and one in which an insurance company paid for damage to insured's car which was run into by an army truck.[3] Suit by the subrogee was allowed in both of these cases on the basis that the act should be construed to include derivative suits.

The act gives to the United States District Courts jurisdiction to render a judgment on any claim against the United States for money only "on account of damage or loss to property by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under circumstances, where the United States, if a private party would be liable to the claimant for such damage . . . in accordance with the law of the place where the act or omission occurred. . . . The United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances. . . ."

Previously the same problem has been considered several times in the Federal District Courts and there the decisions have been in conflict. The right to subrogation has been denied by the courts on various grounds: that the common law of the state in which the claim was founded did not allow a subrogee to sue except in the name of the insured;[4] that the anti-assignment act[5] definitely included subrogation;[6] and that subrogation is of the same nature as assignment and is therefore barred by the Federal Tort Claims Act.[7] There are other cases for which no opinion is available for publication which also disallow such suits.[8]

The District Court decisions allowing the subrogee to bring suit under the Federal Torts Claims act are more numerous. The most cited case standing for the proposition that the subrogee should be allowed to sue the United States under the act is based on the theory that the clear import of the language of the statute is to include the case of subrogees; that there is no ambiguity and nothing need be read in by implication.[9] Other cases have allowed the suit by subrogees

2. Aetna Casualty & Surety Co. v. U. S., 170 F. (2d) 469 (C. A. 2d 1948).
3. Old Colony Insurance Co. v. U. S., 168 F. (2d) 931 (C. A. 5th 1948).
4. Gray v. U. S., 77 F. Supp. 869 (Mass. 1948), rev'd on appeal, 172 F. (2d) 737 (C. A. 1st 1949).
5. 35 Stat. 411 (1908), 31 U. S. C. Sec. 203 (1946), the pertinent language of which is: "All transfers and assignments made of any claim upon the United States, . . . whether absolute or conditional, and whatever may be the consideration therefore, and all powers of attorney, orders or other authorities for receiving payment of any such claim . . . shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. . . ."
6. Cascade County Montana v. U. S., 75 F. Supp. 850 (Montana 1948).
7. Bewick v. U. S., 74 F. Supp. 730 (N. D. Texas 1947).
8. McCasey & Michigan Fire and Marine Ins. Co. v. U. S., Civil No. 5991 (E. D. Mich.) cited in Niagara Fire Ins. Co. v. U. S., 76 F. Supp. 850 (S. D. N. Y. 1948); Home Insurance Co. v. U. S., Civil No. 10418 (N. J. 1947) cited in Niagara Fire Ins. Co. v. U. S., 76 F. Supp. 850 (S. D. N. Y. 1948).
9. Niagara Fire Ins. Co. v. U. S., 76 F. Supp. 850 (S. D. N. Y. 1948); see, e. g., South Carolina State Highway Dept. v. U. S., 78 F. Supp. 594 (N. D. Florida 1948); Newsum v. Penn. R. Co., 79 F. Supp. 225 (S. D. N. Y. 1948); Old Colony Ins. Co. v. U. S. 168 F. (2d) 931 (C. A. 6th 1948); Aetna Casualty & Ins. Co. v. U. S., 170 F. (2d) 469 (C. A. 2d 1948); Insurance Co. of North America v. U. S., 76 F. Supp. 951 (E. D. Va. 1948).

on the basis that the anti-assignment act is not applicable to suits by subrogees because the subrogation arises by operation of law rather than voluntarily.[10]

In reaching the decision in the instant case, the court reasoned that had Congress intended to exclude suits by subrogees they would have added such an exception to the twelve other definite exceptions which are included in the act, and that it was the intent of the legislature to relieve themselves of considering all these private claims as was necessary before the Federal Torts Claims Act, and were aware at the time of passing the act that suits by subrogees would arise. In the instant case, the court also refers to an opinion of the Attorney General[11] that the Small Torts Claims act which preceded the Federal Torts Claims act included suits by subrogees, and this opinion was consistently followed by Congress in appropriating sums for the payment of subrogated claims. The court reasons that as the language of the act was similar, and that act was the forerunner of the Federal Torts Claims act, that subrogation should also be allowed under the latter act.

In view of the fact that the only three decisions of the Federal Courts of Appeal on the subject have been reversals of District Courts which did not allow the suit by the subrogee, it seems to become more apparent that the matter might possibly become more or less settled before the opportunity or necessity for a decision by the United States Supreme Court arises.

It is submitted that the decisions of the Courts of Appeal have been correct in their interpretation and application of the act as to subrogees. The historical background and the reasons for the passage of the act, as well as the obvious probability that such suits would be brought and could have been excluded are considerations which could hardly be overlooked, and which were given insufficient attention by the Federal District Courts when they construed and applied the act strictly and thus denied the subrogee the right to sue on mere technicalities.

JOHN O. CALLAHAN

ILLEGAL DETENTION ALONE IS SUFFICIENT TO INVALIDATE A CONFESSION

Appellant, arrested for grand larceny, was held for three days without charges being filed against him; thus, his detention was illegal, because in violation of a statute requiring prompt arraignment. Appellant confessed to the theft during a thirty hour period after being taken into custody. Although he had been question five times before confession, the questioning was shown to have been neither coercive nor extensive. Appellant appealed from conviction on the sole basis that he had been detained an unreasonable time after arrest before the confession was made. *Held,* illegal detention alone is sufficient to invalidate a confession although

10. Grace to use of Grangers Mutual Ins. Co. v. U. S., 76 F. Supp. 174 (Maryland 1948); Hill v. U. S., 74 F. Supp. 129 (N. D. Tex. 1947); Wojciuk v. U. S., 74 F. Supp. 914 (E. D. Wis. 1947); Town of Amherst v. U. S., 77 F. Supp. 80 (W. D. N. Y. 1948); State Road Dept. of Florida v. U. S., 78 F. Supp. 278 (N. D. Florida 1948).
11. 36 Op. Atty. Gen. 553, cited in Employers Fire Ins. Co. v. U. S., 167 F. (2d) 655 (C. A. 9th 1948).