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Augustine T. Smythe Jr.

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versus - UNITED STATES OF AMERICA

AUGUSTINE T. SMYTHE, JR.*

The largest power company, the operator of the largest merchant marine fleet, the operator of the largest fleet of land vehicles, the employer of the largest number of employees liable to negligence—truly a magnificent defendant from the point of view of plaintiffs' attorneys—such is the United States of America.

Yet until recently this fruitful field was barred to injured claimants and hungry lawyers alike by the fence of sovereign immunity, which protected the Federal Government from suits in tort. For almost a century, beginning with the Court of Claims Act of 1855,¹ Congress had gradually yielded to constant pressure and made the Government subject to suit in various classes of cases. The Act of 1855 granted jurisdiction to the Court of Claims to hear cases against the United States founded upon any law of Congress or upon any contract, express or implied. The Tucker Act of 1887² extended concurrent jurisdiction to federal district courts in cases not exceeding \$10,000.00. Later statutes authorized suits for patent infringements³ and for maritime torts.⁴ Several statutes authorized administrative settlement of claims in small amounts.⁵

Still there was no statute permitting suit for torts in general, with the result that thousands of private claims bills were introduced in Congress at every session. Yielding to the growing pressure of this mass of work, which naturally increased tremendously with the growth of the Federal Government and its multitudinous agencies, as well as to a sense of fair play, which demands that an injured citizen have redress speedier than that afforded by a private claim bill, Congress in 1946 passed the important Federal Tort Claims Act.⁶

Briefly stated, the Act permits suit against the United States in negligence cases where a private corporation would be liable, with

*B.A., 1940; L.L.B., 1947, Yale University. Member of the South Carolina Bar, Charleston, S. C.

1. REV. STAT. §§1049-58 (1875), 28 U.S.C. §§ 171 *et. seq.*, 1491 *et. seq.* (1948).

2. 24 STAT. 505 (1887), 28 U.S.C. §§ 791, 1331-'46, *etc.* (1948).

3. 36 STAT. 851 (1910), 40 STAT. 705 (1918), 35 U.S.C. § 68 (1940).

4. 41 STAT. 525 (1920), 46 U.S.C. § 742 (1940); and 43 STAT. 1112 (1925), 46 U.S.C. § 781 (1940).

5. 42 STAT. 1066 (1922), 31 U.S.C. § 215 (1940); 42 STAT. 63 (1921), 5 U.S.C. § 392 (1940); 49 STAT. 1184 (1936), 31 U.S.C. § 224(b) (1940); and many others.

6. 60 STAT. 812 (1946), 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-'80 (1948).

certain specific enumerated exceptions. It grants to the federal district courts, subject to the Federal Rules of Civil Procedure, but sitting without a jury, jurisdiction over all money claims, without limit as to amount, for damage to property or for personal injury or death, caused by a negligent or wrongful act or omission of a Government employee acting within the scope of his employment. Appeal lies either to the appropriate United States Court of Appeals or, with the consent of all appellees, to the Court of Claims. Provision is also made for the administrative settlement of claims not exceeding \$1,000.00. The governing substantive law shall be that of the place of the tort, save that neither punitive damages nor interest prior to judgment are allowed. Venue lies either in the district of the situs of the tort or of the residence of plaintiff. The period of limitation is one year after the accrual of the cause of action. Finally, attorneys fees may be fixed by the court and shall not exceed twenty per cent of the amount recovered by litigation, nor ten per cent of a settlement.

Shortly after passage of the Act it was extensively reviewed in many of the leading Law Reviews and Journals of the country, and comment has continued to date.⁷ A comprehensive annotation considering the effect of early decisions is to be found in 1 A.L.R. (2d) 222 (1948). It is the purpose of this article not to duplicate that literature with a comprehensive study of the Act, but to discuss one or two of the more actively litigated points of interpretation, and to consider one or two interesting shadows which the Act casts upon the law of the State of South Carolina.

The principal basis of interpretation which will determine the final scope of the Tort Claims Act is whether the United States Supreme Court will treat it, from the point of view of the claimant, with a generous or a niggardly hand.⁸ It has long been a canon of statutory construction in this country that statutes permitting suit against the Government, being in derogation of sovereign immunity, should be strictly construed.⁹ This is based on the theory that a congressional intention to subject the Government to suit will not be pre-

7. 56 YALE L. J. 534 (1947); 7 F. R. D. 689 (1948); 9 F. R. D. 143 (1949); 48 MICHIGAN L. R. 534 (1949); 35 VIRGINIA L. R. 925 (1949); 98 UNIV. OF PA. L. R. 603 (1950); 30 BOSTON L. R. 275 (1950); 35 IOWA L. R. 501 (1950).

8. See discussion in 9 F. R. D. 143-169.

9. *United States v. Sherwood*, 312 U. S. 584, 590 (1941); *United States v. Michel*, 282 U. S. 656, 659 (1931); *Eastern Transp. Co. v. United States*, 272 U. S. 675, 686 (1927).

sumed. On the other hand, the Supreme Court has recently found that the dominant modern trend favors Governmental liability, and has to some extent relaxed the rule of strict construction as to statutes waiving the immunity of the Government or its agencies.¹⁰

In the early opinions construing the Tort Claims Act, many of the lower courts repeated the old maxim of strict construction,¹¹ but several others found in the statute a breadth of language implying an intent on the part of Congress to deal generously with the problem of injured claimants.¹² In the second opinion by the Supreme Court construing the statute, *United States v. Aetna Casualty & Surety Co.*,¹³ language is used which indicates that the Court intends to give full play to the statute. The Court said:

“In argument before a number of District Courts and Courts of Appeals, the Government relied upon the doctrine that statutes waiving sovereign immunity must be strictly construed. We think that the congressional attitude in passing the Tort Claims Act is more accurately reflected by Judge Cardozo’s statement in *Anderson v. Hayes Construction Co.*, 243 N. Y. 140, 147, 153 N.E. 28, 29: “The exemption of the sovereign from suit involves hardship enough, where consent has been withheld. We are not to add to its rigor by refinement of construction, where consent has been announced’.”

Since the Court apparently went out of its way, and beyond the argument of counsel before it, to express its views of the congressional attitude in passing the Tort Claims Act, it may be safe to assume that its purpose was to give notice of its overall policy toward the statute, and that the language used should not be thought to apply only to the particular issue in that case before the Court.

In the only other case to reach it to date, *Brooks v. United States*,¹⁴ the Supreme Court was faced with the question of whether a serviceman may recover under the Act for injuries not incident to his service. While there is persuasive argument against a construction

10. *Keifer & Keifer v. R. F. C.*, 306 U. S. 381, 391 (1939); *F.H.A. v. Burr*, 309 U. S. 242, 245 (1940); *United States v. Shaw*, 309 U. S. 495, 501 (1940); *Canadian Aviator Ltd. v. United States*, 324 U. S. 215, 222 (1945) *semble*.

11. *Town of Amherst v. U. S.*, 77 F. Supp. 80 (D.C. N.Y. 1948); *Bates v. U. S.*, 76 F. Supp. 57 (D.C. Neb. 1948); *Spelar v. U. S.*, 75 F. Supp. 967 (D.C. N.Y. 1948); *State of Md. to use of Burkhardt v. U. S.*, 70 F. Supp. 982 (D.C. Md. 1947).

12. *Seplar v. United States*, 171 F. 2d 208 (C.C.A. 2 1948); *Employers' Fire Ins. Co. v. United States*, 167 F. 2d 655, 657 (C.C.A. 9th 1948).

13. 70 S. Ct. 207 (1949).

14. 337 U. S. 49 (1949).

of the Act which would permit recovery in such cases,¹⁵ the Supreme Court made short shrift of it. The opinion of Mr. Justice Murphy¹⁶ uses this sentence:

“We are not persuaded that ‘any claim’ means ‘any claim but that of servicemen’.”

On the basis of presently available evidence, it is probably reasonable to assume that the Supreme Court will give full play to the congressional intent to subject the Government to suit in tort, and that it will be difficult to convince that Court that “any claim” means anything other than “any claim”.

After the question of general attitude toward the interpretation of the Act, perhaps the most interesting and certainly the most litigated questions of interpretation have to do with who may be parties plaintiff, and whether anyone in addition to the United States may be a party defendant. We will consider these questions in inverse order.

As plaintiff's intestate was walking across a street at an intersection, two automobiles collided, the course of one was diverted, and plaintiff acquired her cause of action. She joined as parties defendant the drivers and the owners of both cars. One was a mail truck owned by the United States of America.¹⁷ In another case, plaintiff, riding in a taxicab operated by Yellow Cab Company, was injured when the cab collided with a United States mail truck. Plaintiff sued the Cab Company in the federal District court, jurisdiction being based on diversity of citizenship, and that defendant filed a third party complaint under Rule 14 (a) seeking to enforce contribution from the United States.¹⁸ In still another case, also involving an automobile collision, plaintiff, a passenger in the private car, joined as defendants the driver of that car and the United States, whose employee was driving the other vehicle.¹⁹

The propriety of these and similar joinders has been challenged in a number of cases, sometimes by the United States, and sometimes by the private defendant. In considering the opinions care must be taken to differentiate between three classes of possible co-

15. *Brooks v. United States*, 169 F. 2d 840 (C.C.A. 4th 1948) (Parker dissenting); Cf. *Jefferson v. United States*, 77 F. Supp. 706 (D.C. Md. 1948); 74 F. Supp. 209 (D.C. Md. 1947).

16. Mr. Justice Frankfurter and Mr. Justice Douglas dissented.

17. *Precht v. United States*, 84 F. Supp. 889 (W.D. N.Y. 1949).

18. *Howey v. Yellow Cab Co.*, 181 F. 2d 967 (C.C.A. 3d 1950).

19. *Engelhardt v. United States*, 69 F. Supp. 451 (D.C. Md. 1947).

defendants: (a) the employee of the Government whose negligence gave rise to the claim; (b) a joint tortfeasor who is a resident of the same state as plaintiff; (c) a joint tortfeasor as to whom there exists diversity of citizenship.²⁰

The Tort Claims Act is silent on the precise point, but several of its provisions are pertinent. The overall scheme of the Act is to put the United States as nearly as possible in the position of a private defendant, with certain safeguards. There is thus nothing in the general scheme to refute the idea of joinder. Furthermore, the Act specifically provided that the Federal Rules of Civil Procedure should govern, and Rule 20 (a) authorizes joinder.²¹ On the other hand, the Act provides that judgment shall be a complete bar to any cause of action by plaintiff against the Government employee involved, which has led some courts to isolate the case of an employee defendant.²² Also the Act prescribes that the case against the United States shall be tried without a jury, which raises complications in joining a defendant who has a constitutionally protected right to a jury trial. The legislative history, contained in many hearings and committee reports, is illuminating but not decisive.²³

Essentially the difficulty is this: the Tort Claims Act is similar in purpose to the Tucker Act, and makes reference to it for some of its procedure. In *United States v. Sherwood*,²⁴ the Supreme Court held that the Federal Rules applied only to the manner of exercising jurisdiction and could not be used to increase it. That action arose under the Tucker Act which antedates the Federal Rules, and the Court refused to allow joinder. The argument of the proponents of joinder under the Tort Claims Act is that by specifically referring to the Federal Rules in the Act itself, Congress made the procedure prescribed by those Rules a part of the jurisdictional grant of the Act itself.

The decisions permitting joinder, at least in the case of diversity

20. Of all the cases dealing with the question, none has been found which permits joinder of the Government employee, or of a resident joint tortfeasor. Nor has any case been found which reveals that a non-resident joint tortfeasor was not allowed to be joined. Some of the opinions, however, are not clear on this point. Cf. *Drummond v. United States*, 78 F. Supp. 730 (E.D. Va. 1948); *Bullock v. United States*, 72 F. Supp. 445 (D.C. N.J. 1947).

21. The section of the F. T. C. A. specifying the applicability of the Federal Rules was repealed by the Act of June 25, 1948, revising Title 28 of the United States Code, presumably because it was considered surplusage. See *Howey v. Yellow Cab Co.* See note 18, *supra*, at page 971 footnote 8.

22. See note 17, *supra*.

23. See 56 *YALE L. J.* 534, 535 fn. 10, 554-'5 (1947); *Howey v. Yellow Cab Co.* See note 18, *supra*, at pages 971-'2, *Drummond v. United States*. See note 20, *supra*.

24. 312 U. S. 584 (1941), reversing *Sherwood v. United States*, 112 F. (2d) 587 (C.C.A. 2d 1940).

of citizenship where the co-defendant is one other than the responsible Government employee,²⁵ slightly outnumber those which forbid it.²⁶ As was pointed out by Judge Chesnut of Maryland in the first opinion to consider this question,²⁷ the practical difficulties presented by joinder, as to jury trials, as to appeal, as to fixing attorney's fees, as to admission of evidence, etc., are not insurmountable, whereas joinder is very desirable in the interest of a speedy and equitable deliverance from the afflictions of litigation. While it may be that from a purely technical point of view the reasoning of the cases forbidding joinder is extremely convincing, it appears to the writer that the Supreme Court of the United States is more likely, if and when presented with the issue for decision, to sweep aside the technical objections and, in the mood of the *Aetna* and *Brooks* cases,²⁸ to find no objection to the joinder of third party defendants.

A different but related question is whether a suit may be brought under the Act by a plaintiff who is not the party originally injured, but a subrogated insurer of the primary claimant. While this question has been authoritatively answered in favor of the insurer-subrogee by the Supreme Court in the case of *United States v. Aetna Casualty and Insurance Co.*,²⁹ the importance of the question merits its review here.

The argument of the Department of Justice in seeking to avoid such suits was in two parts:

(a) The Act declares that the district courts shall have jurisdiction over "claims against the United States, for money damages * * * for injury or loss of property, or personal injury or death * * *."³⁰ The Act as passed further read: "* * * 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

25. *Howey v. Yellow Cab Co.* See note 18, *supra*. State of Maryland for use of Pumphrey v. Manor Real Estate & Trust Co., 83 F. Supp. 91 (D.C. Md. 1949, *aff'd. in part, rev'd. in part*, 176 F. 2d 414 (C.C.A. 4th 1949) (appellate decision does not discuss point involved here, but seems to assume propriety of joinder); *Newsum v. Pennsylvania R. Co.*, 79 F. Supp. 225 (D.C. S.D. N.Y. 1948); *Bullock v. United States*. See note 20, *supra*. *Englehardt v. United States*. See note 19, *supra*.

26. *Precht v. United States*. See note 17, *supra*; *Donovan v. McKenna*, 80 F. Supp. 690 (D.C. Mass. 1948); *Drummond v. United States*. See note 20, *supra*. *Uarte v. United States*, 7 F. R. D. 703 (D.C. Cal. 1948).

27. See note 19, *supra*.

28. See notes 13 and 14, *supra*.

29. See note 13, *supra*.

30. 28 U.S.C.A. § 1346(b) (1948). The original Act prior to its codification read "on account of injury" etc.

* * *³¹ The Government argued that a claim by a subrogated insurer was not "on account of" injury to property, but was on account of a payment made by the insurer to the insured. It further said that the language cited to footnote 31 above was not controlling, even though a private individual would be responsible to a subrogated insurer, because that language is introduced by the phrase "in respect of *such* claims," meaning, as it was contended, claims on the part of the person suffering the original damage.

(b) The so-called Anti-Assignment statute³² declares void the transfer or assignment of any claim upon the United States, with certain exceptions not here pertinent. It was the contention of the Government that this statute applied to assignments of claims by operation of law, as is the case with subrogation, as well as to voluntary assignments, and that it therefore served to prevent the bringing of an action in the name of an insurer-subrogee. Since Rule 17(a) requires that every action shall be prosecuted in the name of the real party in interest, and since the doctrine of *Pringle v. Atlantic Coast Line R. R. Co.*³³ has not been applied to that Rule, this would have left subrogated insurers in a position of some difficulty.

The question was important not only because of the numberless suits which it immediately involved, but also because of the size of many of the claims affected by it.³⁴ While in the long run the issue was between the man who pays insurance premiums and the man who pays taxes, this philosophical view was not evident among the companies or their attorneys who early found themselves embroiled in the dispute. Before the issue was decided by the Supreme Court, it had been discussed in published opinions by at least sixteen district courts³⁵ and by eight Courts of Appeals.³⁶

31. For codification see 28 U.S.C.A. § 2674 (1948).

32. R.S. § 3477, 31 U.S.C.A. § 203.

33. 212 S.C. 303, 47 S. E. 2d 722 (1948).

34. The Texas City disaster, as a principal example, involves an estimated \$200,000,000 of subrogated claims now being litigated.

35. *Rusconi v. U. S.*, 74 F. Supp. 669 (S.D. Calif. 1947); *Old Colony Insur. Co. v. U. S.*, 74 F. Supp. 723 (S.D. Ohio 1947); *Hill v. U. S.*, 74 F. Supp. 129 (N.D. Tex. 1947); *Wojcink v. U. S.*, 74 F. Supp. 914 (E.D. Wis. 1947); *Grace v. U. S.*, 76 F. Supp. 174 (D. Md. 1948); *Niagara Fire Ins. Co. v. U. S.*, 76 F. Supp. 850 (S.D. N.Y. 1948); *Insur. Co. of North America v. U. S.*, 76 F. Supp. 951 (E.D. Va. 1948); *Van Wie v. U. S.*, 77 F. Supp. 22 (N.D. Iowa 1948); *Town of Amherst v. U. S.*, 77 F. Supp. 80 (W.D. N.Y. 1948); *Gray v. U. S.*, 77 F. Supp. 869 (D. Mass. 1948); *State Road Dept. of Florida v. U. S.*, 78 F. Supp. 278 (N.D. Fla. 1948); *Bewick v. U. S.*, 74 F. Supp. 730 (N.D. Tex. 1947); *Aetna Cas. & Surety Co. v. U. S.*, 76 F. Supp. 333 (E.D. N.Y. 1948); *Cascade County, Mont. v. U. S.*, 75 F. Supp. 850 (D. Mont. 1948); and *S. C. Highway Dept. v. U. S.*, 78 F. Supp. 598 (E.D. S.C. 1948).

36. *See U. S. v. Aetna Casualty & Surety Co.*, 70 S. Ct. 207, 209 (1949).

While some of the decisions varied, the great bulk of them anticipated the action of the Supreme Court in the *Aetna* case,³⁷ overruled the arguments of Government counsel, and permitted the actions by subrogated insurance companies. By the time the question reached the Supreme Court, the Government had withdrawn from its earlier positions and now argued only that the Anti-Assignment statute was a procedural requirement preventing an insurer from instituting an action in its own name, while not preventing suit and ultimate recovery by the insurer in the name of the insured.

The Court held that the Anti-Assignment statute had for almost a century been interpreted as forbidding only voluntary assignments and not assignments by operation of law; that the procedural difficulties foreseen by the Government—the possibility of becoming entangled in litigation as to the respective rights of insurer and insured, problems of venue due to claims by both insurer and insured arising out of one transaction, loss of rights of counterclaim and set-off which the Government might have against original claimants—could largely be avoided by proper use of the Federal Rules and by the rule that a subrogee has no better claim than that of his subrogor. The Court finally held that if the Government did find itself in the position of having to defend two or more actions on the same tort, it would be no worse off than other tortfeasors.

In discussing the technique for bringing an action for a subrogee, the Court held that in view of the practice under Rule 17(a), suit should be instituted in the name of the subrogee. It said: "If the subrogee has paid an entire loss suffered by the insured, it is the only real party in interest and must sue in its own name". And "In cases of partial subrogation * * * both insured and insurer 'own' portions of the substantive right and should appear in the litigation in their own names".

Before leaving this question of the rights of subrogees under the Act, it is interesting to consider the parallel situation under the present state of the law in South Carolina. The State statute most nearly analogous to the Federal Tort Claims Act is that which permits suit against the Highway Department in certain cases with limited recovery.³⁸ The pertinent language reads as follows:

"Any person, firm or corporation who may suffer * * * damage to his, her or its property by reason of a defect in any

37. See note 36, *supra*.

38. S. C. CODE OF LAWS, 1942, § 5887, as amended.

state highway * * * may bring suit against the state highway department * * *.”

Insurance companies are faced with the question of whether, having paid a claim in whole or in part for damages so caused, they may in any way assert their subrogated rights against the Highway Department.

This question was first put to the South Carolina Supreme Court in a case brought in the name of the insurance company, which had settled with the insured in full, and taken subrogation.³⁹ The Court looked at the language of the statute and held that only the original claimant might sue. The Court said:

“The Statute does not provide that an assignee of a person who has suffered damage to his property may sue the Highway Department. Neither is there a provision which permits a subrogated party to enter suit for damage occasioned to the property of the person from whom the right of subrogation comes. The property alleged in the respondent’s Complaint to have been damaged was the property of William Foor. The Complaint did not allege damage to any property of the respondent.”

This decision, as is apparent, arrives at a result, as regards subrogated insurers suing the Highway Department in their own names, different from that reached by the Federal courts in regard to suits under the Tort Claims Act. The South Carolina decision is apparently based strictly upon the wording of the statute as quoted above.

Since the decision in the *Casualty Company* case, the South Carolina Supreme Court has handed down the opinion in the case of *Pringle v. Atlantic Coast Line R. R. Co.*⁴⁰ In that case an insurance company, pursuant to its policy, had paid Pringle a part of his loss arising out of an accident and taken subrogation. Suit was then instituted against the Coast Line by Pringle to recover the full amount of the loss, although in reality the insurance company would first be reimbursed out of any recovery. This procedure was challenged. The South Carolina Court held that in such a case, where there had been but partial payment by the insurer, it was proper for

39. *United States Casualty Company v. State Highway Department*, 155 S. C. 77, 151 S.E. 887 (1930).

40. See note 33, *supra*.

the insured to sue in his own name for the full amount.⁴¹ The decision uses language which suggests that the same procedure would be deemed proper even where the insurance company had paid the full amount of the loss.

The effect of the *Pringle* case upon suits against the Highway Department is apparent. If the doctrine of the *Pringle* case is held to include instances of full payment, then cases may be brought against the Highway Department in the name of the insured, thus satisfying the language of the statute as interpreted in the *Casualty Company* case and denying to the Highway Department the free ride which it has enjoyed to date in those instances in which the claimant had insurance coverage. In fact—that conclusion has been reached in *Jeff Hunt Machinery Co. v. S. C. Highway Dept.*⁴² There the plaintiff who had been paid by the insurer was allowed to maintain the action against the Highway Department for the damages due to the defect in the highway (§ 5887 S. C. CODE OF LAWS 1942) as against the contention that the plaintiff was not the real party in interest. If this line of reasoning is followed, subrogees will be treated alike under the two statutes, State and Federal, save that in the former they will sue in the name of the injured party, while in the latter they should use their own names.

There are of course innumerable other questions which may arise under the Act, many of which are treated at length in the literature hereinabove referred to. These will not be discussed here, but some reference to the exceptions contained in the Act should be made.⁴³ These are thirteen in number. The first excepts any claim arising out of the execution of a statute or regulation, whether valid or not, or the performance of a discretionary function, whether abused or not. Another class of exceptions relates to the transmission of postal matter, the collection of customs, the administration of the trading with the Enemy Act, the operation of the quarantine service, or the fiscal operation of the Treasury. A third class of exceptions covers causes of action for which a remedy has already been provided, and includes cases covered by Sections 741-752, 781-790 of Title 46, U.S.C.A., relating to suits in admiralty, claims arising from the operation of the Panama Canal, or of the Panama Railroad

41. Presumably the reason for attempting to keep the insurance company out of the picture is because of a supposed preference on the part of jurors for individual rather than corporate plaintiffs.

42. Decided by South Carolina Supreme Court August 9, 1950.

43. 28 U. S. C. A. § 2680 (1948).

Company, or of the Tennessee Valley Authority. Another exception forbids claims arising out of assault, battery, false imprisonment, libel, slander, etc. There is excepted any claim arising in a foreign country.⁴⁴ The final exception excludes claims arising out of the combatant activities of the military or naval forces, or Coast Guard, during time of war. In a case involving construction of the word "combatant", it was held that this covered only direct action against an enemy, that training activities by the armed forces even in time of war were not excepted.⁴⁵

The Federal Tort Claims Act provides that the jurisdiction granted therein shall be exclusive.⁴⁶ Yet justifiable claims may arise for which no remedy is provided by the Statute, either because the claim arises under one of the exceptions (especially the first exception), or because of some hole in the draftsmanship not now apparent. Is the claimant without a remedy?

The Tort Claims Act was passed as a part of the Legislative Reorganization Act of 1946, and is Title IV thereof.⁴⁷ In Title I, Part 3, Section 131, it is provided, inter alia, as follows:

"No private bill or resolution * * * authorizing or directing (1) the payment of money for property damages, for personal injuries or death *for which suit may be instituted under the Federal Tort Claims Act* * * * shall be received or considered in either the Senate or the House of Representatives." (Emphasis added.)

When the Legislative Reorganization Act, S. 2177, first passed the Senate, the words italicized above were not found in this section. They were added in the House substitute measure. In discussing the final version in debate on the floor of the House, Mr. Monroney, vice-chairman of the Joint Committee, said: "* * * There will be no claims blocked. Either they have a right to come before the Congress or they can go into the courts".⁴⁸

It thus appears that in a proper case resort may still be had to a private claim bill.

44. This is due presumably to the provision that the law of the place of the occurrence shall govern. There has been considerable litigation as to the status of American bases in such places as Newfoundland, as to islands such as Guam, etc. See 1 A.L.R. 2d 222, 229-30.

45. *Skeels v. United States*, 72 F. Supp. (D.C. La. 1947).

46. 28 U.S.C.A. § 1346 (b) (1948).

47. Pub. Law No. 601, 79th Cong., 2d Sess., Chap. 753 (Aug. 2, 1946).

48. 92 Cong. Rec., July 25, 1946 at p. 10091.

CONCLUSION

The only justification for the continued application of the doctrine of sovereign immunity is the practical consideration of the difficulties and dangers incident to administering claims, once the doctrine is abandoned. Theoretically at least the taxpayers of the State of South Carolina should pay for the damages and injuries done in the course of administering the affairs of the State, as is the case with any other employer, and the hardship of the State's accidents should not fall upon the hapless and unoffending citizen who happens, either in person or property, to be in the wrong place at the wrong time.

The Federal Tort Claims Act is a bold and proper piece of legislation. A similar step on the part of this State would be only the assumption of a burden rightfully hers. Perhaps local conditions would demand additional safeguards not found in the Federal Act. These could be devised. The duty of the State to live within the laws which she prescribes for others should be recognized and assumed.
