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Federal Tort Claim Act--A Further Waiver of Sovereign Immunity

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vision of the will, for under the revised statute all residuary property will be subject to all general legacies in the will, unless it is otherwise expressly provided.

In its final result, the statutory change has substituted a rule of law for an unwieldy group of decisions attempting to give equitable justice in the interpretation of wills as to the testator's intent in the payment of general legacies and distribution of real property not specifically devised.

JOHN P. MAHON.

FEDERAL TORT CLAIM ACT—A FURTHER WAIVER OF SOVEREIGN IMMUNITY.—Congress recognizing the need for a more efficient and just method of settling private tort claims brought by any citizen against the United States arising out of the negligence or wrongful acts of any employee, while carrying out his duties of employment or office, passed Public Law No. 601 of the 79th Congress known as the "Legislative Reorganization Act of 1946" of which Title IV is known as the "Federal Tort Claim Act."¹ Now, the United States Government can be sued without the claimant first obtaining consent; in effect the Federal Government has waived its sovereign immunity in regard to claims arising out of causes as outlined in the Act.

Formerly, since the Government very rarely consented to be sued,² the only method of redress for negligent injury in a case, for example, of negligent operation of a motor vehicle was for the claimant to get a judgment against the driver of the Government vehicle, which was usually uncollectible due to the financial status of the employee. The judgment was then presented to the Congressional Claims Committee in order to have a private claims bill passed. Such a bill had to be introduced in Congress by a member, asking for an appropriation of a sum of money to be paid to the beneficiary of this private bill as compensation for the loss he had suffered. However, the percentage of these private bills that were passed in comparison to the number introduced was small. These bills in addition to being a very costly proposition even as far as printing costs alone were concerned, took up much of the valuable time of Congress.³

The Act as passed concerns itself with common law torts. Under the terms of the Act the principal tort for which the Government waives its sovereign immunity and allows itself to be sued now as a matter of right is that of negligence. There are express

¹ 60 STAT. 843 (1946), 28 U. S. C. § 921 (Supp. 1946).

² *United States v. Sherwood*, 312 U. S. 584, 586, 85 L. ed. 1058, 1061 (1941). ("The United States, as sovereign, is immune from suit save as it consents to be sued.")

³ H. R. Doc. No. 562, 77th Cong., 2d Sess. 2 (1942); H. R. Rep. No. 667, 69th Cong., 1st Sess. 1 (1926).

exceptions; as to those cases for which there are already remedies in existence, as well as to those listed in the Act.⁴

The method of procedure is designed to eliminate unjust delay with simplicity as its keynote. Where claim is made for \$1,000 or less the agency or department against which the claim is entered will have the authority to negotiate and settle the same. In cases where the claim is in excess of \$1,000 the claimant must bring his action against the United States. The suit must be instituted in a United States District Court. The summons and complaint must be served on the local United States Attorney, and the claim tried without a jury before a United States District Court judge. Either party to the suit has the right to appeal from this decision in accordance with the existing appellate procedure.⁵

The statute of limitation under the Act is one year.⁶ Every

⁴ 60 STAT. 845 (1946), 28 U. S. C. § 943 (Supp. 1946). The provisions of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by the Act of March 9, 1920 (U. S. C., title 46, §§ 741-752, inclusive), or the Act of March 3, 1925 (U. S. C., title 46, §§ 781-790, inclusive), relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abusive process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

⁵ 60 STAT. 844 (1946), 28 U. S. C. § 933 (Supp. 1946).

⁶ 60 STAT. 845 (1946), 28 U. S. C. § 942 (Supp. 1946). Statute of limitations. Every claim against the United States cognizable under this title

claim brought under the Act must be brought within one year after such claim has accrued or within one year after the date of enactment of the Act, whichever is later. If the claim is for \$1,000 or less and presented to the federal agency out of whose activities it arises for payment, provision is made for an extension of six months from date of notification by the agency of disposition of the claim, or from date of withdrawal of the claim from such federal agency if it would otherwise expire before the end of such period.⁷

Though formerly the United States has never been open to suit against it in general tort liability, the Government has waived its immunity in the past in regard to claims arising out of contract.⁸ Consent was also given under the Admiralty Act,⁹ which authorized suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdiction and for other purposes.¹⁰ Other instances of such waiver of immunity are the Public Vessels Act of 1925,¹¹ and an act authorizing suit for Government infringement of patents.¹²

The trend today is indicative of a breaking away from the archaic concept that the king can do no wrong. That we clung to this concept was vividly illustrated by Mr. Justice Holmes in the case of *The Western Maid*, where he said, ". . . the authority that makes the law is itself superior to it . . ." ¹³ Certainly in modern times when we have witnessed the Government entering the field of private business, through various governmental agencies and departments, we should not be hindered and handicapped by so cumbersome a concept of sovereign immunity which has influenced and permeated our legislation in the past.

Great strength is given to the argument for the extension of

shall be forever barred, unless within one year after such claim accrued or within one year after the date of enactment of this Act, whichever is later, it is presented in writing to the federal agency out of whose activities it arises, if such claim is for a sum not exceeding \$1,000; or unless within one year after such claim accrued or within one year after the date of enactment of this Act, whichever is later, an action is begun pursuant to part 3 of this title. In the event that a claim for a sum not exceeding \$1,000 is presented to a federal agency as aforesaid, the time to institute a suit pursuant to part 3 of this title shall be extended for a period of six months from the date of mailing of notice to the claimant by such federal agency as to the final disposition of the claim or from the date of withdrawal of the claim from such federal agency pursuant to Section 410 of this title, if it would otherwise expire before the end of such period.

⁷ For a sectional analysis of the Act, see Gottlieb, *The Federal Tort Claim Act*, 35 GEO. L. J. 1 (1946).

⁸ 24 STAT. 505 (1887), as amended, 28 U. S. C. § 41(20) (1940); see Pound, *A Survey of Public Interests*, 58 HARV. L. REV. 909 (1945).

⁹ 41 STAT. 525 (1920), 46 U. S. C. § 741 (1940).

¹⁰ *United States v. Caffey*, 141 F. 2d 69 (C. C. A. 2d 1944).

¹¹ 43 STAT. 1112 (1925), 46 U. S. C. § 781 (1940).

¹² 36 STAT. 851 (1910), as amended, 35 U. S. C. § 68 (1940).

¹³ 257 U. S. 419, 432, 66 L. ed. 299, 303 (1921).

governmental liability by looking to the states, what steps they have taken and the apparent results. Four states, New York, California, Arizona and Illinois have extended and waived their governmental immunity in the field of tort without suffering any unfavorable consequences.¹⁴ In 1929 by act of the legislature of the State of New York, the Court of Claims Act was amended, whereby immunity from liability for torts of officers and employees was waived and liability assumed.¹⁵ Under this Act of the State of New York, the City of New York was liable for personal injuries caused by a runaway police horse.¹⁶

Thus we have seen from our discussion instances where federal, state and municipal governments have allowed themselves to be subjected to suits arising out of negligence, manifesting their intent to discard the protection of the aged, outmoded concept of sovereign immunity. (It is wholly within the realm of probability that charitable institutions will be the next in line to forfeit some of their immunizing privileges, as New York State has already done in regard to employees in its charitable institutions.)

In the recent case of *McCrink v. City of New York*,¹⁷ decided in January of this year, Judge Lewis in interpreting Section 8 of the Court of Claims Act, points out the effect of this state Act upon the theory of liability of its subordinate sovereign, the city. "The immunity thus waived and the consent thus granted apply to the ' . . . civil divisions of the State [which] are answerable equally with individuals and private corporations for wrongs of officers and employees—even if no separate statute sanctions that enlarged liability in a given instance.' "¹⁸

It would be interesting to keep in mind for further consideration this question: Since a municipality has been deemed to have waived its immunity because the state has, now that the Federal Government has waived its immunity, will the Act under consideration be construed as a waiver of the immunities of the state governments which still cling to their archaic insulation from suit under the doctrine of sovereign immunity?¹⁹

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¹⁴ Laws of N. Y. 1929, c. 467; Cal. Statutes 1893, c. 45, § 1, p. 57; Ariz. Laws 1912, c. 59; Laws of Ill. 1917, c. 325.

¹⁵ Jackson v. State, 261 N. Y. 134, 184 N. E. 735 (1933).

¹⁶ Bernardine v. City of New York, 294 N. Y. 361, 62 N. E. 2d 604 (1945).

¹⁷ 296 N. Y. 99, 71 N. E. 2d 419 (1947).

¹⁸ 296 N. Y. 99, 106, 71 N. E. 2d 419, 422 (1947).

¹⁹ *McCrink v. City of New York*, 296 N. Y. 99, 71 N. E. 2d 419 (1947).