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In the instant case appellant contends that the title to the ring was either wholly in him or that he had an insurable interest therein as the ring had been presented to her as an "engagement ring," and that it was no ordinary gift but at most a mere pledge or conditional presentment, conditioned upon their consummating their engagement to be married. The court maintained, however, that it is an established principle that even a conditional gift confers a title to the object given at the time of its delivery into the possession of the donee and denied recovery on the ground that appellant had no insurable interest at time of the loss.

It is felt that this decision, holding that a man does not have an insurable interest in the engagement ring which he gives to his fiancee, should not be followed. Such an implication must be based upon facts and circumstances of the particular case with particular emphasis upon whether the gift was given as a conditional gift expressly and which party, with or without fault, broke the engagement.

J. H. S.

INSURANCE—SUBROGATION—ANTI-ASSIGNMENT ACT—FEDERAL TORT CLAIMS ACT.—Plaintiffs sue Federal Government for personal injuries and property damage sustained when their auto was involved in a collision with a United States Army truck. It is alleged that the accident was caused by the negligence of the soldier operator of the Federal vehicle. Plaintiff insurance company paid the amount of the property damage sustained to the automobile in question under a policy of indemnity insurance, which policy included coverage for collision damage. The policy contained the standard subrogation clause in the event that payments under it should be made to the assured. Held, tort claims for damages resulting from collision between an auto and an Army truck are not within the statute prohibiting the assignment of any claim upon the United States. Hill v. United States, 74 F. Supp. 129 (N. D. Tex. 1947).

The precise point ruled on in the case was raised when the United States attorney filed a motion to dismiss the insurance company's subrogation claim on the ground that the Tort Claims Act does not authorize the maintenance of suits upon derivative claims, and that such a claim is prohibited under the Anti-Assignment Act.1

The court held that the purpose of the Anti-Assignment Act is to restrict voluntary assignments for the payment of claims against the United States Government, so as to better keep a steady status thereof, and thereby facilitate the undistracted consideration, deter-

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mination and safe payment of such claims. The Act is altogether for the protection of the Government. Since the insurance company would have an equitable right of subrogation by operation of law even without any express subrogation clause in the policy, there does not exist a voluntary assignment such as was intended to be prohibited by the Act. Also, "since in this suit, any recovery liquidating the claim, and the enforcement of the subrogation claim would be simultaneous and with all the parties before the court, the Government would be fully protected under the judgment and the amount of its liability would remain unchanged."

The Tort Claims Act provides that within the bounds of the Act the Government is liable "to the same claimants . . . and to the same extent" as a private person under like circumstances according to the law of the state. Under the law of Texas, if the defendant in this suit were an individual instead of the Government, the subrogation claim in question could be maintained.

To date there have been but few decisions rendered on the question of the right of an insurance company to sue the Federal Government as subrogee under the Tort Claims Act, and there have been no rulings by the Federal Circuit Courts of Appeals or by the United States Supreme Court. The decisions of the District Courts, before which the question has been brought, have been anything but uniform. In Old Colony Insurance Co. v. United States, the court ruled that the Federal Tort Claims Act does not authorize the maintenance of suits upon derivative claims and refused to allow a recovery by the insurance company. In Rusconi v. United States, the court held that the consent of the Government to be sued, being a relinquishment of sovereign immunity, must be strictly interpreted, and the insurance company's claim was not allowed.

In line with the ruling made in the Hill case, is a ruling in the Eastern District of Wisconsin which allowed a recovery under the Act by an insurance company on the ground that "subrogation means substitution, not assignment or transfer." Subrogation is an act of

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the law and a creature of equity depending not on contract but upon principles of equity and justice.\(^9\)

It is apparent that there will be no uniformity among the decisions until a ruling on the question is made by a Circuit Court of Appeals or by the United States Supreme Court, or until the Federal Tort Claims Act is amended to specifically allow or disallow such claims by an insurance company as subrogee.

J. B. McG.

**LANDLORD AND TENANT—EVICTION UNDER EMERGENCY RENT ACT—COOPERATIVE OWNERSHIP.**—The defendant tenant occupied the apartment since 1941, having gone into possession under a lease with the corporate owner. In July 1946 the lessor corporation sold the apartment house, assigning the defendant's lease to the new owners. In 1947 a cooperative was formed and the property deeded to it. At the time of the trial the entire building was under cooperative ownership. The plaintiff acquired shares of stock in the new company, plus a proprietary lease purporting to give her the right to possession of the defendant's apartment for ninety-nine years with the right to one hundred year renewals. The plaintiff then served the defendant with statutory notice to quit and upon her refusal to quit brought this action to evict her. In the trial court, with a jury, the plaintiff was successful. The principal defense was to the effect that the plaintiff was just another tenant, and not an owner or landlord under the act\(^1\) defining a landlord as "an owner, lessor, sub-lessee, or other person entitled to receive rent for the use or occupancy of any housing accommodation." Held, for the plaintiff, as a landlord under the classification mentioned. *Hicks v. Bigelow*, 55 A. 2d 924 (Mun. Ct. of App. D. C. 1947).

The pivotal point in the case is the determination of the plaintiff's position as a landlord. The defendant's contention that she is merely another tenant would seem to gain support from the common law conception of a personal relationship between the landlord and tenant,\(^2\) and the required presence of certain essentials such as permission and consent of the landlord to the occupancy, subordination to the landlord's title, reversion, and generally some contractual relationship express or implied.\(^3\) However, the case is decided under a statutory definition, and one which is quite common, being substantially the same as the New York Emergency Rent Laws applying

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\(^9\) Wojcik v. United States, 74 F. Supp. 914 (E. D. Wisc. 1947); accord, Grace v. United States (Maryland) (no opinion for publication).

\(^1\) D. C. CODE SUPP. V. 45-1611(g) (1940).


\(^3\) See Note, 51 C. J. S., Landlord and Tenant § 2 (1947).