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Notes

FEDERAL TORT CLAIMS ACT—SERVICEMEN NOT EXCLUDED—Two army enlisted men on furlough were riding with a civilian in a privately owned automobile on a public highway when the vehicle was struck by a United States Army truck negligently driven by an employee of the United States Government. The soldiers and civilian brought suit under the Federal Tort Claims Act.¹ Relying on *Jefferson v. United States*,² the court of appeals,³ by a two to one decision, denied the claims of the soldiers, but granted recovery to the civilian. Certiorari was granted in order that the United States Supreme Court might rule upon whether the Federal Tort Claims Act should be interpreted to include claims by members of the armed forces for torts not service connected. *Held*, a member of the armed forces can recover under the Federal Tort Claims Act for non-service connected injuries caused by the negligent conduct of a government employee. *Brooks v. United States*, 69 S.Ct. 918 (U.S. 1949).

The Federal Tort Claims Act was enacted as Title IV of the Legislative Reorganization Act of 1946. The purpose of this act was "To provide for increased efficiency in the legislative branch of the government." The title dealing with tort claims was designed to promote efficiency in government by eliminating the many private bills introduced in Congress each year to authorize the granting of relief for tortious acts of government employees and agents. The act thus waived the sovereign immunity of the United States from torts suits and even went so far as to forbid the introduction of private bills authorizing claims falling within the ambit of the act.⁴ Jurisdiction is conferred on the United States district courts and liability is to be tested "in accordance with the law of the place where the act or omission occurred."⁵

1. 60 Stat. 842 (1946), 28 U.S.C. § 921, now 28 U.S.C. § 2671(1948).

2. 77 F. Supp. 706 (App. D.C. 1948).

3. *United States v. Brooks*, 169 F.(2d) 840 (C.C.A. 4th, 1948).

4. 60 Stat. 831, Legislative Reorganization Act of 1946, § 131.

5. The Legislative Reorganization Act of 1946, § 410(a) reads as follows:
"Sec. 410. (a) Subject to the provisions of this title, the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government

In *Jefferson v. United States* it was held that a soldier could not recover under the Federal Tort Claims Act for injuries sustained as a result of the negligence of an army surgeon operating in an army hospital. The United States Supreme Court distinguished the *Jefferson* case and held that *service connected* injuries to service personnel are exempt from the coverage of the act, but that *non-service connected* injuries are included within its scope. The case turned not so much on technical points of interpretation as on the common sense notion that a soldier on furlough is in a status not essentially different from that of a civilian. Mr. Justice Murphy, speaking for the court, stated: "But here we are dealing with an accident which had nothing to do with the Brooks' Army careers, injuries not caused by their service except in the sense that all human events depend upon what has already transpired. Were the accident incident to the Brooks' service, a wholly different case would be presented."⁶ Clearly the Supreme Court was not overruling the *Jefferson* case but merely distinguishing it on its facts.

The point was much labored in the *Brooks* case that the soldier, upon enlistment, acquires a special and unique military status and that he becomes the object of the government's benevolence in the form of low insurance rates and special and automatic compensation for injury, incapacity, or death. From this it was argued that because of these provisions the soldier was already provided for (which supported other arguments of statutory interpretation), and thus to allow recovery under the Tort Claims Act would require the government to compensate servicemen twice. Clearly this is not so, for, although holding the petitioner's actions to be well founded, the Court remanded the cases to the court of appeals to consider reduction of the damages pro tanto for any claims which might have been previously paid for the same injuries under authorizations of law.

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while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. Subject to the provisions of this title, 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. . . .

"(b) The judgment in such an action shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the Government whose act or omission gave rise to the claim."

6. 69 S.Ct. 918, 920 (U.S. 1949).