In the other jurisdictions, recovery is allowed in the event of a contemporaneous physical injury only when that physical injury is of a definite and substantial character, and the direct cause of the fright or shock.[10]

The latter view, seems to be the most practical solution to these cases. To allow recovery when there is the slightest contact, independent of its effect or proximate relevancy, is to open the door to many fictitious suits which are hard to disprove. To follow any other view, would be to permit plaintiffs with exceptionally weak nervous systems easily to recover enormous verdict. Public policy, therefore, demands that there be no recovery for the physical consequences of fright, in the absence of some substantial, contributing physical injury caused by the defendant's negligent conduct.[11] The instant case, therefore, which is in accord with prior Missouri decisions,[12] follows what seems to be the more practical ruling.

M. J. G.

TORTS—DUTY OF CARE—POSTMAN AS INVITEE—[Missouri].—Plaintiff, a United States postman, brought an action for injuries sustained while delivering mail on a slippery runway leading from the sidewalk to defendant's place of business.[1] The court, though reversing a judgment in favor of plaintiff because of his contributory negligence, and applying the principle *volenti non fit injuria,* nevertheless *held,* that a United States postman engaged in the performance of his duties enters the premises of those he serves upon the express or implied invitation to do so because of the mutual benefit to the postman and the landowner.[2] Although this was the first decision by a Missouri appellate court on this point, the cases outside this jurisdiction, on which the court relied, took this view.[3]

It is generally agreed among text-writers,[4] and supported by the decided

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10. Hack v. Dady, 127 N. Y. Supp. (1911); Decatur v. Hamilton, 89 Ill. App. 561; see, Haile v. Texas & P. R. R. Co., 60 Fed. 557, (C. C. A. 5, 1849), in which the falling of the plaintiff to the floor of the car was held not to constitute a physical injury; Spade v. Lynn & Boston R. R. Co., 168 Mass. 285; 47 N. E. 88 (1897), in which the contact was held to be a trivial matter.

11. Supra, note 5; supra, note 6, l. c. 1121; Mitchell v. Rochester R. R. Co., 151 N. Y. 107, 45 N. E. 354, 34 L. R. A. 781 (1896); Braun v. Craven, 175 Ill. 401, 51 N. E. 657, 42 L. R. A. 199 (1898).

12. Triggs v. St. Louis, K. C. & N. R. R. Co., 74 Mo. 147, 41 Am. Rep. 305 (1881); Porter v. St. Joseph R. R. Co., 311 Mo. 66, 277 S. W. 913 (1925); Chawkley v. Wabash R. R. Co., 317 Mo. 782, 297 S. W. 20 (1927).

1. Paubel v. Hitz, 96 S. W. (2d) 369 (Mo. 1936).

2. Ibid., at p. 370.

3. Gordon v. Cummings et al., 152 Mass. 513, 25 N. E. 978, 9 L. R. A. 640, 23 Ann. St. Rep. 846 (1890); Sutton v. Penn, 238 Ill. App. 182 (1925).

4. 3 Cooley, *Torts* (Haggard's 4th ed. 1932) sec. 440; Salmond, *Torts* (7th ed. 1928) sec. 122, especially noting discussion on the conflict in the cases as to whether the owner or occupant owes the invitee the duty of reasonable care or the duty to warn him of the danger.

cases,[5] that when an owner or occupant of premises invites another either expressly[6] or by implication,[7] to come on his premises, he must exercise reasonable care to keep those premises in repair, and may be held liable in a suit by the other for damages sustained by reason of any dangerous condition on the premises, provided the injured party was in the exercise of due care.[8] On the other hand, where there is no invitation, but the party has a legal right to be on the premises, he must take them as he finds them and the owner or occupant is liable only for his wanton or wilful misconduct[9] or for maintenance of latent defects or "traps" known to the owner or occupant, but not known to the licensee.[10] While these statements serve as general guides, the difficulty for the court has been to decide under the particular facts the status of the injured party and the amount of care owing to him.[11] This issue has arisen with respect to government officials,[12] most of the cases, however, being restricted to firemen[13] and policemen.[14]

In the absence of a statute[15] or a municipal ordinance[16] imposing additional duties with respect to the condition of the premises on the owner or occupant, it is generally held that a policeman in the exercise of his duties is a mere licensee.[17] The same rule is applied in the majority of jurisdictions in regard to firemen,[18] the reason commonly given being that the right to enter the premises exists independently of any invitation because it is in the interest of the public good to prevent a general conflagration.[19] The New York Court of Appeals, however, in the case of *Meirs v. Fred Koch Brewery*,[20] recognized that under some circumstances a duty of reasonable

5. Roman v. King, 289 Mo. 641, 233 S. W. 161, 25 A. L. R. 1263 (1921); Sweeny v. Old Colony & N. R. R. Co., 10 Allen (Mass.) 368, 87 Am. Dec. 644 (1865).

6. Noyes v. Des Moines Club, 178 Ia. 815, 160 N. W. 215 (1916).

7. O'Rourke v. Marshall Field & Co., 307 Ill. 197, 138 N. E. 625, 22 N. C. C. A. 766, 27 A. L. R. 1014 (1923).

8. It has been held to be contributory negligence to fall over a step outside a toilet, which plaintiff had seen a minute and a half before, when she went in. Main v. Lehman, 294 Mo. 579, 243 S. W. 91 (1922).

9. For a discussion of what is meant by the terms "wanton" and "wilful" see Chicago, etc., R. Co. v. Lacy, 78 Kan. 622, 97 Pac. 1025 (1908).

10. "A trap is a figure of speech not a formula. It involves the idea of concealment and surprise, of an appearance of safety under circumstances cloaking a reality of danger." Latham v. Johnson, 1 K. B. 398, 415 (1913).

11. 3 Cooley, *op. cit.*, sec. 440, p. 193.

12. See 45 C. J. 817, sec. 226, n. 2.

13. Litch v. White, 160 Cal. 497, 117 Pac. 515 (1911).

14. Creeden v. Boston & M. R. Co., 193 Mass. 280, 79 N. E. 344, 9 Ann. Cas. 1121 (1906). See also 13 A. L. R. 637, where the duty owing to firemen and policemen is fully discussed.

15. Racine v. Morris, 201 N. Y. 240, 94 N. E. 864 (1911).

16. Thrift v. Vandalia R. Co., 145 Ill. App. 414 (1908).

17. Burroughs Adding Mach. Co. v. Fryar, 132 Tenn. 612, L. R. A. 1916B, 791, 179 S. W. 127, 11 N. C. C. A. 706 (1915).

18. New Omaha Thomson-Houston Electric Light Co. v. Anderson, 73 Neb. 84, 102 N. W. 89 (1905).

19. Lunt v. Post Printing, etc., Co., 48 Colo. 316, 324, 110 P. 203, 30 L. R. A. (N. S.) 60, 21 Ann. Cas. 492 (1910).

20. 229 N. Y. 10, 127 N. E. 491, 13 A. L. R. 633 (1920).

care in maintaining the premises for a fireman should be imposed upon an owner of lands.[21]

In a related case[22] the St. Louis Court of Appeals under the particular facts classed a government inspector of livestock as a licensee. But there was *dictum* to the effect that had plaintiff been injured in the performance of his official duties which required his presence on defendant's private property, he would have been held an invitee.[23] In saying this, the court indicated that the test for determining plaintiff's status was the owner's reasonable anticipation of his presence on the premises at the precise time and place of the injury.[24] A test of "reasonable anticipation," however, while important in determining the duty of care owing plaintiff, is not the true test of his status.[25] Once having determined that he is not a mere trespasser or licensee, the court can then decide the duty owing him. This would depend on whether the owner could reasonably anticipate his presence, and if, as in the *Koch* case, there were previous acts apprising the owner of plaintiff's probable presence on the particular part of the premises, the court would then be justified in setting up a duty of reasonable care.[26]

Decisions on related questions in states contiguous to Missouri have not been plentiful. An Illinois appellate court has held a United States postman to be an invitee[27] in spite of the fact that in that state firemen[28] and policemen[29] are considered licensees. In that case, the postman slipped on an oily floor while delivering mail to offices on the second floor of defendant's building. The court said, in rendering its decision, that the owner of the premises, in leasing offices on the second floor, must have known that her tenants would have their mail delivered and that such would be a daily occurrence.[30] In Illinois a city building inspector has been held a mere licensee,[31] though a city water inspector was treated as an invitee,[32] the court in the latter case, however, resting its decision on the broad ground of liability laid down in *Heaven v. Pender*.[33] Neither the Kansas nor Arkan-

21. Andrews, J., in rendering the decision said: "We are unwilling to place our decision on so narrow a ground (implied invitation). . . . The essential element is that he entered the premises, rightfully, on the way adapted by the owner for that purpose and that he was neither a trespasser nor a licensee."
22. Boneau v. Swift & Co., 66 S. W. (2d) 172.
23. Ibid., at p. 175.
24. Ibid.
25. Bohlen, *Studies in the Law of Torts* (1926) 179.
26. Ibid., at p. 156 et seq.
27. Sutton v. Penn, 238 Ill. App. 182 (1925).
28. Volluz v. East St. Louis Light & Power Co., 210 Ill. App. 565 (1918).
29. Thrift v. Vandalia R. Co., 145 Ill. App. 414 (1908).
30. Sutton v. Penn, supra, note 27 at p. 185.
31. Ross v. Becklenberg, 209 Ill. App. 144 (1917).
32. Kennedy v. Heisen, 182 Ill. App. 200 (1913).
33. 11 Q. B. D. 506 (1883) "Wherever one person is, by circumstances, placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he

sas courts seem to have passed on the status of such government officials. The problem as to policemen arose in Oklahoma in *St. Louis-San Francisco Ry. Co. v. Williams*[34] and in *Kithcart v. Feldman*.[35] In the former case a night policeman, whose custom was to inspect the night freight trains of defendant railroad company on their arrival, was held an invitee,[36] but there had been a special request made to the mayor and chief of police by the chief special officer of defendant railroad company that he continue this custom. In the latter case, however, the court held that a policeman entering defendant's premises for the purpose of making an arrest was a mere licensee.[37]

S. J. B.

TORTS—FIRST INJURY AS PROXIMATE CAUSE OF SUBSEQUENT INJURY—CONTRIBUTORY NEGLIGENCE—[District of Columbia].—The plaintiff, in the case of *S. S. Kresge v. Kenney*,[1] sustained a fractured pubis bone from a fall occasioned by the negligence of the defendant company. Ten months later, while able to move around the house only with the assistance of her family, and according to the testimony of her physician, in a very weak state, the plaintiff got out of her bed alone to get a drink of water. In so doing she fell again and fractured the bone in the same place. The court declared, as a matter of law, that the original negligence was not the cause of the injuries sustained by the second fall, which was chiefly caused by her own contributory negligence.

In an effort to prove her contentions the plaintiff cited various cases in which an injured person was allowed to recover for the effects of a second injury which had taken place during the period of recovery from the first.[2] Answering these authorities the court pointed out that "each case must rest largely upon its own facts, since there are usually such variations in the facts of others as to make them not persuasive."[3] The fact which differentiated the case under discussion from those cited was the imprudence of the plaintiff in attempting to do something which she should have known was outside her physical powers.

In the case of *Hartnett v. Tripp*[4] the plaintiff was injured the second time when the crutch he was using slipped from beneath him. The use of

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would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger."

34. 56 P. (2d) 815 (Okla. 1936).
35. 215 Pac. 419 (Okla. 1923).
36. St. Louis-San Francisco Ry. Co. v. Williams, supra, note 34 at p. 816.
37. Kithcart v. Feldman, supra, note 35 at p. 420.

1. 4 U. S. Law Week 30 (D. C. App., 1936).
2. Hartnett v. Tripp, 231 Mass. 382, 121 N. E. 17 (1918); Smith v. Northern Pac. R. R. Co., 79 Wash. 448, 140 Pac. 685 (1914); Hoseth v. Preston Mill Co., 49 Wash. 682, 96 Pac. 423 (1908); Papic v. Freund, 181 S. W. 1161 (Mo. App., 1916); Wagner v. Mettendorf, 232 N. Y. 481, 134 N. E. 539 (1922); Brown v. Beck, 63 Cal. App. 686, 220 Pac. 14 (1923).
3. S. S. Kresge Co. v. Kenney, at p. 30.
4. Hartnett v. Tripp, supra, note 2.