In the opinion of the instant case[17] the court denies that the decision in the *Rice Millers* case lessens the binding force of the ruling of the Supreme Court in *Bailey v. George,* the leading decision of the period of interpretation of Section 3224 referred to above.[18] It states: "No reason, however, is assigned for the action taken, and it may have resulted from a showing of exceptional circumstances not present in this case. * * * We are not authorized to depart from the rule laid down in *Bailey v. George,* supra, upon a mere conjecture as to what the Supreme Court may have had in mind in the absence of some expression upon that point."[19] And properly so; for the court, in the *Rice Millers* decision, did not either directly or indirectly, question the validity or propriety of congressional limitations upon suits relating to taxation.[20] Again the courts adds:[21] "Mere apprehension of 'ultimate' ruin to plaintiff's business on account of a tax is not sufficient to entitle one to injunctive relief in equity. It must appear that such ruin is so imminent that the remedy provided by law is not adequate. *Allegations of mere hardship or injustice of the tax are not a recognized foundation of equitable jurisdiction.*" (Italics supplied.)

It remains to be seen whether the Supreme Court, in view of its previous pronouncement, will accept the above limitation on the restraining power in tax cases.

J. R. G.

Editor's Note: The Department of Justice has filed a memorandum asking the Supreme Court of the United States to define with more exactness the jurisdiction of federal courts in federal tax injunction suits. The memorandum states that the decision in *Houston v. Iowa Soap Co.* was clearly right, but public interest will be promoted by a decision of the Supreme Court. In stating the need for clarification, the memorandum points to the inharmonious decisions commented upon above and to the *Rice Millers* cases. The memorandum concludes ". . . an early decision is of utmost importance to the orderly and uninterrupted collection of federal revenues." 4 U. S. Law Week 153 (Oct. 20, 1936).

TORTS — DAMAGES — RECOVERY FOR PHYSICAL INJURIES RESULTING FROM NERVOUS SHOCK OR FRIGHT—[Missouri].—The defendant, while arresting a drunken man, flourished a revolver and negligently fired a shot which struck plaintiff's husband in the head, killing him. His body, in falling to the ground, as the plaintiff later recollected, slightly brushed her person. The sight of this, however, caused the plaintiff great mental anguish and shock, and she later suffered such physical injuries as nervous convulsions, nervous indigestion, insomnia and general physical debility. *Held;* that no recovery

17. Huston, etc., v. Iowa Soap Co., 4 U. S. Law Week 85 (C. C. A. 8, 1936).

18. Supra, note 7.

19. 4 U. S. Law Week 85, 86 (C. C. A. 8, 1936).

20. Los Angeles Soap Co. v. Rogan, 14 F. Supp. 112 (D. C. S. D. Cal., 1936); Simonin's Sons, Inc., v. Rothensies, 13 F. Supp. 807 (D. C. E. D. Pa., 1936); Mellon v. Mertz, 82 F. (2d) 872 (D. C. App., 1936).

21. 4 U. S. Law Week 85, 85 (C. C. A. 8, 1936).

can be had in a tort action for physical injuries resulting from fright or mental pain, in the absence of evidence that plaintiff received some other physical injury as a result of the negligent act.[1]

The problem as to whether a plaintiff, who has suffered physical injuries following mental fright resulting from defendant's negligence, should be allowed to recover, is one about which the authorities do not agree.[2] The minority view is that there can be recovery for physical injuries which are the result of a reasonable fear of one's own safety, although there has been no other physical injury resulting from the defendant's conduct.[3] In England and in a few American jurisdictions, this rule has been extended to allow recovery for physical injuries resulting from a reasonable fear of another's predicament.[4]. This latter view is open to many practical objections, and is generally not considered very sound.[5]

The general rule is that recovery may not be had for such physical injuries, unless they are accompanied by some other physical injury caused by the defendant's negligent act.[6]. There is a well recognized exception to this rule in those instances where the act was wilful or wantonly negligent.[7]

Within this general rule, however, the courts do not agree as to what constitutes the necessary physical injury.[8] Some jurisdictions define this physical injury as a violation of the legal right of the plaintiff to have his person free from any interference. They rule, therefore, that when there is the slightest physical contact with the plaintiff's body, he may recover for the physical injuries resulting from fright, whether the physical injury caused the fright or not.[9]

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1. State ex rel. Renz v. Dickens et al., 95 S. W. (2d) 847 (Mo. 1936).

2. See for problem in general, Note, 11 A. L. R. 1119 (1920); Note, 40 A. L. R. 983 (1926); Note, 46 A. L. R. 772 (1927); Harper, *On Torts* (1933) sec. 67; Cooley, *On Torts* (4th ed. 1933) sec. 47-49.

3. Stewart v. Arkansas Southern R. R. Co., 112 La. 763, 36 So. 676 (1904); O'Meara v. Russell, 90 Wash. 557, 156 Pac. 550, L. R. A. 1916 E, 743 (1916); Fitzpatrick v. Great Western R. R. Co., 12 U. C. Q. B. 645 (1855); Dulieu v. White, 2 K. B. 669 (1901); Restatement, *Torts* (1934) sec. 436 (2).

4. Hambrook v. Stokes, 1 K. B. 141 (1925), (relationship of mother and children); Spearman v. McCrary, 4 Ala. App. 473, 58 So. 927 (1912) (mother and children); Gulf, C. & S. F. R. R. Co. v. Coopwood, 96 S. W. 102 (Tex. Civ. App. 1906). This view is favored in comment, 2 U. of Chicago L. Rev. 654 (1935).

5. As to determine when the appropriate relationship exists between the plaintiff and the threatened or injured third party, see dissenting opinion in Hambrook v. Stokes, supra, note 4; the strong probability of many suits arising out of a single negligent act. See for good general criticism, Spade v. Lynn & Boston R. R. Co., 168 Mass. 285, 47 N. E. 88, 43 L. R. A. 832 (1897); Braun v. Craven, 175 Ill. 401, 51 N. E. 657 (1898).

6. The states and cases which follow this view are listed in Note, 11 A. L. R. l. c. 1120 (1920).

7. Moellman v. Union Electric L. & P. Co., 206 Mo. App. 253, 227 S. W. 264 (1921); Hickey v. Welch, 91 Mo. App. 4 (1901).

8. Supra, note 6, l. c. 1128-1134.

9. Kisiel v. Holyoke Street R. R. Co., 240 Mass. 29, 32, 132 N. E. 622; Homans v. Boston Elev. R. R. Co., 180 Mass. 456, 62 N. E. 737 (1902); Southern R. R. Co. v. Owen, 156 Ky. 827, 162 S. W. 110 (1914).

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.