

duced nervous prostration and physical disability, the theory, no matter what its reason, that would say there was no actionable wrong, would be too fine spun and too cold for our sanction." But if you allow recovery for a wilful tort, there must be some other reason in unintentional negligence than that it is not a physical injury, or that the injury is of a class that is easily feigned. It was said in speaking of the policy of the law against fictitious claims that "greater evil would result from a holding of no actionable wrong than can possibly follow the rule we announce," viz.: that shock causing prostration gives a right of action.

In New York,⁸ where there was an assault alleged to have caused nervous prostration and maniacal insanity, there was quoted from the Court of Appeals⁹ that one cannot recover damages from fright disconnected from other injuries, but it was ruled to have no application to the case before the Court, because for negligence purely the measure of damages is confined to the natural and probable consequences of the act or omission, constituting the cause of action. It did not hold, however, that nervous prostration and insanity from a wrongful act were not physio. injuries, which might not be recovered for if reasonably contemplated by such an act.

And so in a Vermont case,¹⁰ where the situation of a blind girl, a guest in the house, was referred to, where defendant's conduct caused her to be "so frightened and shocked in her feelings as to injure her health." Here the shock and injury to health were the physical evidences of recoverable damages.

The *Spade* case, *supra*, regards also as actionable "cases of acts done with gross carelessness or recklessness, shewing utter indifference to such consequences when they must have been in the actor's mind."

Occasion of Fright Not Being Actionable, Shock is in Same Category.—This is the doctrine held by many cases. But it

8. *Williams v. Underhill*, 63 N.Y. App. Div. 223, 71 N.Y. Supp. 291.

9. *Mitchell v. Rochester Ry. Co.*, 151 N.Y. 107, 45 N.E. 354, 34 L.R.A. 781, 56 Am. St. Rep. 604.

10. *Nowell v. Whitchee*, 53 Vt. 589, 38 Am. Rep. 703.