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LIABILITY OF CHARITABLE CORPORATIONS FOR THEIR TORTS

The question whether or not a charitable corporation should be liable for personal injuries suffered through the negligence of the corporation's servants is one on which the the decisions in England, Canada, and America are many and hopelessly different. The early conclusions on this question in this country were based upon some English cases¹ in which the principles there laid down have since not been supported in that country nor in Canada. Many American jurisdictions are now following doctrines which can hardly be based upon sound principle, but which they have thought necessary to support on the grounds of expediency; others seem to be simply following precedents and advance a wide variety of reasons to justify such a course.

An individual is absolutely bound to make compensation for any injury negligently inflicted upon a stranger in the performance of any acts which he undertakes, and the fact that he is actuated by a charitable motive is immaterial. He is bound to compensate a recipient of his charity for any injury inflicted by the negligent performance of any service which he undertakes to perform, although the degree of care required of him is less than he owes a stranger. The fact that he attempts to delegate performance of the undertaking to another is immaterial, and the fact that he organizes a corporation to perform his undertaking should confer no immunity from liability, nor should the fact that several united in the enterprise. To make charitable corporations exempt from liability for their torts permits the creator of the trust to nullify or evade the law, and makes the rights of the beneficiaries of the charity superior to the rights of the innocent sufferers from the negligence of the trusts.

Nevertheless the courts have not held charities liable for their torts under the same general principles applicable to individuals; on the one extreme it is held that a charitable institution is not liable for torts at all,² and on the other that it is liable for torts like any other

1. *Heriot's Hospital v. Ross* (1848), 12 Clark & F. 507; 8 Eng. Reprint 1508;

Holliday v. St. Leonard (1861), 11 C. B. N. S. 192; 142 Eng. Reprint 769.

2. *Johnston v. City of Chicago* (1913), 258 Ill. 494; 101 N. E. 960.

person.³ Between, we find it held that they are liable to strangers, but not to their own beneficiaries;⁴ also that they are liable to their own employees, but not to their own beneficiaries;⁵ and again that they are liable for negligently selecting incompetent employees or servants, but are not liable for the tort of a servant selected without negligence.⁶

A careful consideration of the decisions, then, leads to a division of them into three classes: those cases in which the injury was received by a person who at the time was a recipient of the benefit of the charity; those cases in which the injury was inflicted upon a stranger; and those cases in which the injury was inflicted upon a servant or employee of the corporation. With this somewhat arbitrary division it is possible to more nearly reconcile the decisions upon this question.

The rule is well settled that a person who receives an injury from acts of the servants of a charitable corporation, at a time when he is accepting the benefits of the charity, cannot recover for such injury provided the corporation used due care in selecting its servants.⁷ Of course, an action may be maintained against the officer, servant, or employee whose act or omission caused the injury, but such action must be against him in his individual, and not in his corporate capacity.⁸ Some of the many reasons given for this rule are: (1) Public policy;⁹ (2) That their funds are held in trust, the diversion of which the courts will not permit, because it might result in the destruction of the charity, or, it is beyond the power of the trustee to divert them directly, and

3. *Roberts v. Ohio Valley General Hospital* (1925), 98 West Va. 476; 127 S. E. 318;

Here the defendants plead only that they were a charitable institution and failed to allege that they used reasonable care in selecting the nurse of whose negligence the plaintiff complained.

In accord: *Wallwork v. City of Nashville* (1923), 147 Tenn. 681; 251 S. W. 775.

4. *Marble v. Nicholas Senn Hospital Association* (1918), 102 Neb. 343; 167 N. W. 208.

5. *Bruce v. Central M. E. Church* (1907), 147 Mich. 230; 110 N. W. 951.

6. *City of Shawnee v. Roush* (1923), — Okla. —; 223 Pac. 354.

7. 5 R. C. L. 375.

8. *Hill v. Tualatin Academy* (1912), 61 Oregon 190; 121 Pac. 901.

9. *St. Mary's Academy of Sisters of Loretto of City of Denver v. Solomon* (1925) — Col. —; 238 Pac. 22;

Jensen v. Maine Eye and Ear Infirmary (1910), 107 Maine 408; 78 Atl. 898;

Duncan v. Nebraska Sanitarium and Benevolent Association (1912), 92 Neb. 162; 137 N. W. 1120;

Currier v. Dartmouth College (1900), 105 Fed. 886;

Lindler v. Columbia Hospital (1914), 98 S. C. 25; 81 S. E. 512;

Weston v. Hospital of St. Vincent of Paul (1921), 131 Va. 587; 107 S. E. 785.

therefore they cannot do so indirectly;¹⁰ (3) Charities are agencies of the government, and therefore entitled to the government's immunity from suit;¹¹ (4) One accepting charity impliedly assents to hold the giver immune from liability for injury;¹² (5) The doctrine of *respondet superior* does not apply to them;¹³ and particularly with respect to hospitals; (6) the employees of the hospitals are independent contractors and not the servants of the charity;¹⁴ And (7) the undertaking of the hospital is, in general, not such as to render it liable for injuries inflicted upon patients.¹⁵

10. Parks v. Northwestern University (1905), 121 Ill. App. 512; 75 N. E. 991;

Cook v. Norton Memorial Infirmary (1918), 180 Ky. 331; 202 S. W. 874;

Perry v. House of Refuge (1884), 63 Md. 20; 52 Am. Rep. 495;

Roosen v. Brigham Hospital (1920), 235 Mass. 66; 126 N. E. 392;

Downes v. Harper Hospital (1894), 101 Mich. 555; 60 N. W. 42;

Adams v. University Hospital (1907), 122 Mo. App. 675; 99 S. W. 453;

Corbett v. St. Vincent's Industrial School (1903), 79 App. Div. (N. Y.) 334; 68 N. E. 997;

Gable v. Sisters of St. Francis (1910), 227 Pa. 254; 75 Atl. 1087;

Abston v. Waldon Academy (1907), 118 Tenn. 24; 102 S. W. 351.

11. Morrison v. Henke (1916), 165 Wis. 166; 160 N. W. 173;

University of Louisville v. Hammock (1907), 127 Ky. 564; 106 S. W. 219.

12. Paterlini v. Memorial Hospital Association (1916), 232 Fed. 359;

Burdell v. St. Luke's Hospital (1918), 37 Cal. App. 310; 173 Pac. 1008;

Mikoto v. Sisters of Mercy (1918), 183 Iowa 1376; 168 N. W. 219;

Conklin v. John Howard Industrial Home (1916), 224 Mass. 222; 112 N. E. 606;

Pepke v. Grace Hospital (1902), 130 Mich. 493; 90 N. W. 278;

Collins v. N. Y. Post-Graduate Medical School (1901), 59 App. Div. 63; 69 N. Y. Supp. 106;

Conner v. Sisters of Poor (1900), 7 Ohio N. P. 514; 10 Ohio S. & C. P. Dec. 86.

13. Pierce v. Union Pacific R. Co. (1895), 13 C. C. A. 323; 32 U. S. App. 48;

Brown v. La Societe Francaise (1903), 138 Cal. 475; 71 Pac. 516;

Hearns v. Waterbury Hospital (1895), 66 Conn. 98; 33 Atl. 595;

Parks v. Northwestern University (1905), 218 Ill. 381; 75 N. E. 991;

Eighney v. Union Pac. R. Co. (1895), 93 Iowa 538; 61 N. W. 1056.

Thornton v. Franklin Square House (1909), 200 Mass. 465; 86 N. E. 909;

Cunningham v. Sheltering Arms (1908), 115 N. Y. Supp. 576; 61 Misc. 501;

Taylor v. Protestant Hospital Asso. (1911), 85 Ohio 90; 96 N. E. 1089;

Morrison v. Henke (1916), 165 Wis. 166; 160 N. W. 173.

14. Kellog v. Church Charity Foundation (1908), 128 App. Div. 214; 112 N. Y. Supp. 566;

Schloendorff v. Society of N. Y. Hospital (1914), 211 N. Y. 125; 105 N. E. 92.

15. Adams v. University Hospital (1907), 122 Mo. App. 675; 99 S. W. 453.

The case of *Heriot's Hospital v. Ross* (1848)¹⁶ has been relied upon by nearly all the cases which have denied liability of the charity for injuries on the ground that the funds were held in trust and could not be diverted to other uses by the trustees, either directly or indirectly. This decision was overruled in that country by *Mersey Docks Trustees v. Gibbs* (1866)¹⁷, in which case Lord Westbury said that trustees may render the property of their beneficiaries liable to third persons for an act done by them in the exercise of their trust. A late English case upon this point is that of *Hillyer v. St. Bartholomew's Hospital* (1909),¹⁸ which was an action for injury to a charity patient while under an anesthetic, by the physician who was making an examination of him. In this case Farwell, L. J., said that it is now held that a public body is liable for the negligence of its servants in the same way as private individuals would be liable under similar circumstances, notwithstanding it is acting in the performance of public duties like a board of health, or of eleemosynary or charitable functions such as a public hospital. In *Lavere v. Smith's Falls Public Hospital* (1915)¹⁹ it is said that the trust fund theory no longer has a footing in the English law.

The weight of authority is that a charity is not exempt from liability for injuries negligently inflicted upon strangers, although here the law is by no means settled. In *Basabo v. Salvation Army* (1912)²⁰ it was held that a charitable corporation is liable for injury to a pedestrian through the negligence of its servant in handling a team engaged in its charitable work even though it is not lacking in the selection or retention of said servant. Likewise a charitable hospital is answerable for injuries caused by the negligence of the driver of its ambulance to a traveler on the highway. In *Van Ingen v. Jewish Hospital* (1917),²¹ the court says that the fact that a charitable corporation is liable in this state for the negligence of its servants is no longer open to question. The only exception is in the case of beneficiaries or patients. *Marble v. Nicholas Senn Hospital Association* (1918)²² is decided with like results. Here, in holding the hospital liable for negligent injuries to one accompanying the patient, the court said that the theory that limited exemption from liability to those who are recipients of the institution's charity conforms to correct standards of justice. In *Hospi-*

16. *Supra.*

17. 11 H. L. C. 686; 11 Eng. Reprint 1500.

18. 2 K. B. 820.

19. 35 Ont. L. Rep. 98.

20. 35 R. I. 22; 85 Atl. 120.

21. 227 N. Y. 665; 126 N. E. 924.

22. 102 Neb. 343; 167 N. W. 208.

tal of *St. Vincent v. Thompson* (1914),²³ the court handed down an exactly similar opinion.²⁴

But there are several jurisdictions which have held that a charity must be exempt from liability even for negligent injuries to strangers. Thus, in *Foley v. Wesson Memorial Hospital* (1923),²⁵ where the driver of an ambulance failed to stop because of grease on its brake bands and ran upon the sidewalk where it struck and injured pedestrians, the court said that a charitable corporation is exempt from liability for the negligence of its servants, whether such negligence causes injury to recipient of the charity or to a stranger. The court further pointed out that, under the Massachusetts doctrine, trust funds could not be used to compensate wrongs committed by agents of those administering the funds and that if it was necessary to modify the law as a matter of public policy, such modification must come from the Legislature and not from the courts.²⁶

In regard to the charitable corporation's liability to their own servants, the law is in greater conflict. There are several jurisdictions holding both ways on this subject, but it appears that the weight of authority holds the charity liable for injury to a servant through negligence in the performance of some duty owing to him. In *McInerny v. St. Luke's Hospital Association* (1913)²⁷ it was held that the failure of a charitable association to fulfill the duty imposed upon a master to cover or guard dangerous parts of machinery, which duty was absolute and nondelegable, rendered it liable to its servants and employees who were injured in consequence of neglect to comply with the provisions of a statute; the court saying that if public policy requires that such associations be excluded from the operation of the law, it should be so declared by the Legislature, and not by the dictum of the courts. Again, a hospital holding its property for general hospital purposes, and not under a limited deed of trust, is liable for injuries

23. 116 Va. 101; 81 S. E. 13.

24. In Accord: *Gallon v. House of Goop Shepherd* (1909), 158 Mich. 361; 122 N. W. 631; *Hall-Moody Institution v. Copass* (1902), 108 Tenn. 582; 69 S. W. 327.

25. 246 Mass. 363; 141 N. E. 113.

26. The following jurisdictions have also decided that the charitable corporation is exempt from liability to a third person:

Fire Insurance Patrol v. Boyd (1888), 120 Pa. 624; 15 Atl. 553; *Loeffler v. Sheppard and E. P. Hospital* (1917), 130 Md. 265; LRA. 1917D 937;

Fordyce v. Woman's Christian Nat. Library Association (1906), 79 Ark. 550; 96 S. W. 155;

Bachman v. Y. W. C. A. (1923), 179 Wis. 178; 191 N. W. 751.

27. 122 Minn. 10; 141 N. W. 837.

inflicted upon a nurse through the negligence of those in charge of the institution. See *Hewett v. Woman's Hospital Aid Association* (1906).²⁸ This case indicates that trust funds could not be used to pay damages for such injuries. But, in *Armendarez v. Hotel Dieu* (1919),²⁹ a religious corporation organized to operate a hospital was held not to be exempted from liability for injury sustained by an employee through negligence chargeable to it, though money received in payment for services was expended in maintaining the institution for the benefit of the poor.³⁰

The opposite side of this question is favored in *Whittaker v. St. Luke's Hospital* (1908).³¹ This action was instituted against a hospital in St. Louis to recover damages for an injury suffered by the plaintiff, while an employee in the institution, in working with an ironing machine. After reviewing the authorities, Goode, J., said, "Two rules of law, both founded on motives of public policy, come into conflict here; the rule of *respondeat superior* (or if not technically that, one akin to it) and the rule exempting charitable funds from executions for damages on account of the misconduct of trustees and servants. As both rules rest on the same foundation of public policy, the question is whether, on the facts in hand, the public interest will best be subserved by applying the doctrine of *respondeat superior* to the charity or the doctrine of immunity; and we decided this cause for the respondent because, in our opinion, it will be more useful on the whole not to allow charitable funds to be diverted to pay damages in such a case, and moreover the weight of authority is in favor of this view, as expressed not only in cases where the parties seeking damages were patients in the institution, but where they were not."³²

The doctrine of exemption, therefore, seems to have been founded on some early English cases which were subsequently departed from in that country. Our courts still advance several reasons for absolving privately conducted charities from liability for personal injuries, but none of these reasons have met with general approval. There seems to be a slight tendency among the later cases to hold the charity liable, except in cases where the liability may be held to have been waived

28. 73 N. H. 556; 64 Atl. 190.

29. — Tex. —; 210 S. W. 518.

30. Similar decisions are reached in:

Bruce v. Central Church (1907), 147 Mich. 230; 110 N. W. 951;

Hordern v. Salvation Army (1910), 199 N. Y. 233; 92 N. E. 626.

31. 137 Mo. App. 116; 117 S. W. 1189.

32. The same result is reached by different reasons in:

Farrigan v. Pevear (1906), 193 Mass. 147; 78 N. E. 855;

Emery v. Jewish Hospital Association (1921), 193 Ky. 400; 236 S. W. 577.

by contract. In accordance with this tendency is the case of *Love v. Nashville Agricultural and Normal Institution* (1922),³³ which holds that a private charitable corporation cannot be exempted from liability for injuries caused by a nuisance maintained by it on the theory that its funds are held in trust for the purposes of its creation. So also, in *Taylor v. Flower Deaconess Home and Hospital* (1922)³⁴ a charity hospital was held liable for failure to exercise due care in the selection of employees. In *Mulliner v. Evangelischer Diakonniessenverein* (1920)³⁵ the court holds that one entering a hospital has no thought of assuming the risk of injury from negligence. In this case Hallam, J., says, "This corporation must administer its functions through agents, as any other corporation does. It harms and benefits third parties as they are harmed or benefited by others. To the person injured the loss is the same as though the injury had been sustained in a private hospital for gain. In this case the deceased paid for the services he expected would be rendered, but this may not be a controlling fact. We do not believe that a policy of irresponsibility best subserves the beneficent purposes for which the hospital is maintained. We do not approve the public policy which would require the widow and children of deceased, rather than the corporation, to suffer the loss incurred through the fault of the corporation's employees, or, in other words, which would compel the persons damaged to contribute the amount of their loss to the purposes of even the most worthy corporation. We are of the opinion that public policy does not favor exemption from liability."

WENDELL J. PHILLIPS, '27.

REFORMATION OF WRITTEN INSTRUMENTS BECAUSE OF MISTAKES OF LAW

It has long been a general rule that Courts of Equity are powerless to correct mistakes of law, and order the reformation of written instruments executed while the parties labored under a mistaken idea as to their legal rights or status.¹ But like many broad general principles this particular one has become the plaything of many Courts until

33. 146 Tenn. 550; 243 S. W. 304.

34. 104 Ohio St. 61; 135 N. E. 287.

35. 144 Minn. 392; 175 N. W. 699.

1. *Norton v. Highleyman*, 88 Mo. 621.