LIABILITY OF A CHARITABLE INSTITUTION FOR THE NEGLIGENCE OF ITS OFFICERS AND EMPLOYEES

The subject of the liability of a charitable institution for the negligence of its officials and employees has given rise to different lines of authority. While the facts have varied as a matter of course with each particular case, the principle to be applied has uniformly been the same. Thus we find the reports crowded with cases in which a patient was suing for injuries sustained by reason of the negligence of some official or employee of the hospital against which recovery was sought to be had. On the other hand there are cases in which the injured party bore no relation to the charitable institution on which liability was attempted to be affixed. Further, there are cases wherein the charitable institution was exercising a part of the state's sovereignty, and other cases in which the alleged negligent wrong occurred in a place other than the premises of the defendant (e. g., in the public streets). And so on reviewing these decisions there is found an irreconcilable conflict of authorities.

Without dissent the cases hold that if the defendant institution has been negligent in employing or supervising the work of the employee whose negligence is complained of, the plea of charitable immunity will not prevail. The weight of authority further is, that if the plaintiff was partaking of defendant's charity at the time of the alleged negligent act, there can be no recovery.[1] The cases above cited also lay down the rule that a patient in a charitable hospital is a beneficiary of its charity, notwithstanding the fact that he may pay the hospital for its services.

The reasoning employed by the courts in disposing of the question involved has been variously placed on the diversion of trust funds theory, governmental agency, and public policy. A striking illustration of the conclusions reached by this line of reasoning is afforded in the Missouri case of Whittaker v. Hospital,[2] and the Rhode Island decision of Glavin v. Hospital.[3] The Missouri case was a suit brought by an employee of St. Luke's Hospital for injuries suffered by reason of certain defective machinery, which defendant allowed to get out

[1] Taylor vs. Hospital, 85 O. St., 95; Powers vs. Mass. Homeopathic Hospital, 109 Fed. 294.
[2] 137 Mo. App., 116.
[3] 12 R. I. 411.

of repair. In sustaining the plea of charitable immunity, the court said: "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 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." It will be observed that in this case plaintiff bore no relation to defendant that could place her in the position of a beneficiary of its charity. This case, perhaps, goes the limit in applying the principle of charitable immunity.

In the Rhode Island case, a patient paying eight dollars per week for defendant's services, was suing for injuries sustained by reason of the unskillful surgical treatment of an interne. The court held that the defendant was liable. In the course of the decision, the court said: "The public is doubtless interested in the maintenance of a great public charity, such as the Rhode Island Hospital; but it also has an interest in obliging every person and every corporation which undertakes the performance of a duty to perform it carefully, and to that extent, therefore, it has an interest against exempting any such person and any such corporation from liability for its negligence. The court cannot undertake to say that the former interest is so supreme that the latter must be sacrificed to it. Whether it shall be or not, is not a question for the court, but for the legislature." In this case, plaintiff, being a patient in the defendant hospital, he was, in theory of law, a beneficiary of its charity. Beyond question this case approached the limit of charitable liability. So we find the paradoxical situation of the Missouri court in a case in which the injured party was not a beneficiary of defendant's charity, holding, that for reasons of public policy, the charity should be exempted from liability, and the Rhode Island court, in a case in which the plaintiff was a beneficiary of the charity, holding, that on the same grounds, the defendant should be liable.

The court in Whittaker v. Hospital, *supra*, refused to accept the distinction made in some of the decisions between the liability of institutions which are public instrumentalities and private charities, since in either case their funds, whether donated by the government or by individuals, were intended to be dispensed for the general good in designated ways.

In Mortaugh v. St. Louis,[4] the court said: "The general result of the adjudications seems to be that where the officer or servant of a municipal corporation is in the exercise of a power conferred upon the corporation for its private benefit, and injury ensues from his negligence or misfeasance, the corporation is liable, as in the case of private corporations or parties; but when the acts or omissions complained of were done or omitted in the exercise of a corporate franchise conferred upon the corporation for the public good, and not for private corporate advantage, then the corporation is not liable for the consequences of such acts or omissions on the part of its officers and servants." It is evident from this passage that the court considered the exemption of a public charity from liability for the negligence of its officers and employees as resting on the fact that its corporate franchise and the funds which kept it alive were conferred on the corporation by the sovereignty for the public welfare and ought not to be diverted to pay claims for damages. So the rule in Missouri may be stated to be, that charitable institutions, whether of the nature of a public instrumentality or privately endowed, are not subject to the rule of *respondeat superior*.[5]

In the Massachusetts case of Farrigan v. Peuear,[6] the plaintiff sued the defendants as trustees of an unincorporated charity, for injuries sustained while in the employ of said trustees. In laying down the rule of charitable immunity the court said: "The reason for the rule is, that acting for the benefit of the public solely in representing a public interest, whether by a municipality or by a public officer, does not involve such a private pecuniary interest as lies at the foundation of the doctrine of *respondeat superior*. Defendant's duty to the plaintiff did not extend beyond the requirement of using reasonable care to select competent servants, and the demands of substantial justice are met if, as charitable trustees, they are not charged with negligence of those so employed."

The same rule is laid down in the Pennsylvania case of Fire In-

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[4] 44 Mo. 479.

[5] The court in Whittaker vs. Hospital, *supra*, was careful to state that some instances of negligence might arise, such as in the public streets; which was the case in Kellogg vs. Church Foundation, *infra*, which would call for the application of the rule of charitable liability.

[6] 193 Mass., 147.

surance Patrol v. Boyd.[7] Numerous other cases set forth the same principle.[8]

The opposite view of this question has been adopted in some jurisdictions. The New York Court of Appeals, in the case of Hordern v. Salvation Army,[9] laid down the rule that while a beneficiary of a charitable trust may not hold the corporation, administering the trust, liable for the neglect of its servants, this immunity does not affect the rights of those who are not such beneficiaries. The same rule was applied in Kellogg v. Church Charity Foundation.[10] In that case defendant's driver negligently operated an ambulance and ran over the plaintiff in the public streets. While it would seem that the fact that that act occurred in the public streets should have been the controlling factor in determining the case, negligence having been shown, the court apparently ignored it, and discussed the theory of diversion of trust funds, the doctrine of *respondeat superior* and public policy. The defendant was held liable on the ground, that not being a beneficiary of defendant's charity, plaintiff had the same rights against it that he would have had against any one else for similar injuries.

The same doctrine has crept into the later decisions of the Michigan court, as set forth in Bruce v. Central Methodist Church.[11] In that case the plaintiff, while engaged in decorating the defendant church, was injured by the breaking of a defective scaffolding furnished by the agents of the church. The church was held liable. The case is weakened as authority by the difference of opinion among the Judges regarding the ground of liability, and not easy to reconcile with prior decisions of the same court.

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[7] 120 Pa. St. 624.

[8] Adams vs. University Hospital, 122 Mo. App., 675; Hearns vs. Waterbury Hospital, 66 Conn., 98; McDonald vs. Mass. General Hospital, 120 Mass., 432; Downs vs. Harper, 101 Mich,, 555; Pepke vs. Grace, 130 Mich., 493; Perry vs. House of Refuge, 63 Md., 20; Feoffee's of Herriot's Hospital vs. Ross, R. A., 200; Railroad vs. Artist, 60 Federal, 365; Parks vs. University, 2 L. R. A., (N. S.), 556; Fordyce vs. Library Assn., 79 Ark. 550; Alston vs. 12 Clark and Finneley, 507; Williams vs. Louisville Industrial School, 23 L. Waldon Academy, 102 S. W., (Tenn.), 102.

[9] 199 N. Y., 233.

[10] 128 N. Y. (App. Div.), 214.

[11] 147 Mich., 230.