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IMMUNITY OF CHARITABLE INSTITUTIONS FROM LIABILITY IN TORT: LIMITATIONS ON THE DOCTRINE.

The question of the immunity of charitable institutions from liability in tort is one beset with difficulties. This condition is caused not so much by the nature of the subject-matter as by the quite diverse and irreconcilable reasons assigned by the courts for their conclusions. In dealing with this ques-

tion, therefore, an attempt will be made to classify the various cases and to contrast the reasoning of one class of cases with that of other classes, and vice versa. The general rules of liability of charitable institutions for tort, as established by the decisions, will be stated, and an effort will be made to show the reasons, if any, for the adoption by the courts of rules restricting or limiting, in certain cases, the application of the general rules. As is usual when courts in different jurisdictions have occasion to pass upon the same question, a contrariety of opinion arises, and though the same result may be reached the reasoning employed is quite different. Perhaps this difference in reasoning in the present instance is caused to a great degree by the question of whether or not the defendant is a charitable institution, the courts in some jurisdictions hesitating to declare liability where there is any doubt concerning the charitable character of the defendant.¹

But as the question of this thesis deals with the immunity of charitable institutions, as such, for liability in tort, no effort will be made to discuss what circumstances are deemed necessary to constitute an institution a charitable institution. These circumstances, however, may be gathered from quoted excerpts of cases which appear subsequently. Further cases in which liability has been declared solely because the defendant was not a charitable institution, have been eliminated.

In a majority of the cases pertaining to this question the defendant has been a hospital, and in making statements of law the word "patients" is used, but inmates of reformatories and other institutions as well as "persons injured" are included by that word. Thus the law regarding the liability of a hospital for injury to a patient is equally applicable to other institutions that are not hospitals.

Also, the individual facts of cases will not be set forth, except in certain instances, and no attempt will be made to dwell upon the difference between a private charity and pu-

1. *Powers v. Massachusetts Homeopathic Hospital*, 109 Fed. 294. *Fire Ins. Patrol v. Boyd*, 120 Pa. 624.

ble charity, it being true that if the defendant is a charity, its liability in either case is the same.²

At the outset, it may be said that the early English decisions on the question of liability of charitable institutions for tort, furnish no valuable precedent or workable rule applicable to charitable institutions in America, and because of the divergent reasoning employed therein, have been expressly repudiated.³ The American courts, however, from the earliest times have regarded charitable institutions as not liable for their torts solely on the ground of public policy.⁴ This is perhaps the first reason adopted by the courts for holding charitable institution exempt from liability for torts committed by their agents and servants. To permit the institution to be held liable for the negligence or other torts of its officers or employees would be to authorize the diversion of the funds intrusted to it from the purpose for which they were given, and hence defeat the intention of the donors.⁵ This is a defense that has been successfully invoked by institutions when sued for negligence of their agents or servants.

The doctrine of public policy may best be illustrated by an examination of the cases in various jurisdictions, such as Massachusetts and Pennsylvania. Perhaps the first case of any importance to arise in Massachusetts was *McDonald v. Massachusetts General Hospital*.⁶ The principle of immunity laid down in that case was that a public hospital operated as a charitable corporation has no funds which can be charged with any judgment which the plaintiff might recover except those which are held subject to the trust of maintaining the hospital. This doctrine was again considered in *Benton v. Boston City Hospital*,⁷ the decision resting on the fact that

2. *Whittaker v. St. Luke's Hospital*, 137 Mo. App. 116, 119.

3. *Hearns v. Waterbury Hospital*, 66 Conn. 98. *Glavin v. Rhode Island Hospital*, 12 R. I. 411.

4. *McDonald v. Massachusetts General Hospital*, 120 Mass. 432. *Fire Ins. Patrol v. Boyd*, 120 Pa. 624. *Powers v. Mass. Homeopathic Hospital*, 109 Fed. 294.

5. *Gable v. Sisters of St. Francis*, 227 Pa. 254, 258.

6. 120 Mass. 432.

7. 140 Mass. 13.

the defendant was an agency of the city of Boston and that defendant could not be held liable for negligence of its servants in the performance of a governmental function undertaken by it. Apparently the principle of general immunity of a charitable institution for liability in tort seems to have been based originally on the governmental capacity of the person sued. The principle that a charitable institution is not liable for its negligence on the ground of public policy, however, has met with almost universal approval and has been properly applied to defendants who were separate corporations not operated as governmental agencies or functions.⁸

In the case of *Farrigan v. Pevear*,⁹ defendant was held to be a private charity and was said to stand in respect to liability for negligence of its servants on the same plane as a public charity and the reason advanced for the immunity of a public charity from liability, namely, that the funds of a public hospital are devoted to a charitable trust and that to subject them to the payment of damages would be an unlawful diversion of the trust funds, was really the authority for the decision.

The doctrine of public policy has also been firmly adopted by the courts of Pennsylvania. Like other courts, in the earlier cases, the immunity of charitable institutions seems to have been rested on the fact that the defendant was an instrumentality of the government and accordingly exempt from liability, although some of the cases have stated the exemption as being due to the charitable nature of the defendant.

In the case of *Fire Ins. Patrol v. Boyd*,¹⁰ which was twice before the Supreme Court of Pennsylvania, the court upheld the immunity of the plaintiff in error on the ground that "the

8. *Perry v. House of Refuge*, 63 Md. 20. *Abston v. Walton Academy*, 118 Tenn. 24. *Williamson v. Louisville Industrial School*, 95 Ky. 251. *Parks v. Northwestern University*, 218 Ill. 381. *Adams v. University Hospital*, 122 Mo. App. 675. *Jensen v. Maine Eye & Ear Infirmary*, 107 Me. 408. *Duncan v. Neb. Sanitarium Benev. Ass'n*, 92 Neb. 162. *Hearns v. Waterbury Hospital*, 66 Conn. 98. *Downes v. Harper Hospital*, 101 Mich. 555. *Powers v. Massachusetts Homeopathic Hospital*, 109 Fed. 294 (Federal rule).

9. 193 Mass. 147.

10. 120 Pa. 624; 113 Pa. 269.

duty of extinguishing fires and saving property therefrom is a public duty and the agent to whom such authority is delegated is a public agent and not liable for the negligence of its employes." This language plainly shows that the decision rested on the fact that defendant was a governmental agency. The court further said that to pay the judgment recovered would amount to a misapplication of the trust funds. But in a Massachusetts case, similar in facts to *Fire Ins. Patrol v. Boyd*, the court arrived at an opposite conclusion, holding defendant to be a private and not a charitable corporation and liable for the negligence of its servants.¹¹ The doctrine of immunity established in the case of *Fire Ins. Patrol v. Boyd* has been followed in jurisdictions which maintain that a charitable institution is not liable for the negligence of its servants on the ground that payment of damages would amount to a diversion of the trust funds and thus be against public policy.¹² A Pennsylvania case which follows the *Boyd* case and emphasizes the immunity of charitable institutions from liability for negligence is *Gable v. Sisters of St. Francis*.¹³ In that case the court says:¹⁴ "It is a doctrine too well established to be shaken, and as unequivocally declared in our own state as in any other, that a public charity cannot be made liable for the torts of its servants. The doctrine rests fundamentally on the fact that such liability if allowed, would lead to a diversion of the trust funds from the trust's purposes." This doctrine has further been approved and affirmed in a recent federal court case¹⁵ which recognizes the general immunity doctrine as established by state court decisions in Pennsylvania. This decision, though handed down by a federal court, is for practical purposes a Pennsylvania state case, as it strengthens the principles laid down in the *Boyd* case.

11. *Newcomb v. Boston Protective Dept.*, 151 Mass. 215.

12. See note 8.

13. 227 Pa. 254.

14. p. 258.

15. *Paterlini v. Memorial Hospital Assn*, 247 Fed. 639, certiorari denied, 38 Sup. Ct. 334.

But, as efficacious as the public policy doctrine has been in shielding charitable institutions from liability, it has not totally protected them, and in some jurisdictions, if the institution sued has failed to exercise proper care in selecting its agents, it is responsible in damages to the person injured, regardless of its charitable character. This rule, which is known as the qualified immunity rule, exempts charitable institutions from liability for the torts of their servants provided they have used due care in their selection.¹⁶ It is hard to see, however, why a charitable corporation should be held liable for negligence in selecting its agents and not liable for the negligence of agents carefully selected.¹⁷ In either event liability for negligence in the selection of servants may impair the trust estate just the same as liability for the negligence of servants, though, perhaps, less frequently.¹⁸ This reasoning, of course, is designed to qualify the inviolability of trust funds to the extent that damages may be allowed for the negligence of servants. The direct result of such a course would be to place charitable institutions on the same ground of liability for torts as any other person or corporation, and thus destroy their privileged immunity. The courts, however, have never sanctioned or applied such reasoning, but have consistently maintained the rule that charitable corporations are not liable for the torts of their servants and agents when they have exercised due care in their selection. Some of the courts recognize the immunity of charitable institutions on the ground of public policy, but at the same time seem to base their decisions on the fact that the exemption of such institutions

16. *Hearns v. Waterbury Hospital*, 66 Conn. 98. *McDonald v. Mass. General Hospital*, 120 Mass. 432. *Powers v. Mass. Homeopathic Hospital*, 109 Fed. 294. *Collins v. New York Post Graduate Med. School & Hospital*, 66 N. Y. Supp. 106, 59 App. Div. 63. *Parks v. Northwestern University*, 218 Ill. 381. *University of Louisville v. Hammock*, 127 Ky. 564. *Taylor v. Protestant Hospital Ass'n*, 85 Ohio St. 90. *Wharton v. Warner*, 75 Wash. 470. *Mikota v. Sisters of Mercy*, 183 Ia. 1378. *Bishop Randall Hospital v. Hartley*, 24 Wyo. 408. *Nicholson v. Hospital Ass'n*, 97 Kan. 480.

17. *Hordern v. Salvation Army*, 199 N. Y. 233. *Basabo v. Salvation Army*, 35 R. I. 22.

18. *Hordern v. Salvation Army*, *supra*.

from liability for injuries occasioned by the negligence of their physicians, surgeons, nurses, servants, and agents should be limited to cases where there has been no negligence on the part of the defendants in the selection or retention of such persons. But the cases sustaining this doctrine seem to be entirely inconsistent with the general proposition of the exemption of charitable corporations on grounds of public policy. The ground for the non-liability for the torts of agents or servants of charitable institutions, as stated before, is that to pay damages for torts would be a diversion of the funds from the purposes for which they were donated and that damages cannot be paid in such cases. While the courts recognize this doctrine, they except cases where the agent or servant was incompetent and there was negligence in his selection, failing to observe that it would be as much a diversion of the trust funds to pay damages for torts occasioned by negligence in the selection of an incompetent servant as for any other torts.¹⁹ But it seems that this rule regarding care in the selection of servants, may just as well rest solely upon the ground of public policy. Indeed, both reasons are discussed in the cases, but the courts seem to prefer the ground of "due care in the selection of servants" as being more logical and tangible than the vague ground of public policy.

There are a few cases, however, where the correlative statement, to the effect that charitable corporations are liable where they have failed to exercise due care in the selection of servants and agents, has been used to assert the liability of charitable corporations.²⁰ One of the first cases to so hold was *Galvin v. Rhode Island Hospital*,²¹ where the court in the opinion said: "If the interne neglects to call the surgeon, his neglect is the neglect of the corporation. Now the plaintiff contends that this injury was such that under the rule a sur-

19. *Kellogg v. Church Charity Foundation of Long Island*, 135 App. Div. 839; reversed on other grounds, 203 N. Y. 191.

20. *Gitzhoffen v. Sisters of Holy Cross Hos. Ass'n*, 32 Utah, 46. *St. Paul Sanitarium v. Williamson* (Tex. Civ. App.), 164 S. W. 36.

21. 12 R. L. 411, 425.

geon should have been immediately sent for, and that the interne's neglect to do it cost him his arm. He also contends that the corporation did not use proper care in selecting the interne who was incompetent for his position, and thereby he occurred the injury complained of." The court proceeds to say that there are certain duties to patients which are corporate duties, such as the exercise of due care in the selection of competent attendants, and that the agent of the corporation, whose duty it is to summon such attendants, is in such case the agent and representative of the corporation, whose negligence is considered to be that of the corporation itself. Incidentally, it may be said that the Galvin case holds that the doctrine of general immunity of a charitable corporation from liability for damages on the ground of public policy as involving the diversion of trust funds from the purposes of the trust, has no logical foundation. But it is only natural that this case in favoring a recovery for the plaintiff should condemn the public policy doctrine. Yet the Rhode Island legislature subsequently saw fit to pass a statute holding charitable corporations exempt from liability for the negligence of their servants and agents.^{21a} A Massachusetts case goes to the other extreme and denies the liability of a charitable corporation for the negligence of its servants and agents regardless of whether or not they were carefully selected.²² It considers the language of the court in the McDonald case, to the effect that a charitable institution is not liable provided it exercised due care in the selection of its servants and agents, as merely "precautionary," and states:²³ "The correlative assertion, to the effect that there is liability of the hospital in cases where there has been carelessness on the part of the managers in the selection of servants and agents, is neither expressed or implied." This is rather an illuminating statement considering the fact

21-a. Gen. Laws of R. I., c. 213, sec. 38.

22. *Roosen v. Peter Bent Brigham Hospital* (Mass.), 126 N. E. 392.

23. *McDonald v. Massachusetts General Hospital*, 120 Mass. 432; p. 394, 126 N. E. 392, *supra*.

that in none of the cases dealing with this point is a similar remark to be found. The case, therefore, seems to decide the question of exemption of charitable corporations from liability in tort upon the sole ground of public policy and renders useless the distinction that such an institution is only liable when it has failed to exercise due care in the selection of its agents and servants. The cases in Missouri on this question cling to the doctrine of public policy, without recognizing the distinction above pointed out.²⁴

Closely allied with the "due care in selection" rule, is a supplemental rule regarding the relation the person injured bears to the corporation. For instance, a charitable corporation is never held liable to a person who is a recipient of the benefit of the charity at the time of his alleged injury.²⁵ Some of the cases deny the liability of a charitable corporation in any event to pay damages for injuries arising from the negligence of its servants or agents, either to a patient or to a third party, on the ground of public policy.²⁶ The relation side of this rule is best explained in *Powers v. Massachusetts Homeopathic Hospital*,²⁷ where it is said: "It would be intolerable that a good Samaritan, who takes to his house a wounded stranger for surgical care, should be held personally liable for the negligence of his servant in caring for that stranger." Thus, the relation of the person injured to his benefactor sometimes determines the liability or non-liability of a charitable corporation for its torts. But it is well settled that a charitable institution is not liable in damages to one who is the beneficiary of its charity.²⁸ In some of the

24. *Murtaugh v. City of St. Louis*, 44 Mo. 479. *Adams v. University Hospital*, 122 Mo. App. 675. *Whittaker v. St. Luke's Hospital*, 137 Mo. App. 116. *Nicholas v. Evangelical Deaconess Home (Mo.)*, 219 S. W. 643.

25. *Hearns v. Waterbury Hospital*, 66 Conn. 98, 125.

26. *Adams v. University Hospital*, 122 Mo. App. 675. *Whittaker v. St. Luke's Hospital*, 137 Mo. App. 116.

27. 109 Fed. 294, 304.

28. *Hordern v. Salvation Army*, 199 N. Y. 233. *Thomas v. German General Benevolent Society*, 168 Cal. 183, 188. *Downes v. Harper Hospital*, 101 Mich. 555, 559. *Thornton v. Franklin Square House*, 200 Mass. 465.

cases²⁹ the contention is made that a charitable institution loses its charitable character when it accepts pay from a patient or inmate, and in the event of injury to such a person it is answerable in damages. But the fact that the money derived is applied to further the charitable interests of the recipient, calls for the rejection of this contention. Where such institutions are not charitable, however, and are maintained for profit, they are liable for their torts the same as any other person.³⁰

But while one who is the beneficiary of the bounty of a charitable institution may not hold it liable for personal injuries, a third person, not the recipient of its favor at the time of his injury, may recover.³¹ In fact, nearly all the adjudicated cases which have dealt with the question of the liability of a charitable corporation to its servants or third parties for injuries arising from negligence, have held in favor of the plaintiffs. One of the first cases holding a charitable institution liable for injuries to its servants is *Hewett v. Woman's Hospital Aid Association*.³² A nurse in the employe of the defendant, a charitable corporation was placed by the superintendent in charge of a patient suffering from diphtheria, of which the superintendent was aware, but neglected to notify the nurse. The nurse contracted the disease, and for the injury to her caused thereby brought suit. She was held entitled to recover. The defendant claimed exemption on the ground of public policy, but the court deemed it a wiser application of the rule to find for the plaintiff rather than to apply

29. *Gable v. Sisters of St. Francis*, 227 Pa. 254. An attempt was made to hold liable funds derived from patients who paid for their treatment and to exclude the trust funds from liability. The contention was disapproved, the court holding that "every dollar received by the defendant corporation is stamped with the impress of charity." *Paterlini v. Memorial Hospital Assn. of Monongahela City, Pa.*, 247 Fed 639.

30. *Phillips v. St. Louis & San Francisco R. R. Co.*, 211 Mo. 419. *Illinois Cent. R. Co. v. Buchanan*, 31 Ky. L. Rep. 722. *Fontanella v. N. Y. Cent. R. Co.*, 174 N. Y. Supp. 537. *Richardson v. Carlon Hill Coal Co.*, 6 Wash. 52. *Texas & Pacific Coal Co. v. Connaughten*, 20 Tex. Civ. App. 642. But see *Barden v. Atl. Coast Line Ry. Co.*, 152 N. C. 318.

31. *Kellogg v. Church Charity Foundation*, 203 N. Y. 191. *Glavin v. Rhode Island Hospital*, 12 R. I. 411.

32. 73 N. H. 556.

the rule against her. After discussing the duty of the superintendent to notify the nurse of the contagious disease and contending that such duty is a non-delegable one, the court says:³³ "Since the property of the defendant is held for the general purpose of maintaining a hospital without other specific limitation, it is no more exempt from being appropriated to the payment of damages occasioned by the negligence of the hospital than is the property of an individual, which he holds for commercial or charitable purposes, for the consequence of his negligence." The New Hampshire court apparently went on the theory that charitable institutions are no more exempt from liability than any other person and that immunity of such corporations will only be recognized where a statute expressly provides for such immunity. The court had a mass of authority available to support the non-liability of the defendant, yet it disregarded it and rendered a decision precisely opposite to the interests of the defendant. The case, however seems to be anomalous and has never been directly followed, though dicta to the effect that the doctrine of public policy has no logical foundation have been quoted by cases upholding the liability of charitable corporations for injuries occurring to third persons.³⁴

The doctrine that charitable institutions are liable for injuries to third persons through the negligence of their servants and agents has been fully adopted in the Michigan case of *Bruce v. Central Methodist Episcopal Church*.³⁵ The church was held liable to an employee of a contractor, engaged in decorating the church building, for injuries sustained by reason of the breaking of defective scaffolding furnished by the agents of the church. The defendant relied upon the general rule of public policy, but the court held that corporations administering a charitable trust, like all other corporations, are

33. p. 566.

34. *Basabo v. Salvation Army*, 35 R. I. 22, 26. *Kellogg v. Church Charity Foundation*, 203 N. Y. 191.

35. 147 Mich. 230.

subject to the general laws of the land, and cannot claim exemption from liability for the torts of their agents. In the opinion decisions supporting the immunity of charitable institutions on the ground that a beneficiary of a charity cannot recover are discussed and used as a negative argument in arriving at the conclusion that such relation not having existed, the defendant must be held liable on the ground of *respondeat superior*. It will be remembered that in the Hewett case^{35a} the plaintiff was a servant of the defendant and not a third person as in the Bruce case. The diverse reasoning in the latter case has weakened the decision according to a Missouri case.³⁶

In the New York case of Hordern v. Salvation Army,³⁷ a journeyman mechanic, who was engaged in making repairs on a boiler on the premises of the Salvation Army, was allowed to recover, it being held that the defendant was not relieved from liability for the negligence of its agents and servants on the theory that the rule of *respondeat superior* did not apply to such corporation. This case was approved and followed in Kellogg v. Church Charity Foundation of Long Island,³⁸ where an ambulance driver of defendant, a charitable hospital, negligently ran into plaintiff, the rule of *respondeat superior* applying. Again, a charitable institution was held liable in New York on the ground of *respondeat superior* where one of its servants negligently committed a tort causing plaintiff, who was working on defendant's property, to be injured.³⁹

A Rhode Island case which unqualifiedly sanctions the liability of charitable institutions for injuries to third persons is Basabo v. Salvation Army.⁴⁰ There, plaintiff's intestate was fatally injured by the negligence of defendant's servants in the driving of its teams while engaged in the scope of their

35-a. 73 N. H. 556.

36. Whittaker v. St. Luke's Hospital, 137 Mo. App. 116 (Goode, J.).

37. 199 N. Y. 233.

38. 203 N. Y. 191, reversing 135 App. Div. 839. See also Van Ingen v. Jewish Hospital of Brooklyn, 182 App. Div. 10 (N. Y.)

39. Gartland v. N. Y. Zoological Soc., 135 App. Div. 163 (N. Y.).

40. 35 R. I. 22.

employment, and the court held the defendant liable on the ground of *respondeat superior*. Incidentally, as in the Glavin case,⁴¹ the doctrine of public policy was condemned.

From these cases it is apparent that liability of a charitable institution to servants and third persons for negligence has been rested on the doctrine of *respondeat superior*, and subsequent cases indicate that the courts have definitely decided to adopt this doctrine.⁴²

A principle which has been mentioned incidentally in the cases is that concerning the existence of a contract, between the person injured and the charitable institution. Though a recovery has been attempted on such a theory, none of the courts have given serious consideration to it and in no case has a recovery been allowed.⁴³ In a recent Massachusetts case,⁴⁴ the plaintiff tried to recover on an alleged oral contract, but the court held that there could be no liability in contract if none existed in tort, and this statement rather tersely summarizes the law on this phase of the question. If the courts deny a recovery in tort on the ground that such recovery would be against public policy, certainly any contract attempting to contravene such public policy by establishing liability would be void.

Having examined the various principles laid down by the cases, it is necessary that a summary of our investigation be made. The first principle discussed was that concerning pub-

41. 12 R. I. 411.

42. Van Ingen v. Jewish Hospital of Brooklyn, 182 App. Div. 10 (N. Y.). Hospital of St. Vincent of Paul v. Thompson, 116 Va. 101. McInerney v. St. Luke's Hospital Ass'n of Duluth, 122 Minn. 10. Marble v. Nicholas Senn Hospital Ass'n of Omaha (Neb.), 167 N. W. 208.

The courts of Massachusetts, in particular, refuse to apply the doctrine of *respondeat superior* to charitable institutions. McDonald v. Mass. General Hospital, 120 Mass. 432. Farrigan v. Pevear, 193 Mass. 147. Conklin v. John Howard Industrial Home, 224 Mass. 222. Zoulalian v. New England Sanitarium & Benev. Ass'n, 230 Mass. 102. Roosen v. Peter Bent Brigham Hospital (Mass.), 126 N. E. 392.

43. Magnuson v. Swedish Hospital, 99 Wash. 399, 403. Duncan v. Neb. Sanitarium Benev. Ass'n. 92 Neb. 162. Paterlini v. Memorial Hospital Ass'n. of Monongahala City, Pa., 247 Fed. 639. Ward v. St. Vincent's Hospital, 39 App. Div. 624 (N. Y.).

44. Roosen v. Hospital (Mass.), 126 N. E. 392, 395.

lic policy and the diversion of trust funds. The second consisted of the qualified immunity rule, which, supplementing the public policy doctrine, exempts charitable institutions from liability for their torts if they exercised due care in the selection of their agents and servants. The third principle dealt with the relation the person injured bore to the defendant, deciding that if he was a recipient of the charity, he could not recover. The fourth principle embraced the doctrine of *respondeat superior*, which constituted the basis of recovery of strangers and servants injured by reason of the negligence of agents and servants of the charitable institutions. The fifth and last principle discussed dealt with the attempt to hold a charitable institution liable on the ground that a contract existed between the person injured and the defendant institution.

Our conclusion is that there is only one reason for the immunity of charitable institutions from liability in tort, and that reason is that it is against public policy to allow trust funds to be diverted for the payment of damages. This principle as laid down in *McDonald v. Mass. General Hospital*⁴⁵ and *Fire Ins. Patrol v. Boyd*⁴⁶ has been the real foundation for all the decisions exempting charitable institutions from liability for torts occasioned by the negligence of their agents and servants. But the courts have attempted to disguise this principle by basing their decisions on grounds providing for exemption when due care has been exercised by the defendant in the selection of its agents and servants; also on the ground that a beneficiary of charity cannot recover merely because of the relation it bears to the defendant. But, in either case, the fundamental reason is that of public policy, which prohibits a diversion of the trust funds for the payment of damages.

Directly opposed to the public policy doctrine, however, are those cases supporting the doctrine of *respondeat superior* with reference to liability to servants and third persons. This

45. 120 Mass. 432.

46. 120 Pa. 624.

doctrine is the only substantial one that the courts have applied to refute the public policy doctrine, and circumstances indicate that it will continue to be recognized by the courts.⁴⁷

Regarding the existence of a contract between the person injured and the defendant institution, it may be said that, as contracts made in contravention of public policy are void, and as public policy is the main reason for immunity of charitable institutions for liability in tort, any contract establishing liability would consequently be void.⁴⁸ But it is certain that this principle can never be effectually applied to hold charitable institutions liable in tort.⁴⁹

The recent cases⁵⁰ pertaining to the immunity of charitable institutions for tort bring forth no new principles, and it may safely be said that the courts will continue to exempt charitable institutions from liability for torts occasioned by the negligence of their agents and servants, on the sole ground of public policy.

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47. *Van Ingen v. Jewish Hospital of Brooklyn*, 182 App. Div. 10 (N. Y.).

48. *Mikota v. Sisters of Mercy*, 183 Ia. 1378.

49. *Roosen v. Peter Bent Brigham Hospital* (Mass.), 126 N. E. 392

50. *Kidd v. Mass. Homeopathic Hospital*, (Mass), 130 N. E. 55. *Nicholas v. Evangelical Deaconess Home and Hospital* (Mo.), 219 S. W. 643.