trade which has a tendency to unduly hinder competition or to create a monopoly. Sometimes public interest is involved because the unfair methods being used mean oppression of the weak by the strong. *Federal Trade Commission v. Beech-Nut Packing Co.* (1922) 257 U. S. 444; *Federal Trade Commission v. Oppenheim, Obendorf, & Co., Inc.* (C. C. A. 4, 1925) 5 F. (2d) 574; *Kobi Co. v. Federal Trade Commission* (C. C. A. 2, 1927) 23 F. (2d) 41. The principal case places emphasis on the fact that the practice complained of arose out of hatred and malice. It was not claimed that the article supplied by the defendant was inferior to that of the complainant or that the public suffered financially. Therefore an order of the Commission prohibiting a practice which does not affect the public may be set aside by the reviewing court. E. S., '31.

AGENCY—LIABILITY FOR INFRINGEMENT OF COPYRIGHT BY INDEPENDENT CONTRACTOR.—Appellants owned and operated for profit a dance and amusement hall to which the public was invited for entertainment and for which charge was made. Appellants entered into a contract with an orchestra leader to furnish music on certain nights, but they had no voice in the selection of musicians, had no control over the players, and had no right to determine the musical selections to be rendered during an evening's engagement. The orchestra infringed appellee's copyrights on certain musical numbers. *Held*, that appellants are liable in damages for the infringement. *Dreamland Ball Room, Inc. v. Shapiro, Bernstein & Co.* (C. C. A. 7, 1929) 36 F. (2d) 354.

It is an elementary rule of agency that if an employer uses due care in the selection of one with whom he enters into a contract by which the other party undertakes to accomplish a certain result with means of his own choice the employer is not liable for the negligence of the contractor. Mechem, AGENCY (2d ed. 1914) sec. 1917. Stated briefly, the master is not responsible for the torts of the independent contractor unless the latter was hired to do some act in its nature illegal. However, despite this well settled rule, the copyright infringement cases disregard it and hold the employer liable. This holding, moreover, is uniform throughout England and the United States. In *Monaghan v. Taylor* (1885) 2 T. L. R. 685, defendant employed a singer and took no pains to ascertain what songs he proposed to sing. He was present at the performance at which the singer infringed plaintiff's copyright. Defendant was held liable on the ground that he had caused the singer to sing the songs, including the one which was copyrighted by plaintiff. The same doctrine is upheld in *March v. Conquest* (1864) 17 C. B. (N. S.) 418, 10 L. T. 717, and *Performing Rights Society v. Thompson* (1918) 34 T. L. R. 351. Some American cases hold that the mere fact that defendant operates a place for profit establishes his liability for permitting the unlicensed use of musical compositions on the premises. *Irving Berlin, Inc. v. Daigle* (D. C. E. D. La. 1928) 26 F. (2d) 149; *Trow v. Boyd* (C. C. S. D. N. Y. 1899) 97 F. 586.

One case, which is typical, reasons thus: "He who employs a musician to

perform in an exhibition for profit, under a contract by which the musician has authority to play whatever compositions are in accordance with her judgment appropriate and fitting, must be held responsible for all that is done by the musician. By giving her that authority the employer acquiesces in and ratifies whatever she does. If under his contract he has parted with the right to exercise this control over her actions, without making inquiry as to what she intends to play, he yet must be deemed to have taken part, and to have given her general authority to perform copyright compositions." *Harms et al. v. Cohen* (D. C. E. D. Pa. 1922) 279 F. 276. See also *M. Witmark & Sons v. Pastime Amusement Co.* (D. C. E. D. S. C. 1924) 298 F. 470.

When scrutinized closely it is apparent that the above passage, in effect, says that when the employer parts with the right to control the actions of the independent contractor he is deemed to have given general authority for the commission of torts, thus disregarding all of the immunities which have come to be considered incidents of the employer—independent contractor relationship. For copyright infringement purposes, then, there is no distinction between the master—servant and employer—independent contractor relationship.

The result reached in the main case is not inequitable, but rather desirable. In view of the general practice in agency cases we might rather expect the decision to be on the ground that the orchestra leader was not truly an independent contractor than on the ground that defendant profited from the music, however much more realistic the latter ground may be. In many cases involving small jobs it is found more expedient and equitable to consider what are technically independent contractors as servants, and thus to render employers liable for their torts. In some cases where this is not done a very inequitable result is reached. In an Arkansas case defendant physicians owned and operated a hospital. They had an X-ray department but defendants, knowing nothing of X-rays placed an expert in charge. Through the negligence and incompetence of an employee of the department plaintiff was burned severely. Defendants were held not liable because the wrongdoer was an independent contractor (on the general theory that physicians occupy this position). *Runyan v. Goodrum* (1921) 147 Ark. 481, 228 S. W. 397. Obviously this is an extreme case but it raises the question as to the desirability, in all cases, of exempting the employer from liability for the torts of his independent contractor.

There is no logical ground for distinction between the copyright cases and those of other business situations in which the independent contractor is involved. We are not ready to discard the law of independent contractor as it has grown up; yet these cases are suggestive of a possible survey of the whole field with a view to effecting changes of policy in those situations in which the results reached under the general rule are unsatisfactory.

B. L. W., '31.

CHARITIES—LIABILITY IN TORT—EFFECT OF LIABILITY INSURANCE.—Plaintiff was injured as the result of a fall upon ice on the sidewalk of a building owned by defendant, a charitable corporation. Evidence that defend-