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Liability of Charitable Corporations and Trusts for Their Torts - State, Use of Kalives, v. Eye, Ear and Throat Hospital

LIABILITY OF CHARITABLE CORPORATIONS AND TRUSTS FOR THEIR TORTS

State, use of Kalives, v. Eye, Ear and Throat Hospital[1]

The equitable plaintiffs brought suit as widow and son of decedent for his wrongful death resulting from alleged negligence and malpractice on the part of the defendants. The trial court held that the plaintiffs had not offered legally sufficient evidence as to the defendant's negligence and malpractice, and on appeal this ruling was affirmed. It was, therefore, unnecessary for either court to concern itself with the corporate defendant's special plea to the effect that it was an eleemosynary institution organized solely for charitable purposes for which all its property was held in trust, and the replication thereto denying that the hospital was an eleemosynary institution with respect to the equitable plaintiffs and the decedent, a paying patient. However, the fact that counsel conceived of the possibility of a successful attack in Maryland upon the apparently well-fortified exemption of eleemosynary institutions from tort claims would seem to justify a review of the local and general law on the subject of the liability of charitable trusts and charitable corporations for their torts.

Two Maryland cases dealing with the tort liability of charitable corporations, have gone far toward establishing the local law. *Perry v. House of Refuge*[2] first directed the attention of the Maryland courts to the possibility of the immunity of charitable corporations from tort claims. "Embarrassed by an antagonism in the rulings emanating from other jurisdictions,"[3] the Court refused an inmate of a charitable institution recovery for assaults by the agents of the organization. The decision relied primarily on the

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[1] 177 Md. 517, 10 A. (2d) 612 (1940).
[2] 63 Md. 20, 52 Am. Rep. 495 (1885).
[3] *Ibid.*, 63 Md. 25.

strength of *Feoffees of Heriot's Hospital v. Ross*,[4] decided in 1846 by the House of Lords of England. In the latter case a perfectly eligible applicant for admission to a trust-fund hospital brought suit against the board of trustees that had voted to reject his application. The House of Lords stated the usual rule that the mere fact that a person is a possible beneficiary is not sufficient to entitle him to maintain a suit for the enforcement of a charitable trust or to recover damages for its breach, bolstering its opinion with the dictum that funds created by the benefactors of a charity should not be diverted from their intended purposes by a suit to recover damages out of the trust property. This dictum was repudiated later in England,[5] although it has become law in Maryland and some other American jurisdictions.[6]

It is to be noted that while the Court of Appeals in the *Perry* case relied on and adopted the so-called "trust fund" theory, it was confronted on the facts by the prospect of liability on the part of a Good Samaritan[7] for the misconduct of its servants to a *recipient of its benefactions*. With a noticeable aversion for one's biting the hand that feeds, the weight of authority even today precludes a recovery in tort by a recipient of benefits from a charitable institution where the tort is attributable to an employee of the institution.[8] However, one eminent authority finds it difficult to justify even this exemption.[9]

The second Maryland decision, *Loeffler v. Sheppard-Pratt Hospital*,[10] forced the courts to place the tort immunity of charitable corporations squarely on the "trust fund" theory. This suit, brought by a fireman for injuries sustained in the discharge of his duties on a defective fire escape of the charitable institution, differs from its predecessor in that a stranger to (and not a beneficiary of) the

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[4] 12 Cl. and F. 507 (Eng. 1846). The Maryland court also cited with approval McDonald v. Mass. General Hospital, 120 Mass. 432, 21 Am. Rep. 529 (1876), which applied the same "trust fund" doctrine. England does not follow the early, unwise dictum of the *Heriot* case but holds charitable bodies liable for their torts the same as private bodies. Hillyer v. St. Bartholomew's Hospital (1909) 2 K. B. 820, 9 B. R. C. 1. See note 14 A. L. R. 572.

[5] *Supra*, n. 4.

[6] McDonald v. Mass. General Hospital, *supra*, n. 4. See also notes 14 A. L. R. 572; 23 A. L. R. 923; Bogert on Trusts and Trustees, Sec. 401.

[7] See Feezer, *The Tort Liability of Charities* (1928) 77 U. of Pa. L. Rev. 191, 196 for a comment on the change in the character of the Good Samaritan.

[8] RESTATEMENT, TRUSTS, Sec. 402, (3). 3 SCOTT, TRUSTS, 2151.

[9] 3 SCOTT, TRUSTS, 2152.

[10] 130 Md. 265, 100 A. 301 (1917).

corporation's charity brought action for a tort of the corporate directors themselves (rather than for a wrong of a servant). By quoting from *Tucker v. Mobile Infirmary Association*,[11] the Court reviewed the three doctrines on which the tort immunity of charities is usually based: the "*respondeat superior* inapplicable" theory, the "implied assent" theory and the "trust fund" doctrine. It merely mentioned the glaring inapplicable rule that the principle of *respondeat superior* is not to be invoked against a charitable organization since its servants are not engaged in work for the master's profit, supposedly a requisite for the operation of the principle.[12] It admitted the inapplicability of the "implied assent" theory, which is based on the presupposition that a beneficiary of a charitable trust assumes the risk of negligent injuries inflicted by its servants,[13] at least by those in whose selection the charity has exercised due care;[14] and concluded that the only theoretical justification for the exemption of the charity lay here in the previously recognized "trust fund" doctrine. The Court refused to distinguish between a plaintiff-stranger and a plaintiff-beneficiary so as to avoid the decision of *Perry v. House of Refuge*[15] on its facts, and emphasized that the "trust fund" theory was the sole basis for the decision in that case, relying upon the fact that it was in recognition of this doctrine only that the *Perry*[16] case was cited in *Weddle v. School Commissioners*[17] and *State v. Rich*,[18] two intervening liability-of-public body cases where immunity to tort claims was predicated primarily on the

[11] 191 Ala. 572, 68 So. 4 (1915). This case repudiated the view adopted by Maryland.

[12] But "an individual is absolutely bound to make compensation for any injury negligently inflicted upon a stranger in the performance of any act which he undertakes, and the fact that he is actuated by a charitable motive is immaterial . . . The fact that he organizes a corporation to perform his undertaking confers no immunity from liability." 14 A. L. R. 573.

[13] "The objection to this theory is that it does violence to the facts. 'A patient entirely unskilled in legal principles, his body racked with pain, his mind distorted with fever, is held to know, by intuition, the principle of law that the courts after years of travail have at last produced.'" (1921) 19 Mich. L. R. 406. The author quotes from the dissenting opinion in Lindler v. Columbia Hospital, 98 S. C. 25, 36, 81 S. E. 512 (1914).

[14] No Maryland case has dealt with the need of reasonable care in the selection of servants by a trustee or board of directors, although in Perry v. House of Refuge, *supra*, n. 2, the court quoted language to that effect from McDonald v. Mass. General Hospital, *supra*, n. 4. It is interesting to note that since the decision in Roosen v. Peter Bent Brigham Hospital, 235 Mass. 66, 126 N. E. 392 (1920), Massachusetts no longer makes even this requirement—a position contra the great weight of authority.

[15] *Supra*, n. 2.

[16] *Supra*, n. 2.

[17] 94 Md. 334, 51 A. 289 (1902).

[18] 126 Md. 643, 95 A. 956 (1915).

theory that the King can do no wrong.[19] Under the facts of the *Loeffler*[20] case, the modern view is clearly in favor of holding the charity liable.[21]

There have been no Maryland cases involving the tort liability of charitable trusts as distinguished from charitable corporations. The Restatement of Trusts[22] and reliable text-writers[23] take the position that since the considerations of public policy are the same in both instances, a tort-claimant should be permitted to reach the trust fund under those circumstances which result in the liability of a charitable corporation. Aside from his action against the charitable trust the tort-claimant may seek to subject the trustee to a personal liability similar to that of the board of management of a charitable corporation—a possibility which is beyond the scope of this casenote.

Sharing the harsh fate of its concomitant theories, the "trust fund" doctrine is now under attack on many fronts. The principal objection to its continued existence is the feeling that institutions as well as men should be "just before generous" and that those who establish trust funds would have it so.[24] From the one extreme of absolute non-responsibility,[25] at least one jurisdiction has veered to the opposite pole of liability on the same basis as individuals or corporations generally.[26] Some courts, taking an intermediate position, emphasize the relation to the charity of the person injured, holding the charity for a tort to an employee[27] or to a stranger,[28] exempting it from the tort-claims of beneficiaries[29]—at least where the tort

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[19] For a discussion of the overlapping of the nonliability of governmental agencies and that of charitable trusts for their torts, see (1921) 6 Corn. L. Q. 56.

[20] *Supra*, n. 10.

[21] RESTATEMENT, TRUSTS, Sec. 402; 3 SCOTT, TRUSTS, 2151, 2152; Feezer, *op. cit. supra*, n. 7.

[22] Sec. 402.

[23] "While there is a real difference in some respects between the charitable trusts and the holding of property absolutely by a charitable corporation, it is not believed that there should be any distinction between the two situations as to tort liability. Whatever principles of public policy and tort law require an exemption from liability in the case of a charitable corporation should also apply to a trustee for charity, whether the trustee be incorporated or a private individual." 2 BOGERT, TRUSTS AND TRUSTEES, 1243. See also 3 SCOTT, TRUSTS, 2155.

[24] 3 SCOTT, TRUSTS, 2150. Feezer, *op. cit. supra*, n. 7.

[25] O'Neill v. Odd Fellows Home, 89 Ore. 382, 174 P. 148 (1918); Abston v. Walden Academy, 118 Tenn. 24, 102 S. W. 351 (1907).

[26] Geiger v. Simpson M. E. Church of Minneapolis, 174 Minn. 389, 219 N. W. 463 (1928).

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

[28] Bougon v. Volunteers of America, 151 So. 797 (La. App. 1934).

[29] The fact that the recipient of benefits has paid for the services rendered does not alter the rule of exemption in the great majority of

is committed by a servant in whose selection the charity has exercised due care.[30] In some cases the courts, refusing to apply the doctrine of *respondeat superior* to charities, separate torts attributable to a servant or agent and those traceable to a board of directors or trustee.[31] Such exceptions manifest a strong reaction against the "trust fund" theory. The Restatement of Trusts adopts the rule of full liability to non-beneficiaries, and denies recovery to beneficiaries only if the trustee has been personally at fault.[32]

In the final analysis it seems that the immunity of eleemosynary institutions to tort-claims is grounded on an assumed public policy against the enervation of public charities, established for the benefit of the whole community, by compensation of isolated individuals for injuries inflicted by the negligence of the charities and their agents.[33] Such assumed policy is not even consistent with itself. It must be remembered that there is a public policy against preventing loss of earning power and property in the case of the isolated individual or family.[34] Moreover, the community has an interest in obliging every person and every corporation which undertakes the performance of a duty to perform it carefully, and there is, therefore, an attendant interest against exempting any such person and any such corporation (charitable or otherwise) from liability for its negligence.[35]

Although the possibility of the disestablishment of the "trust fund" doctrine in Maryland is probably remote, it might be observed that the doctrine is one which the Court of Appeals could change with little violation of the real purpose of the doctrine of *stare decisis*,[36] should it ever feel that the modern view represents a better social policy. It would, of course, always be appropriate to have legislative correction.[37]

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jurisdictions. Gable v. Sisters of St. Francis, 227 Pa. 254, 75 A. 1087 (1910); Powers v. Mass. Homeopathic Hospital, 109 Fed. 294 (1901). But see Tucker v. Mobile Infirmary Assn., *supra*, n. 11.

[30] This exemption is supported by the weight of authority. See 14 C. J. S. 548, for a list of authorities.

[31] Farrigan v. Pevear, 193 Mass. 147, 78 N. E. 855 (1906); Shapiro v. Jewish Board of Guardians, 165 Misc. 581, 300 N. Y. S. 556 (1937). See also *supra*, n. 14

[32] Sec. 402, (2) and (3).

[33] Vermillion v. Woman's College of Due West, 104 S. C. 197, 88 S. E. 649 (1916); Ettlinger v. Randolph-Macon College, 31 F. (2) 869 (1929).

[34] 2 BOGERT, TRUSTS AND TRUSTEES, 1244.

[35] Glavin v. Rhode Island Hospital, 12 R. I. 411, 34 Am. Rep. 675 (1879).

[36] (1924) 37 Harv. L. Rev. 409. See also (1941) 10 Fordam L. R. 1.

[37] Glavin v. Rhode Island Hospital, *supra*, n. 35.