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# Contributors to the January Issue/Notes

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## CONTRIBUTORS TO THE JANUARY ISSUE

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## NOTE

CHARITIES—THE LIABILITY OF A CHARITABLE ORGANIZATION FOR NEGLIGENCE AS AFFECTED BY THE TRUST FUND DOCTRINE AND INDEMNIFYING INSURANCE.—A recent Colorado case [1] frequently commented upon has focused attention upon the effect of a charity's being insured upon its tort liability. Plaintiff was injured due to alleged negligence in the care and medical treatment of herself while in the defendant's sanitarium as a paying patient. The plaintiff in her replication admitted that the defendant was a non-profit, charitable organization. However, the plaintiff contended that the defendant had taken out insurance indemnifying the plaintiff against all liability for torts of its agents in the conduct of the hospital business. Thus, due to the said policy, a judgment for the plaintiff to be paid by the insurance company would in no way affect the well established Trust Fund Doctrine. The court rendered a decision for the plaintiff contending that the Trust Fund Doctrine would not be disturbed by its decision.

For many years now this country, through the medium of the courts, has rather generally held that a charitable institution is not liable for torts committed by its agents or servants. One of the principal bases for the immunity of the eleemosynary institutions is the so-called Trust Fund Doctrine. It is the purpose of this writing to analyze the Trust Fund Doctrine with its limitations and present trends.

To adequately understand the problem before us, it may be well to try to comprehend just what judicial bodies mean when they speak of the Trust Fund Doctrine. In the main, one may understand the theory of the Trust Fund to be that in cases of charitable institutions

[1] O'Connor v. Boulder Colorado Sanitarium Association, 96 P. 2d 835 (Colo., 1940).

trust funds or funds belonging to the institution which are held in trust for use in furthering the benefits of the organization should not be diverted therefrom to pay damages arising from torts of servants.[2] This is the reason for the adoption, by the courts, of the Trust Fund Doctrine in this country.

The first court to exempt an eleemosynary institution from tort liability because such liability would interfere with the institution's Trust Fund was the English court in the case of *Heriot Hospital v. Ross*.[3] From its inception in England, the theory of the Trust Fund Doctrine found its way to the United States courts in the leading Illinois case of *Parks v. Northwestern University*.[4] In this case the appellee university undertook for hire to teach the appellant the science of dentistry, dental surgery, etc. The appellant alleges that while in the process of the said teachings the appellee through the negligence of one of its professors caused the appellant to lose his eye while the student appellant was in the laboratory under the supervision of the professor. The appellee demurred to the complaint on the ground that the appellee University was a charitable institution organized for the purpose of disseminating education and professional learning, and that the doctrine that the employer shall be liable to respond for the negligent acts of its employee did not apply. The court sustained the demurrer.

In the court's opinion, one comes to understand the basis for the Trust Fund Doctrine. The court said:

"The appellee University is a private corporation, but it is organized for purely charitable purposes. . . . The funds and property thus acquired are held in trust, and cannot be diverted to the purpose of paying damages for injuries caused by the negligent or wrongful acts of its servants and employees to persons who are enjoying the benefits of the charity. An institution of this character, doing charitable work of great benefit to the public, and depending upon gifts, donations, legacies, and bequests made by charitable persons for the successful accomplishment of its beneficial purposes, is not to be hampered in the acquisition of property and funds for those wishing to contribute and assist in the charitable work by any doubt that might arise in the minds of such intending donors as to whether the funds supplied by them will be applied to the purposes for which they intended to devote them, or diverted to the entirely different purpose of satisfying judgments recovered against the donee because of the negligent acts of those employed to carry the beneficial purpose into execution."

By and large, this is the reason for the adoption of the Trust Fund Doctrine which makes the charitable institution immune of liability for the negligence of its servants in tort cases. Since the decision of *Parks*

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2 Charities, 14 C. J. S. 75.

3 C. & F. 507 (1846).

4 281 Ill. 381, 75 N. E. 991, 2 L. R. A. (N. S.) 556 (1918).

*v. Northwestern University, supra,* this doctrine has found expression in many jurisdictions in the United States.

Let us first make some general observations in regard to the acceptance of the Trust Fund Doctrine since *Parks v. Northwestern University, supra,* in this country. Some of the cases absolutely deny the liability of a charitable institution, in any event, to pay damages for injuries arising from the negligence or other tort of its servants and agents. In these cases the Trust Fund Doctrine is stretched to the limit on the theory that all the property and other holdings of a charitable institution are potentially a part of the so-called Trust Fund and any judgment against the charity would in some wise affect this fund.[5]

However, one finds other cases which merely limit the liability of an eleemosynary organization, and still this is done by the application of the Trust Fund theory of immunity. For example, it was held in the Colorado case of *St. Mary's Academy of Sisters of Loretto of the City of Denver v. Solomon*[6]:

"The trust fund rule does not preclude the recovery of a judgment against a charitable institution based on the tort of its agents or servants but prohibits the execution of judgment when the trust fund might be depleted."

This same rule has been followed in *Brown v. St. Lukes Hospital Association.*[7]

Thus, one can appreciate that there have been strict and liberal interpretations to the Trust Fund. Now, let us turn to some of the court's reasoning in its more strict application of the Trust Fund Doctrine. In the case of *Roosen v. Peter Brent Brigham Hospital,*[7a] the court sees no distinction between the liability of the servants of an inferior nature for negligence and the liability of managers and trustees for the same wrong. To both cases the Trust Fund Doctrine finds application.

The Pennsylvania court found that the charitable institution is not liable for "pay patients" any more than it is liable for non-pay-patients. It is held that the money which these parties pay is made a part of the charitable fund and thus to allow recovery from this fund would be to destroy the whole theory behind the Trust Fund.[8]

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5 Foley v. Wesson Memorial Hospital, 246 Mass. 336, 141 N. E. 113 (1923); Roosen v. Peter Brent Brigham Hospital, 235 Mass. 66, 126 N. E. 392, 14 A. L. R. 563 (1920); Vermillion v. Woman's College of Due West, 104 S. C. 197, 88 S. E. 649 (1916).

6 77 Colo. 463, 238 P. 22 (1925).

7 85 Colo. 167, 274 P. 740 (1926).

7a *Supra,* note 5.

8 Gable v. Sisters of St. Francis, 227 Pa. 254, 75 A. 1087, 136 Am. St. Rep. 879 (1910).

The case of *Adams v. University Hospital*[9] goes even a step further when it said:

"It is manifest that, if we uphold a rule which would make an institution of charity liable to a patient who has been injured by an incompetent servant, negligently selected, we destroy the principle we have endeavored to make plain, that charitable trust funds cannot be diverted from the purposes of the donor."

The St. Louis Court of Appeals in *Whittaker v. St. Lukes Hospital,*[10] applies the same rules as were developed in *Adams v. University Hospital, supra,* to cases involving the injury of a servant while at work.

Also in *Eads v. Young Womens Christian Association,*[11] the same doctrine was developed by the Missouri Court, the court saying:

"Charitable organizations are exempt from liability for negligent injury because their funds, being held in trust for charitable purposes may not be diverted."

However, many of the courts have not so readily accepted the Trust Fund Doctrine. In *Glavin v. Rhode Island,*[12] the charitable institution was held liable for negligence in its tort cases.

Other states have refused to adopt the non-liability of an eleemosynary institution, in Minnesota *Geiger v. Simpson Methodist Episcopal Church*[13]; in Oklahoma in *City of Shawnee v. Raush*[14]; in Alabama in *Tucker v. Mobile Infirmary Association.*[15] These give us the majority of cases which hold the charitable institution liable. Many of these courts held charitable institutions liable because of certain claimed weaknesses of the Trust Fund Doctrine. For some specific criticisms of the Doctrine where the courts have refused to follow it are seen in the Minnesota case of *Geiger v. Simpson Methodist Episcopal Church, supra,* where it is declared:

"Charitable institutions to be liable for torts in the same manner as other corporations and individuals, it was said that the trust fund theory has been so weakened and limited by the decisions that it is not likely to hereafter have practical application or importance."

Also, in the case of *Tucker v. Mobile Infirmary Association*[16] the opinion stated:

"In opposition to this doctrine it has been pointed out that the same principle, logically extended would exempt such bodies from lia-

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9 122 Mo. App. 675, 99 S. W. 453, 456 (1907).
10 137 Mo. App. 116, 117 S. W. 1189 (1909).
11 39 S. W. 2d 701 (Mo., 1930).
12 112 R. I. 411, 34 Am. Rep. 678 (1879).
13 174 Minn. 389, 219 N. W. 463, 62 A. L. R. 716 (1928).
14 101 Okla. 60, 223 P. 354.
15 191 Ala. 572, 68 So. 4, 13 L. R. A. 1915D (1915).
16 *Ibid.*

bility for any tort of a servant, whereas, at least in some jurisdictions, there are various torts for which all employers are held responsible, even though they are engaged in public charity."

The latest case in point is *Silva v. Providence Hospital of Oakland.*[17]

Thus, we have reviewed both sides of the Trust Fund Doctrine as it has been limited and expanded in the courts of the United States. The general observation which we may make from these citations is to the effect that the courts of this country have adopted the Trust Fund Theory either entirely or in some limited scope.

Indemnifying Insurance is one of the most important limitations on the Trust Fund Theory. Many courts have construed it so as to make the eleemosynary institutions liable for the torts committed by their agents or servants. In the Kentucky case of *Williams Administratrix v. Church Home for Females and Infirmary for Sick,*[18] the court adopted the rule that the mere taking out of indemnifying insurance would not make the eleemosynary institution more liable than it previously was. In adopting this rule the *Kentucky* court, *supra,* referred to the opinion presented in *Levy v. Superior Court,*[19] which observed:

"If a liability may be created or an exemption waived by the acts of the trustee of a charity in procuring and accepting the promise of a third person to make good the losses following such liability or waiver, and the trustee thus allowed to accomplish indirectly that which is not permitted to be done directly, the protection afforded by the rule stated would be destroyed. No authorities holding in accordance with the argument of counsel in this behalf have been called to our attention; and it is our opinion that the theory that a charity, not otherwise subject to liability, may become liable by reason of the procurement by those administering it of indemnity insurance cannot be supported in principle."

In an early Washington case, *Susman v. Young Mens Christian Association of Seattle,*[20] the court remarked on indemnifying insurance as a means of making the charitable organizations not liable to the effect that:

"The taking of indemnifying insurance was but the exercise of business prudence. At any rate it could create no liability where none before existed, however much it might weigh as evidence of the construction the corporation placed upon its limitations and powers."

In Massachusetts in the case of *Enman v. Trustees of Boston University*[21] it was held in a personal injury action against charitable

17 97 P. 2d 798 (Cal., 1939).
18 3 S. W. 2d 753 (Ky., 1928).
19 74 Cal. App. 171, 239 P. 1100 (1925).
20 101 Wash. 487, 172 P. 554 (1918).
21 270 Mass. 299, 170 N. E. 43 (1930).

corporation, a policy of liability insurance was held not admissible to prove that because of the insurance the defendants were deprived of exemptions from liability otherwise open to charitable organizations.

The case of *Bougon v. Volunteers of America* [22] speaks of the effect of insurance on the liability of a charitable institution when the court says:

"In at least some of those jurisdictions which apply the trust fund doctrine to strangers it has been held that even where a charity is protected by an indemnity insurance policy, no recovery can be had, notwithstanding the fact that no diversion of the trust funds would result. In other words, a third person cannot recover from a charitable organization for the effect of the negligence of its servants, because it would result in the diversion of trust funds, but, whether there be a diversion of trust funds or not, there can be no recovery for the same reason."

It is true from many of the latter citations that many courts have held that indemnifying insurance will not affect the non-liability of eleemosynary institutions. Nevertheless, many of the latest cases seem to deviate from this original theory.

In a Mississippi case of *Mississippi Baptist Hospital v. Moore,*[23] the court gives the impression that it might allow one injured in a charitable institution due to the negligence of the servants of the charity to recover under a general insurance indemnity when the court said:

"It did not contract to indemnify the patients against the negligence of the physicians or servants of the hospital, if there was no liability of the hospital under the law of the land. . . . If the indemnity had been taken without a basis for legal liability under the same situation, it might be permissible to construe it so as to cover some liability in order to give effect to the contract. In other words, the court would be reluctant to hold that a contract of insurance, of which the premium had been collected, could not be given legal basis to operate."

We see somewhat of a deviation from the old rule that a charitable institution should be absolutely immune of liability due to the fact that it is a charity and its trust funds should not be tampered with; and any act against the limitation of the charities non-liability necessarily tampered with the trust fund. One may observe this deviation in the case of *McLeod v. St. Thomas Hospital,*[24] where the court said:

"We think it fairly may be said that the exemption and protection afforded to a charitable institution is not immunity from suit, not non-liability for a tort, but that the protection actually given is to the trust funds themselves."

This statement seems to imply that it is not wrong to recover from an eleemosynary institution for a tort committed by the servant if the

22 151 So. 797 (La., 1934).
23 156 Miss. 676, 126 So. 465 (1930).
24 95 S. W. 2d 917 (Tenn., 1936).

trust fund is in no way depleted or affected. That is, there is a legal wrong against a charitable institution for negligence and other torts of its servants, but the wrong may not be righted since the trust fund would be harmed. Now, if we assume this reasoning to be true, then indemnifying insurance will make it possible to collect against the charity for its torts without affecting the trust funds.

Then, turning to the Colorado case of *St. Marys Academy v. Solomon, supra,* we see that the court reasoned:

"that the judgment against a charitable corporation is valid, but that no property which they hold in charitable trust can be taken under execution upon it, and if and while they hold no property but in such trust this judgment can't be collected."

From the statement of this court, one is led to assume that if the charitable corporation had indemnifying insurance the judgment against them might be satisfied through this medium, and, in the principal Colorado case of *O'Connor v. Boulder Colorado Sanitarium Association,* April 1940, *supra,* the court followed this reasoning by holding the defendent, charitable institution, liable for its negligent acts of its servants on the theory that the *Trust Fund Doctrine* has not been disturbed by this reasoning since the payment of the judgment comes from the indemnifying insurance.

The latter case is the latest case decided on this point of law. From this case, one is able to see that the trend in the future points to liability for charitable institutions when the latter is indemnified by insurance. And, from the point of view of justice, it seems that this is the most satisfactory and equitable solution to the problem. My reasons for this view is bound in the reasoning that when a charitable institution takes out insurance, it does so for the benefit of those who are injured by the negligence or other tort of its servants. Then, why shouldn't the one so indemnified be allowed to collect on the insurance policy? If one holds otherwise, the insurance company is the only one benefiting, and both the insured and the injured parties stand to lose. It seems perfectly fair and logical, then, to hold a charitable institution liable for its torts when said institution carries indemnifying insurance covering the wrong committed, and the judgment collected is solely through the insurance company and the Trust Fund is not depleted in any wise.

The trend of cases seems to adopt this view, and the writer submits that this seems to be the most equitable means of handling the situation since all wrongs are satisfied and no one is injured; the injured party may recover, the trust fund theory or the trust fund is not injured or depleted, and the insurance company is merely paying the claim which it has insured against.

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