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Liability of Corporations for Torts

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LIABILITY OF CORPORATIONS FOR TORTS.

THESIS PRESENTED FOR THE DEGREE

of

BACHELOR OF LAWS.

By

LYMAN HICOK GALLAGHER.

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CORNELL UNIVERSITY
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1895.

I N T R O D U C T I O N .

The privilege formerly granted corporations of committing injuries with impunity had its origin only in the inflexibility of the ancient processes and in the unwillingness of the courts to apply writs of a personal bearing to beings having a nominal existence (a).

This absence of any substantial reason for denying the liability of corporations, coupled with the fact of their rapid growth and the consequent importance which these legal bodies were assuming, allowed and compelled the courts to overturn the distorted views of conservative judges and to erect in their stead new principles founded on public policy and natural justice.

Thus the responsibility did not arise from any process of evolution. In a sense corporations had always stood on an equal footing with individuals; and the principles which altered their position toward those with whom they dealt only removed one of the many fetters which have so often interfered with the administration of justice.

(a). *Yarborough v. Bank of England* 16 East 6, Pollock on Torts, p. 5.

Worded differently, the result was not reached by lifting corporations to the plane they occupy but simply by providing a means of remedial approach for parties seeking redress.

The equity of the rule is too apparent to admit of argument. The responsibility imposed is but the obvious consequence of corporate existence and ^{the} exercise of corporate rights: naturally, duties and privileges are inseparable and survive or fall together. No court in changing the rules of law desired to discriminate against corporations. In an opinion adverse to the interests of corporations an American judge says: "I am no enemy to corporations. On the contrary, I look upon them as a proof, and in no small degree, the cause of the unparalleled^{e1} advancement of modern civilization." (a). Equality alone was sought; and now, with regard to the law corporations come into being as do individuals, endowed with rights by the State and placed under certain restraints by the same power.

Davis, J, in N. Y. & N. H. R. R. Co., v. Schuyler, 34 N. Y. 30, says: The "proposition ----- is so clear upon principle, and so distinctly settled by authority, (a) Hightown v. Thornton, 8 Ga., 486, 505.

that nothing but confusion can flow from its discussion", "It will bear no more than plain enunciation." Again, Mr. Justice Field in *Baltimore and Potomac R. R. Co. v. Fifth Bap. Church*, 108 U. S. 317, says: "The doctrine which was sometimes asserted, that an action will not lie against a corporation for a tort, is exploded. The same rule in that respect now applies to corporations as to individuals."

These quotations serve to show how deeply rooted is the principle they involve and the uncompromising manner in which that principle is put by the judiciary of the country.

A few jurisdictions have, however, denied the doctrine. (a). But these cases setting forth the opposite view of the situation would pass unnoticed were it not for the fact that they present the record of a great mistake which succeeding judges on the same benches have seen and gladly rectified. (b). In effect, this petty show of defiance only gave strength to the rule of corporation^{law} which is so fundamental that in modern English and American jurisprudence it stands uncontradicted.

(A) *Orr v. Bank of U. S.*, 1 Ohio, 37.

(B) *Atlantic & Great Western Ry. Co., v. Dunn*, 19 Ohio St. 163.

CHAPTER I.

The fact that a corporation can exist and can remain a factor in the commercial world only through the instrumentality of individuals necessarily leads the discussion of its liability for torts into the field of the law of master and servant.

But the legal relation which the corporation is thus forced to assume negatives any attempt at ascertaining the presence of responsibility by drawing distinctions between the different classes into which employment is usually divided. An agent is given a certain discretion in the performance of his duties while the ordinary servant works mechanically, but, nevertheless, the difference resolves itself simply into one of degree. The liability of a corporation remains the same whether its position be that of principal, employer or master. (a).

The corporation thus made a principal from the moment of its creation, the power to appoint agents follows as a necessary incident and is usually implied though sometimes conferred by legislative enactment (b),

(a) Schou. Dom. Rel. Sec. 461; Mechem on Agency Sec. 2.

(b) Gen. Corp. Law of N. Y., Sec. 11, sub. 4.

This authority is exercised in the same manner as if undertaken by a natural person (a). And, so, in the absence of statutory provisions to the contrary, the authority of a corporation's agents need not be proved by a writing, but may be presumed from the nature and facts of the particular case (b). Implied authority may raise an estoppel as in one case where a corporation allowed persons, working under the direction of its employe, to pursue their labor under the impression that they were working for the corporation (c). Authority is also proved by showing that the principal has received the benefits of the transaction and has adopted and appropriated the work of the agent (d); provided the work was intended to directly benefit the principal (e).

(a) Kelly v. Board of Public Works, 75 Va. 263; New Eng. Fire Ins. Co. v. Robinson, 25 Ind. 536; Randall v. Van Vechten 19 John. 60; Maine Stage Co. v. Longley, 14 Me. 444.

(b) Warren v. Ocean Ins. Co., 16 Me. 439.

(c) Gowen Marble Co. v. Tarrant, 73 Ill. 608.

(d) Peterson v. Mayor &c. of New York.

(e) R. R. I. & St. L. R. R. Co. v. Wilcox 66 Ill. 417; Kelley v. Newburyport Horse R. R., 141 Mass. 496.

(e) Western Pub. House v. D. T. of Rock 84 Iowa 101.

Where the agency is to be proved, something more than the assertions of the agent that the relation exists, must be shown (a). A revocation of authority is effected by agreement (b), by dissolution of the corporation, or, of course, by the death of the agent.

Generally speaking, any person may be the subject of the execution of the right of appointment. In one case it is stated that, "any one except a lunatic, imbecile or child of tender years may be an agent for another." (c). Authority may be conferred upon a partnership, and in such a case the act of any partner is the act of the firm (d). Corporations are, also, allowed to carry on business for others and to act in practically the same manner as if the work were being performed by an individual (e). By legislation in some states the relation has practically been given an unlimited scope (f). And, indeed, the relation of agent is surrounded by so few requirements that very often persons incapable of occupying the position of principal are employed to act as agents (g).

(a) Hatch v. Squires, 11 Mich. 185.

(b) Rowe v. Rand. 111 Ind. 206.

(c) Lyon & Co. v. Kent, Payne & Co., 45 Ala. 656.

(d) Deakin v. Underwood, 37 Minn. 98.

(e) McWilliams v. Detroit Central Mills Co., 31 Mich. 274.

(f) Cal. Code, Sec. 2296; Dak. Code, Sec. 1338.

(g) Weisbrod v. Chicago, &c. Ry. Co. 18 Wis. 35;

After appointment, however, duties may be performed by the agent which are so nearly in the line of his employment that great care is necessary to determine whether the corporation is, so far as that duty is concerned, the agent's principal. So where a person sent a box by an express company in care of one of its officials, it was held that the company was not liable for the loss of the box, the agent having become the agent of the sender and not of the common carrier (a). It is the general rule that an agent cannot act for both principals in a contract; but if both principals are aware of the fact and they contract with that knowledge, both are bound (b). Agency may extend through one or more persons, themselves agents, provided the sub-agent is practically in the employ of the original principal. If the sub-agent is so connected with the principal, the intermediate party becomes a mere legal conduit. Here it may be stated that the question of liability for acts of fellow-servants is now undisputed and so may be excluded. The principal is not responsible for injuries sustained by a fellow-servant through the misconduct of another, if the principal has used care in selecting his servants. (c).

(a) *Fitzsimmons v. The So. Ex. Co.*, 40 Ga. 330.

(b) *Robinson v. Jarvis*, 25 Mo. App. 421.

(c) *Colo. &c. R. R. v. Ogaen*, 3 Colo., 499.

Persons working for the same master in the same employment are fellow-servants.

With this general understanding of the term "agent" as a basis, we are to determine just what persons working in furtherance of the interests of a corporation are in a position to render that body liable for their tortious acts. And, first, persons performing duties independent of any control or supervision of the principal are to be excluded as being entirely without the limits of the law of agency. Injuries occasioned by these independent contractors, as they are called, or by persons in their employ, are not, as a rule, imputable to the principal (a). Thus in a New York case the plaintiff, an employe of one Dillon who was engaged by defendant to transfer rails from vessels to cars by means of defendant's derrick, brought suit to recover for injuries sustained by the falling of the derrick, but was not allowed to recover on the ground that Dillon was a contractor. (b). The proposition which guided the court in rendering the decision was, that "if the person who was the immediate cause of the injury was a contractor, engaged in performing a contract to do a specific

(a) Bailey v. Troy & Boston R. R. Co., 57 vt. 252; Hass v. Phila. &c. Steamship Co. 88 Pa. St. 209; City of St. Paul v. Seitz. 3 Minn. 205; Eaton v. Eu. &c. Ry. Co. 59 Me 520
 (b) King v. N. Y. &c. R. R. Co., 60 N. Y. 180.

work, -----, the relation of master and servant is not created by the contract between the parties, and for the contractor's negligence while performing the work, the other party is not liable".

The rule has its exceptions and they must be carefully noted since they are probably more frequently called into application than is the rule itself. The exceptions are embodied by some courts in the statement that where the injury "is entirely the result of the wrongful acts of the contractor or his workmen, the --- employer is not liable; but where the obstruction or defect which occasioned the injury results directly from the acts which the contractor agreed and was authorized to do, the person who employs the contractor and authorizes him to do those acts is --- is liable to the injured party (a)". The statement is somewhat vague. Better stated, if the performance of the work results in the creation of a nuisance, or the work is unlawful or cannot be carried on without injury to third parties, the principal is liable. Where a drain was so negligently constructed as to cause a nuisance by allowing tide waters to flow into cellars of adjoining property holders, the principal was held liable (b)

(a) Water Co. v. Ware, 16 Wall. 566; Gorman v. Gross, 125 Mass. 232.

The employment by contractors of unlawful means for collecting a debt was held to render the principal liable to the injured party (A). The failure to perform duties imposed by law makes the person commanded amenable for all injury resulting from the negligence, as where, in violation of an ordinance, defendant^{omitted} to place lights about an obstruction in a street and plaintiff was injured, defendant was held liable (c). Municipal corporations are bound to keep their streets in a safe condition for the use of the public in traveling and are liable for any injuries caused through the improper performance of this duty (d).

As is easily seen, a corporation is bound by the acts of persons only when those persons because of express or implied authority are held out to the world as the representatives of the corporation for certain purposes. Hence, as, "a corporation should have a full and complete organization and existence as an entity before it can enter into any kind of a contract or transact any business", no one can before such organization

(b) p. 9. *Sturges v. Theological Ed. Society*, 130 Mass. 414; *Cuff v. Newark & C. R. R. Co.*, 35 N. J. L. 17; *Scammon v. City of Chicago*, 25 Ill. 301.

(a) *Casswell v. Cross*, 120 Mass 545.

(c) *Wilson & Bro. v. White*, 71 Ga. 500.

(d) *Storrs v. City of Utica*, 17 N. Y. 104.

render a corporation liable to parties with whom he deals or comes in contact (a). To hold a corporation responsible for any thing which occurred before its incorporation would be a mere absurdity. Parents might as well be allowed to make contracts binding on an unborn child. Not until the time of its birth does a corporation "acquire its faculties to transact its business and perform its functions". A different rule would produce incalculable harm to persons contemplating the pursuit of business through incorporated bodies and would also make the public suspicious and doubtful whenever approached by promoters or other persons seeking to obtain support for the corporation. With a view to the law of tort, persons would cease to form corporations preferring to transact business on a more limited scale than take the chance of becoming liable for the innumerable injuries which agents in working for the corporation might commit. An interesting case on this point is *Berry v. S. F. & N. P. R. R. Co.*, 50 Cal. 435. There defendant was sued for trespass and injury to certain real estate owned by plaintiff. Defendant set up that at the time the trespass was committed it (defendant) was unincorporated.

(a) *Marchland v. Loan & Pledge Assn.*, 26 La. Ann. 389; *Frost v. Belmont*, 6 Allen 152.

The court in deciding the case said: "For any trespass committed prior to the incorporation of the defendant, the individuals committing or directing such trespass would be responsible in damages, but defendant cannot be made to respond for an injury done before it had an existence".

A corporation is incorporated usually by compliance with the terms of the statutes providing for the formation of corporations. In New York, certificates of incorporation are presumptive evidence of legal existence (a). Often, the filing of a certificate is not a prerequisite to corporate existence but is simply evidence of it (b). And so a bona fide effort to form a corporation is generally sufficient if the intent be followed by an assumption of corporate functions.

Acts committed after dissolution are obviously unimputable to a once-existent corporation. The reason for the rule is that which relieves corporations from liability for the acts of promoters: viz., that the relation of principal and agent does not exist because the necessary parties are not present. The case is even stronger than that of acts done before incorporation

(a) New York gen. Corp. Law, Sec. 9.

(b) Vanneman v. Young, 20 A. (N. J.) 53.

as in the latter case affirmance of an act may be made while a dissolved corporation could never have such a right. When dissolved no vestige of former existence remains. So actions against a corporation after it has ceased to live are void (a). But the dissolution does not effect rights existing at the time of dissolution. The assets of a corporation become a trust fund for the benefit of all creditors. A corporation may be dissolved

by the act of the legislature in repealing its charter or by the natural expiration of the time for which the charter was granted. In some states enabling statutes exist by compliance with which the corporation may at any time dissolve itself.

In the cases above presented it will be noticed that the relation of principal and agent did not exist and the corporation was permitted to protect itself by showing that fact. We now come to the discussion of those cases where the corporation seeks to defend itself from liability for the tortious acts of persons whom it admits are in its employ. Because of the abolition to a large extent of the doctrine of Ultra vires

(a) National Bank v. Colby, 21 Wall. 614; Greeley v. Smith, 3 Story 658.

which confined the duties and privileges of a corporation strictly to the provisions of the charter creating it, numerous opportunities for deciding questions of this nature in the courts have been offered. And the result has been, as before stated, to render a corporation liable for the wrongs perpetrated by its agents; but the reform did not reach beyond its proper bounds. There is line, therefore, beyond which even the most liberal judges dare not go. Hence, when an agent attempts to do any thing which is not in accordance with the intent of the corporation's charter and wholly without the corporate powers and the limits of the business it was intended to pursue, the responsibility for the act remains solely in the agent. This rule precludes directors who are mere agents from launching the corporation with which they are connected into difficulty by Ultra vires acts. So it is said that a corporation could not be held liable for assault and battery, if, in obedience to the demands of the directors, an agent should attack and beat a certain person; for the act was not one connected with the transaction of the business for which the company was incorporated (a).

(a) Brokaw v. N. J. R. & Trans. Co., 32 N. J. L. 328.

But no case definitely points out and from the nature of the thing no court will ever be able to point out just where the dividing line is situated. The question is one of construction for the judges in each particular case as it arises, and so the ground already gained is as likely to be lost by differences of opinion as it is likely to be more sharply defined. Probably the broadest enunciation of the doctrine of Ultra vires is that of Marshall, Ch. J., in 2 Branch, 167, where he says: "Without ascribing to this body (an insurance company) which in its corporate capacity is the mere creature of the Act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may be correctly said to be precisely what the incorporating act has made it, to derive all its powers from that Act, and to be capable of exerting its faculties only in the manner in which that act authorizes". This statement is without doubt too conservative and could hardly suffice to cover some cases which have carried the doctrine of implied powers to an almost unlimited extent. Yet ordinarily any court would keep within the bounds of the rule in rendering a decision. So where the teller of a bank by deceitful representations induced plaintiff to pur-

chase certain railroad bonds, the bank, on being sued for damages resulting from the purchase, was held not liable (a). In cases quite similar no doubt the defense of Ultra Vires would be sustained, and the injured party left to his right of action against the agent (b). The decision of the above case turned upon the construction put upon the words "buy and sell", which were contained in the Act under which the bank was organized. This illustrates the difficulty of determining the effect of an act performed under the provisions of a charter so general in its terms. The responsibility for the act turns on a pivot and may be quite easily shifted so as to fall either on the agent or the corporation. A case which seems to be in the border-land between acts Ultra Vires and those for which the corporation is liable is *Hutchinson v. Western & Atl. R. R. Co.*, 6 Heisk. 634. There a corporation, chartered to construct and operate certain railways undertook to run in connection with the road a steamship line. Two of the boats collided and a passenger was killed. The corporation excused its acts on the ground that it had no authority to run

(a) *Weckler v. First National Bank*, 42 Md. 580.

(b) *Loyd v. City of Columbus*, (Ga.) 15 S. E. 818.

the boats. The court said that acts Ultra vires were as easily imputed to corporations as to individuals, "else the maxim, that 'no man shall take advantage of his own wrong' " is violated. But this statement is largely qualified by the remark that the liability of the corporation is insured if it has knowledge of the act and recognizes it as done to carry on its business. Other cases put the doctrine as strongly as the case last cited (A); but it is to be noticed that the position taken by the corporation generally amounts to a direct affirmance of the act. The broad statement of the rule is made without pointing the possibility of the act being of such a nature as to dissolve for the moment the relation between the principal and his agent.

The second requisite for fixing the liability of the corporation for the tortious acts of its servants is that the act shall be within the real or apparent scope of the agent's employment. When the act of the agent is of such a character as to be imputable to the principal is as difficult to determine as it is to ascertain when the act is within the corporate powers.

There are few guides and the question is consequently

(a) Nat. Bank v. Graham, 100 U. S. 699; Alexander v. Relife, 74 Mo. 495; N. Y. & C. R. R. Co. v. Haring, 47 N. J. L. 137.

one of proof of intention in the business meaning of that term. If the act be in furtherance of the duty to be performed or necessarily incident to it the corporation is liable though the act be unauthorized or in some cases if it be expressly forbidden. Thus where a gate-keeper, upon the attempt of plaintiff to pass through a gate without producing a ticket, caused plaintiff to be arrested and imprisoned, defendant, a railroad company, was held liable (a). The gate-keeper had been ordered to prevent the passage of any person not showing a ticket, and his action was, as he thought, the proper way of carrying out the instructions. In the course of the opinion the court said : "It matters not that he (gate-keeper) exceeded the powers conferred upon him by his principal and that he did an act which the principal was not authorized to do so long as he acted in the line of his duty, or, being engaged in the service of the defendant, attempted to perform a duty pertaining, or which he believed to pertain, to that service". So in cases where a corporation employs persons to arrest and prosecute any one found obstructing its tracks, and the agent arrests an innocent person,

(a) Lynch v. Metropolitan El. R. Co., 90 N. Y. 77.

the corporation is liable (a). The act may be wilful and committed expressly for the purpose of working out the agent's ill will against the person injured and yet the corporation is liable. In *T. H. and Ind. R. R. Co. v. Jackson*, 81 Ind. 19, a railway company was held liable for the act of a trainman in throwing water upon plaintiff who was seated in a car. Although no set rule can be promulgated whereby the acts within the agent's scope of authority may be easily distinguished from those without, it is at least certain that a corporation's liability for the unauthorized acts of its agents "is limited to unauthorized modes of doing authorized acts". Thus where a street car conductor threw plaintiff from the car because he refused to alight while the car was in motion, the company was held ^{not} liable (b). The court admitted the indefiniteness of the rule but stated that the difficulty arose not in the principle but in its application. Of course, in this case, the act of the conductor was wholly uncalled for; though the decision might have been different had the act been committed when the passenger was alighting.

(a) *Evansville & T. H. Ry. Co. v. McKee*, 99 Ind. 519; *The Penn. Co. v. Weddle*, 100 Ind. 139.

(b) *Isaacs v. Third Ave. R. R. Co.*, 47 N. Y. 122.

And yet the Indiana courts would, it seems, hold the company liable under almost any circumstances. In *T. H. and Ind. R. R. Co. v. Jackson* (supra) it was said: "The appellant had undertaken to carry the plaintiff as a passenger upon its train and was bound to do it safely. For this purpose, the appellant was represented by its agents in charge of the trains, and if they did any thing inconsistent with the safe carriage and delivery of the plaintiff, upon the plainest principles of law as well as good public policy, is liable for the injury." The directions to an agent given by his principal are often of much consequence as showing what the agent was authorized to do but they do not have the effect of shielding the principal from liability. The authority of the agent is usually a matter of inference and is to be discovered from surrounding circumstances and the usual course of business. It is said that the principal will not be presumed to authorize the commission of any thing unlawful, but the presumption is of almost no effect. The apparent authority of an agent may be made up of: 1. Powers actually conferred by the principal. 2. Powers incidental i. e., those necessary to carry into effect the powers conferred. 3. Powers which are annexed by custom or usage

to the express authority actually conferred. 4. Powers which principal has by his conduct led third persons to believe he has conferred on his **agent**. 5. Powers which principal has been deemed to have ratified. In order that there may be a legal ratification the principal must have knowledge of the wrong (a).

(a) Herring v. Skaggs, 62 Ala. 180.

CHAPTER II.

The rule that corporations are liable for torts in the same manner as individuals are, under the same circumstances, is found to be entirely too broad when the different classes of corporations are taken into consideration. The widest difference exists between private and municipal corporations in respect to their liability. The first are fairly within the rule above stated and so need no especial mention. Municipal corporations are to be distinguished from quasi-public corporations which are liable for torts only when so declared so by statute. In *Sheldon v. Kalamazoo*, 24 Mich. 383, the general rule as to the liability of municipal corporations is stated thus : "The doctrine is entirely untenable that there can be no municipal liability for unlawful acts done by municipal authorities to the prejudice of private parties. In this respect, public corporations are as distinctly legal persons as private corporations. There are officers who are corporation agents, and there are municipal officers whose duties are independent of agency and with distinct liabilities. But when the act done is in law

a corporate act, there is no ground upon reason or authority for holding that if there is any legal liability at all arising out of it, a corporation may not be answerable- - - to hold that positive wrongs must in all cases be considered as purely individual and not corporate acts, would be a novelty in jurisprudence."

We are concerned only with the explanation of the sentence above quoted which speaks of corporate agents. The officer of a municipal corporation can bind the corporation only when he has authority to act. An act might be done colore officii, but unless authorized the agent is, so far as that particular act is concerned, wholly divested of the power incidental to his position (a). The authority may be expressly conferred or it may be inferred from the general scope of the agent's authority. It is held that for tortious acts done bona fide in the course of the performance of a duty the corporation is liable. As where an overseer of highways, having general authority to care for public streets, entered upon the premises of plaintiff and set back his fence claiming that it encroached upon the property of the public (b).
 (a) Lee v. village of Sandy Hill, 40 N. Y., 442.
 (b) Thayer v. City of Boston, 19 Pick., 511.

But who are agents of a municipal corporation ? Only those persons who are controlled by the corporation and are employed for its especial benefit. Persons employed are considered because necessarily incident to the existence of a town or city are not agents in the sense of being able to render the corporation liable for their acts. Thus where a person was run over and killed by an ambulance belonging to the city and driven by an employe of the Commission of public charities, the city was held not liable because the agent was an officer provided for by legislative enactment (a). For the same reason acts of police officers (b), firemen (c) and persons appointed to carry into execution sanitary regulations (d) are not imputable to the corporation. The matter is well explained in Maximilian v. Mayor (supra). The court said: "There are two kinds of duties which are imposed upon a municipal corporation. One is of that kind which arises from the grant of a special power, ---; the other is of

(a) Maximilian v. Mayor, 62 N. Y. 160.

(b) Buttrick v. City of Lowell, 1. Allen 172; Wishart v. City of Brandon, 4 Manitoba, 453.

(c) Hafford v. City of Bedford, 16 Gray, 297; Hayes v. City of Oshkosh, 33 Wis., 314; Fisher v. Boston, 104. Mass. 87; Lawson v. City of Seattle, (Wash.) 33 P., 347; Alexander v. City of Vicksburg, 68 Miss., 564; Gillespie v. City of Lincoln, (Neb.) 52 N. W., 811.

(d) Ogg v. City of Lansing, 35 Ia., 495.

that kind which arises, or is implied, from the use of political rights under the general law, ---.

--- In the exercise of the former power, and under the duty to the public which the acceptance and use of the power involves a municipality is like a private corporation, and is liable for a failure to use its power well, or for an injury caused by using it badly. But where the power is intrusted to it as one of the political divisions of the State, and is conferred not for the immediate benefit of the municipality, but as a means to be exercised of the sovereign power for the benefit of all citizens, the corporation is not liable for non-user, nor for misuser by public agents!"

The other class of corporations differing from private corporations in the matter of liability are those founded for charitable purposes. By the weight of authority such institutions are taken entirely without the operation of the doctrine of Respondeat superior and so are not responsible for acts of their agents. The rule proceeds upon the ground that the object of such corporations is ^{the} benefit of the public and that without this protection to charitable corporations the public would suffer the loss of many of these institutions;

as few corporations would survive the suits which persons whom they are compelled to employ would cast upon them. So it is said : "--- The law jealously guards the charitable trust fund, and does not permit it to be frittered away by the negligent acts of those employed in its execution". In *Fire Ins. Patrol v. Boyd*, 120 Pa. St. 624, it was sought to hold defendant liable for wrongfully causing the death of plaintiff's relative. Deceased was killed by a bundle thrown from a window by agent of defendant. The court said: "The insurance patrol is a public charity. It has no property or funds which has not been contributed for the purposes of charity, and it would be against all law and all equity to take those trust funds so contributed for a special charitable purpose to compensate injuries inflicted or occasioned by the negligence of the agent or servant of the patrol. It would be carrying the doctrine of respondeat superior to an unreasonable and dangerous length. --- I trust and believe it will never be extended to the sweeping away of public charities; to the misapplication of funds especially contributed for a public charitable purpose and objects not contemplated by the donors".

No court denies the correctness of the rule. But Rhode Island seems to have laid down the opposite doctrine in *Galvin v. R. I. Hospital*, 12 R. I. 411. The case was one brought to recover damages for injuries sustained by a patient through the improper treatment of hospital attendants. From the reasons for the holding given in the opinion it would seem to appear that the case went on the ground that the corporation was negligent in the selection of its servants. If this be the basis of the decision, the court differed but little from other authorities. For in New York an allegation of negligence on the part of officers of a charitable corporation in the selections of its agents is sufficient to warrant a continuance of the action (a). But whatever may be the reasons for the decision, the legislature, shortly after the decision, passed an act relieving charitable corporations of all liability for the tortious acts of their servants (b) and thus left the doctrine clear and settled (c).

- (a) *Hass v. Miss. Society*, 6 Misc. (N.Y.) 281.
- (b) Laws of Rhode Island, 1880, Chapt. 163, Sec. 1.
- (c) *Benton v. Trustees of Boston City Hospital*, 140 Mass. 13; *Perry v. House of Refuge*, 63 Md. 20; *Dows v. Harper Hospital*, (Mich.) 60 N.W. 42.

Sydney H. Gallagher

